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SUSAN LENTZ

v.

DOCKET NO. 89-02-153

BERKELEY COUNTY BOARD OF EDUCATION

DECISION

The grievant, Susan Lentz, is employed by the Berkeley County Board of Education (Board) as a bus operator. Ms. Lentz filed a level one grievance on December 19, 1988 in which she alleged that she had been improperly denied an extracurricular assignment in violation of W.Va. Code §18A-4-8b. The grievance was denied at levels one, two and three; a level four appeal was filed on April 13, 1989. An evidentiary hearing was held on June 8 at which time the grievant alleged that she was improperly denied an extra-duty assignment on December 7, 1988 when Beverly Rogers, School Bus Supervisor, made an inadequate attempt to contact her regarding the assignment. There is no dispute that on the morning of December 7 the transportation department received a request for a bus that afternoon at 4:00. Ms. Rogers began calling bus operators at approximately 9:42 a.m. to schedule the trip and called the grievant's home

between 9:42 and 9:58 a.m. The individual who answered the telephone advised Ms. Rogers that he did not know the location of the grievant but that she could be out on her mid-day run. Ms. Rogers then contacted another driver who accepted the assignment.

The grievant asserts that Ms. Rogers could have contacted her at the school of her destination or over the CB radio. She requests that she be awarded the salary which she would have earned or that she be scheduled a trip of similar compensation out of rotation. The Board asserts that the proper procedure was followed in attempting to contact the grievant, that her schedule on file did not indicate she would be on a run at the time her home was called and that CB radios are not used to assign extra-duty trips.

There appears to be no question that the grievant would have been entitled to the assignment had she been contacted. Some confusion was added to the situation since the grievant had switched a mid-day run with another bus operator but had not yet filed a revised schedule in the transportation office. According to the grievant, the Director of Transportation had approved the change and she had attempted to revise her schedule on December 6 but was unable to because the office staff could not locate it at that time.

A review of the grievant's schedule dated September 12, 1988 indicates that she arrived home from her morning run at 9:05 a.m. and left home for her mid-day run to the vo-tech

center at 10:00 a.m. The revised schedule, in effect on December 7 and filed December 9, reflects that the grievant's mid-day run began at 9:55 a.m. Therefore, she could very possibly have begun her mid-day run when Ms. Rogers called between 9:42 and 9:58 a.m. Even under the September schedule to which Ms. Rogers referred, the call was so close to the grievant's time of departure that it was not unreasonable to expect that she could have already left for her mid-day run. Although the extracurricular trip was scheduled for 4:00 that afternoon the grievant could and should have been contacted at the vo-tech center upon her arrival at 10:15 a.m.¹

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. The grievant is employed as a bus operator by the Berkeley County Board of Education.

¹Although the Board characterizes the situation as an "emergency" and appears to justify, at least in part, the manner in which a driver was obtained, the urgency was somewhat overstated since a period of six hours remained before the scheduled trip and only a fifteen minute wait would have been required to contact the grievant at the vo-tech school.

2. On the morning of December 7, 1988 the transportation department received a request for a bus at four o'clock that afternoon for an extra-duty trip.

3. The School Bus Supervisor began calling bus operators to schedule the trip and called the grievant's residence sometime between 9:42 and 9:58 a.m. The grievant was not home and the trip was offered to another driver.

4. The grievant's schedule on file at the transportation department office indicated that she was to leave home at 10:00 a.m. to complete her mid-day run. A change in the grievant's run which had not been noted on her schedule, through no fault of her own, required that she leave home at 9:55 instead of 10:00.

5. No attempt was made to contact the grievant at her destination, the vo-tech center, upon her arrival at 10:15 a.m.

Conclusions of Law

1. A reasonable effort shall be made to contact employees for the purpose of offering extracurricular assignments.

2. A telephone call possibly made within two minutes of the bus operator's scheduled departure to complete a mid-day run with no call to her point of destination does not constitute a reasonable effort to contact the employee.

3. The failure to make a reasonable effort to contact the grievant, thereby depriving her of an extra-duty assignment to which she was entitled, was in violation of W.Va. Code §18A-4-8b.

Accordingly, the grievance is **GRANTED** and the Board is hereby ORDERED to award the grievant an extracurricular assignment with similar compensation out of the rotational order.

Either party may appeal this decision to the Circuit Court of Berkeley 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: September 22, 1989

Sue Keller

SUE KELLER

SENIOR HEARING EXAMINER