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**WEST VIRGINIA EDUCATION AND
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JAYELL FROATS

v.

DOCKET NOS. 89-15-164/202

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jayell Froats, is employed by the Hancock County Board of Education (Board) as a bus operator. Ms. Froats filed a level four grievance appeal on April 17, 1989 in which she alleged violations of W.Va. Code §§18A-2-7 and 18-29-2 when she was assigned additional duties in January 1989 which interfered with her ability to perform required bus maintenance. The grievance had previously been denied at levels one and two; the Board waived consideration at level three.

Ms. Froats filed a second level four appeal on May 11 in which she alleged reprisal by Superintendent E. Russell Slack for the filing of the prior grievance. The alleged reprisal taken was his failure to respond to the grievance, which was heard February 10, until April 1, about twenty

working days past the agreed time. A level one response was not made part of the record.

The grievant has been employed by the Board as a bus operator for approximately eighteen and one-half years and since the 1987-88 school year she has been awarded a five and three-fourth hours per day assignment consisting of a vo-tech and afternoon run which required that she work from approximately 11:20 a.m. to 3:50 p.m. This schedule permitted time for daily maintenance and safety checks from 3:25 to 3:50 at which time she left work. Also during this time the grievant was on call to fill in for other runs as needed. In January 1989 the grievant was additionally assigned a portion of a junior high run which occurred between 3:30 and 3:42 p.m. which delayed her arrival at the bus garage until 4:00 or 4:15 p.m. with her day concluding at 4:20 to 4:25 p.m.

The grievant argues that the addition of the junior high run to her schedule not only prohibits her from completing the proper standard of maintenance of the bus but also resulted in a mid-year transfer made without the recommendation of the superintendent or the approval of the Board in violation of W.Va. Code §18A-2-7 and without her written consent in violation of W.Va. Code §18A-4-8a. The grievant requests that she be relieved of the junior high run and be compensated for the additional time she was required to work during the 1988-89 school year.

The Board explains that the addition to the grievant's run was necessary due to overcrowding on another bus and asserts that necessary maintenance for the bus can be performed by the morning driver with the grievant completing minor tasks during the breaks in her schedule.¹ The Board argues that even with the additional run the grievant still only works five hours and that there has been no material change in her schedule constituting a violation of Code §18A-4-8a.

Although the grievant's revised assignment may still be within the five and three-fourth hours she could be required to work, the change in her schedule was improperly implemented. The grievant has been additionally assigned a completely different run which has extended her work day by approximately one-half hour. The revised assignment occurred in the mid-year and without her consent in violation of W.Va. Code §18A-4-8a.

The grievant's case for reprisal is based solely upon Superintendent Slack's delay in issuing a level two decision. At the level four hearing James W. Davis, Jr., Assistant Prosecuting Attorney and counsel for the Board, assumed full responsibility for the delay. Mr. Davis, who had also acted as counsel at level two, explained that at that time extraordinary problems in the Prosecuting

¹The bus is used by another driver for morning runs.

Attorney's office had caused a tremendous slowdown in the completion of work and he was unable to submit a proposed decision on time. As the grievant does not dispute Mr. Davis' explanation or offer further evidence of reprisal she has failed to prove that allegation.

In addition to the foregoing narration it is appropriate to make the following specific findings of fact and conclusions of law.

Findings of Fact

1. Grievant has been employed by the Hancock County Board of Education as a bus operator for approximately nineteen years.

2. The grievant's assignment for the 1988-89 school year required that she work from 11:20 a.m. to 3:50 p.m. She was also to fill in for drivers in case of emergencies.

3. In January 1989, due to concern about another overloaded bus, the grievant was assigned a portion of a junior high run which extended her workday to approximately 4:25 p.m..

4. The grievant did not give her written consent to the change.

5. The grievant bases an allegation of reprisal solely upon the superintendent's failure to timely issue a level two decision on the issue of the schedule change.

6. Counsel for the Board assumes full responsibility for the delay due to extenuating circumstances in his office which caused a backlog in work. The grievant does not dispute this explanation.

Conclusions of Law

1. No service employee shall have his daily work schedule changed during the school year without his written consent. W.Va. Code §18A-4-8a Smith v. Lewis County Board of Education, Docket No. 21-88-043-3 (Dec. 30, 1989); Terek v. Ohio County Board of Education, Docket No. 35-87-294-3 (July 20, 1988).

2. The Board acted in statutory violation by changing the grievant's daily work schedule in January without her written consent.

3. The grievant has failed to establish that Superintendent Slack acted in reprisal for her first grievance by delaying a level two decision.

Accordingly the grievance is **GRANTED** as to the change in schedule and the Board is **ORDERED** to delete the junior high run added to the grievant's schedule in January and to compensate her for the additional time worked. The grievance is **DENIED** as to the allegation of reprisal.

Either party may appeal this decision to the Circuit Court of Hancock County or to the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code §18-29-7) Neither the West Virginia Education and State Employees Grievance Board nor any of its Hearing Examiners is a party to such appeal, and should not be so named. Please advise this office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

DATED:

August 31, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER