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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
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STEPHEN LIGHT and ORPHA MUMMA

v.

Docket No. 89-22-144

LINCOLN COUNTY BOARD OF EDUCATION

DECISION

Grievants Stephen Light and Orpha Mumma are employed by Respondent Lincoln County Board of Education as a special education bus operator and a special education bus aide, respectively. They allege that Respondent breached their contracts by requiring them to transport an extra student on their daily supplemental run and that Respondent violated W.Va. Code §18A-4-5b by failing to compensate them for the run at the same rate as vocational runs. Respondent denies any impropriety and also contends that the grievance was untimely filed.

The grievance was filed January 17, 1989. At Level I Johnie Adkins, Respondent's Transportation Director, held, "I feel the supplemental position should receive equal pay with the vocational rate of \$7.00 per half day run." The grievance was denied at Level II on February 9, 1989, and at Level III on March 28, 1989. The grievance was filed at Level IV on April 3, 1989, and a hearing was held May 3,

1989.¹ Proposed findings of fact and conclusions of law were received from the parties on and before May 24, 1989.

The contracts for both grievants are not dated, but they clearly were issued at the beginning of the school year, 1988-89. They provided that Grievants "Transport one child home from Guyan Valley" and be paid \$4.00 per trip. However, on October 31 Grievants were given the additional duty of transporting a second special education student, which they did until January 18, 1989, a total of 45 days.²

Grievants testified that in September or October, when they learned that the rate for vocational runs had been raised, they requested pay commensurate with the pay for vocational runs; they had several discussions on the issue with Mr. Adkins; and he assured them that he would take care of getting them additional compensation. Grievants also testified that they requested from Mr. Adkins additional compensation for transporting the additional student even before the student was added to their run and Mr. Adkins told them that he would also take care of that. Grievants began grievance proceedings as soon as they found out that Mr. Adkins would not be able to resolve these matters. That testimony was uncontradicted.

¹At the hearing it was agreed by the parties that the evidentiary record would consist of the records of the Levels II, III, and IV hearings.

²While there were 47 days of school, apparently the student did not ride the bus on two of the schooldays.

The grievance is not barred by W.Va. Code §18-29-4(a)(1).³ Since it was filed prior to the last day the grievants transported the extra student, that part of their grievance was clearly timely filed, see Harris v. Lincoln Co. Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989), and Respondent's proposed conclusions of law do not argue otherwise. Regarding the remaining part of the grievance, it is well-settled that an employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies in good faith upon the representations of such officials that the matter will be rectified will not be barred by W.Va. Code §18-29-4(a)(1) from pursuing the grievance. Blevins v. Fayette Co. Bd. of Ed., Docket No. 10-87-161 (Oct. 22, 1987); Steele v. Wayne Co. Bd. of Ed., Docket No. 50-87-062-1 (Sept. 29, 1987). See also Indep. Fire Co. v. Human Rights Com'n., 376 S.E.2d 612 (W.Va. 1988). That principle applies in this case.⁴ It

³W.Va. Code §18-29-4(a)(1) provides as follows:

Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

⁴The same principle would also apply to the portion of the grievance on transporting the second student if the
(Footnote Continued)

was reasonable for Grievants to rely on Mr. Adkins' representations that the matter would be taken care of.⁵

Grievants initially argue that the requirement of W.Va. Code §18A-4-5b that "uniformity shall apply to all ...rates of pay...for all persons regularly employed and performing like assignments and duties within the county" entitles them to the same rate of pay for the special education run as for a vocational run, which pays \$7.00 one-way. However, the only evidence in support of the contention is Grievant Light's statement that the special education run was as long as vocational runs.⁶ That evidence is insufficient as a matter of law to establish that the two types of bus runs actually are "like assignments" or entail "like duties."⁷ Grievants' contention therefore must be rejected.

(Footnote Continued)

grievance had not been filed within the statutory requirements of W.Va. Code §18-29-4(a)(1).

⁵At the Level IV hearing Respondent argued that Mr. Adkins had no authority to compensate Grievants for the additional duty of transporting the second student. That fact is immaterial to the issue; rather, the issue is whether Grievants had "actual and reasonable reliance on the defendant's [Respondent's] conduct or representations." Indep. Fire Co. v. Human Rights Com'n., 376 S.E.2d 612, 615 (W.Va. 1988).

⁶Assistant Superintendent Tom Miller testified that the special education run is not a "like" assignment to a vocational run.

⁷Respondent correctly notes that an aide is not used for vocational runs.

Respondent does not dispute Grievants' contention that the addition of the second student was contrary to Grievants' contracts.⁸ It merely argues that the addition did not "substantially alter their run" and that \$1.00 per run would be adequate compensation.

The evidence on how much Grievants' duties were expanded with the addition of the second student is limited. Grievant Light testified that six miles were added to the run but how long the run was prior to the addition of the second student is unclear, although Mr. Miller's testimony did indicate that it was at least 23 miles.⁹ A clearer

⁸Grievants relied on W.Va. Code §18A-2-6 at hearing in contending that Respondent improperly modified their contracts and refer thereto in their proposed conclusions of law. Respondent is correct that that provision is inapplicable because it applies only to continuing contracts, which Grievants' were not. However, in that under W.Va. Code §18-29-2(a) an education employee may grieve "a misapplication or a misinterpretation of the...written agreements under which such employees work," and the crux of Grievants' argument is breach of contract, the issue of breach of contract is herein addressed.

Grievants also provide an unexplained proposed conclusion of law, "West Virginia Code §18A-4-8a provides that no service employees shall have his/her daily work schedule changed without his/her consent. Genevieve May v. Grant County Board of Education, Docket No. 12-86-164-2 [October 7, 1986]." Presumably this argument applies to the addition of the second student. Any contention based on Code §18A-4-8a need not be addressed, however, because the grievance is granted on the basis of breach of contract.

⁹Mr. Miller testified that the distance from Harts High School to Guyan Valley High School is approximately 23 to 24 miles and he did not know the distance of the part of the run before Harts High School. The vacancy bulletin for the position provided that the employees would "return a student home from Pleasant View Elementary to River Bend Road at

(Footnote Continued)

basis for assessing how significant was the effect of the addition to the run is how much additional time it required. Grievant Light testified that the run took approximately one hour before the addition and the addition required their waiting at the school for an additional fifteen minutes plus it took fifteen minutes to go the extra six miles. Grievant Light assessed that approximately 30 minutes worktime was added to their workday with the transporting of the additional student. Since Grievants' contracts for transporting one student were for \$4.00 per run and this uncontroverted evidence establishes that that run was for one hour, the contract in practice provided compensation at the rate of \$2.00 per half-hour. Further, since the evidence establishes that the additional duties added a half-hour to Grievants' worktime, this record establishes that Grievants are entitled to \$2.00 extra for each of the 45 days they transported the second student.

In addition to the foregoing discussion, the following findings of fact and conclusions of law are appropriate:

(Footnote Continued)

approximately 12:15 p.m. each day." While Respondent's proposed findings of fact state that the supplemental run was approximately 24 miles without the additional 6 miles, that conclusion is questionable since Mr. Miller's description of the run does not appear to jibe with the vacancy announcement.

Findings of Fact

1. Grievants Stephen Light, a special education bus operator, and Orpha Mumma, a special education aide, had supplemental contracts of employment with Respondent to transport one special education student during the 1988-89 school term at a rate of \$4.00 per run.

2. From October 31, 1988, to January 18, 1989, for a total of 45 days, Grievants were required to transport a second student on the supplemental run.

3. The addition of the second student added approximately 30 minutes to Grievants' worktime on the supplemental run, which had previously taken approximately one hour.

4. In practice the contract provided compensation at the rate of \$2.00 per half-hour.

5. Grievants began grievance proceedings on January 17, 1989.

Conclusions of Law

1. An employee who makes a good faith, diligent effort to resolve a grievable matter with school officials and relies in good faith upon the representations of such officials that the matter will be rectified will not be barred by W.Va. Code §18-29-4(a)(1). Blevins v. Fayette Co. Bd. of Ed., Docket No. 10-87-161 (Oct. 22, 1987); Steele v. Wayne Co. Bd. of Ed., Docket No. 50-87-062-1 (Sept. 29, 1987). See also Indep. Fire Co. v. Human Rights Com'n., 376

S.E.2d 612 (W.Va. 1988). The grievance is not time-barred by W.Va. Code §18-29-4(a)(1).

2. It is incumbent upon a grievant to prove the allegations of his complaint by a preponderance of the evidence. Hanshaw v. McDowell Co. Bd. of Educ., Docket No. 33-88-130 (Aug. 19, 1988); Andrews v. Putnam Co. Bd. of Educ., Docket No. 40-87-330-1 (June 7, 1988).


3. There was no showing of uniformity between Grievants' special education run and vocational runs. Grievants therefore failed to establish a violation of W.Va. Code §18A-4-5b.

4. Respondent's requiring Grievants to transport a second student on the supplemental run was a breach of Grievants' contracts and therefore was grievable pursuant to W.Va. Code §18-29-2(a).

5. In that the contracts in practice provided \$2.00 per half-hour, \$2.00 per run would reasonably compensate the Grievants for the additional transporting of a second special education student.

Accordingly, the Grievance is **GRANTED in part**. Respondent is **ORDERED** to pay each Grievant \$90.00.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Lincoln County and such appeal must be filed within thirty (30) days of receipt of this decision See 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.



SUNYA ANDERSON
HEARING EXAMINER

DATE: May 30, 1989