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**WEST VIRGINIA EDUCATION AND  
STATE EMPLOYEES GRIEVANCE BOARD**  
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**JIMMY SKEENS**

v.

**Docket No. 89-22-589**

**LINCOLN COUNTY  
BOARD OF EDUCATION**

**D E C I S I O N**

Jimmy Skeens, employed by Respondent Lincoln County Board of Education as a bus operator, filed a grievance July 18, 1989, alleging a "violation of W.Va. Code 18A-4-8b(b) in regard to the summer special education run. The grievant was called to substitute for successful applicant, then removed." The Level I evaluator ruled he had no authority to decide the grievance and the Level II evaluator denied it. Consideration was waived at Level III and Grievant appealed to Level IV on October 4, 1989, requesting a decision on the evidence of record. Grievant submitted proposed findings of fact and conclusions of law and Respondent waived its right to submit such proposals.

The facts are simple and undisputed. Grievant unsuccessfully applied for the disputed bus run. However, when the successful applicant, Donald Payton, was unable to fill the position due to medical problems, Grievant was put in

the position as a substitute for him. Another regular operator, Jennings Miller, who had not applied for the position as a regular employee, having more seniority than Grievant, complained and Grievant, after driving the route for four days, was removed therefrom. Mr. Miller replaced him as a substitute and drove the bus run thereafter.

Grievant proposes the following as conclusions of law:

1. West Virginia Code §18A-4-8b(b) states the most senior applicant be given the position.
2. West Virginia Code §18A-4-16 states that a regular employee assigned to a substitute position of an absent employee shall be given the opportunity to hold that position throughout such absences.

Grievant's reliance on W.Va. Code §18A-4-8b(b), which applies to awarding of jobs, is misplaced. Clearly Mr. Payton was entitled to the position as a regular employee and Grievant does not contend otherwise. This case involves only whether Grievant was entitled to fill the position as a substitute for Mr. Payton. That he had originally applied for the post is irrelevant.

Grievant's second proposed conclusion apparently is based on W.Va. Code §18A-4-15(6), which is the applicable section for determining how substitute assignments must be made:<sup>1</sup>

. . . All substitutes shall be employed on a rotating basis according to the length of their service time

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<sup>1</sup>Grievant's cite to W.Va. Code §18A-4-16 rather than W.Va. Code §18A-4-15(6) is apparently a typographical error. At any rate, no argument has been made based upon Code §18A-4-16.

until each substitute has had an opportunity to perform similar assignments: Provided, That if there are regular service employees employed in the same building or working station as the absent employee and who are employed in the same classification category of employment, such regular employees shall be first offered the opportunity to fill the position of the absent employee on a rotating and seniority basis with the substitute then filling the regular employee's position. A regular employee assigned to fill the position of an absent employee shall be given the opportunity to hold that position throughout such absence. . . .

This provision applies only where regular employees "in the same building or working station" serve as substitutes for absent staff. Accordingly, Grievant's contention, which in particular relates to the last sentence, requiring its removal from context, is specious. Grievant therefore has provided no support for his idea that, once in the position, apparently even if by mistake, he was entitled to retain it.

Grievant has not demonstrated that he had any right to the position as a substitute.<sup>2</sup>

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<sup>2</sup>The following exchange occurred at Level II between Grievant's representative Susan Hubbard and Respondent's Assistant Superintendent Thomas M. Miller, Jr.:

Susan Hubbard: Our contention is that Jennings should have never been considered because he didn't apply. And, that would make Jimmy the most senior....

Tom Miller: The job wasn't given to Jennings in the application area, he was given the job as a substitute.

Susan Hubbard: Ok, that is my contention, if it wasn't given to the most senior person that had applied then why should they use a regular employee. Why didn't they use a regular substitute instead[?]

Tom Miller: We did use a regular substitute, Jennings Miller.

(Footnote Continued)

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

Conclusions of Law

1. It is incumbent upon a grievant to prove the allegations of his or her 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).

2. W.Va. Code §18A-4-8b(b) does not apply to the assignment of substitute service employees and Grievant has not established that he was entitled as a substitute to the disputed summer special education run under W.Va. Code §18A-4-15(6).

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(Footnote Continued)

Susan Hubbard: But, he is a regular employee, he is not a substitute.

Tom Miller: But he is also at the head of the substitute list in the summer time. Our drivers revert back to the substitute list. That is the way we interpret it.

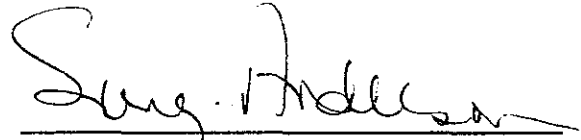
Susan Hubbard: You mean whether they apply or not for the summer you go from that seniority list?

Tom Miller: Yes.

Tr. 3. In this exchange Ms. Hubbard raises a legitimate question, whether it is proper for Respondent to include the regular drivers in its summer substitute list. However, since as a regular driver Grievant has no standing to raise the issue it is not addressed here.

Accordingly, the grievance is DENIED.

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. 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

Dated: November 17, 1989