



Members
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David L. White

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

GASTON CAPERTON
Governor

Offices
240 Capitol Street
Suite 515
Charleston, WV 25301
Telephone 348-3361

JOHN D. THOMPSON

v.

Docket No. 23-88-191

LOGAN COUNTY BOARD OF EDUCATION

DECISION

Grievant John D. Thompson is employed by Respondent Logan County Board of Education as a mathematics instructor at Chapmanville Junior High School (CJHS). On June 13, 1988, Grievant submitted the following complaint at Level I:

The grievant[']s teaching schedule was changed due to an earlier grievance being filed. He was assigned less favorable classes and given poor evaluations. This may be resolved by restoring all or part of the previously assigned classes to grievant.¹

¹ Despite his reference to "poor evaluations" in his statement of grievance, it is significant that Grievant has limited his request for relief to a return to teaching ninth grade students. At the Level IV hearing, he reaffirmed that such a return would satisfy his grievance.

After denials at Levels I and II and waiver at Level III, Grievant, on October 11, 1988, submitted this matter for Level IV resolution on the record compiled below. Thereafter, Respondent requested a hearing, and one was scheduled for November 30. Prior to that date, the parties advised that the case could indeed be decided on the record, supplemented by briefs no later than January 20, 1989. On January 19, Respondent informed the undersigned that the Level II hearing tape could not be found and that a Level IV hearing would be needed after all; based on that information, one was set for March 1.² At the hearing on that date, the parties agreed to submit proposed findings of fact and conclusions of law and/or briefs no later than April 7, and the matter is accordingly mature for disposition.

Grievant formerly taught ninth grade mathematics at CJHS; prior to the commencement of the 1987-88 school year, he was reassigned to seventh grade students. He characterizes this move as a "demotion" and a "transfer," although he admits that there is no difference in salary or required work hours. He stated at Level IV that his West Virginia

² The Level II tape was eventually found, and a transcript prepared and entered at Level IV before March 1; however, the undersigned advised the parties he would not entertain any further motions for continuance or for the submission of this matter on the record.

Education Association representative³ suggested that he not file a grievance at the time he was placed in seventh grade, and he decided to follow this advice to "see how it went."⁴ When he learned he would remain in seventh grade for school year 1988-89, he initiated this complaint, which he first discussed with his immediate supervisor, Mr. Orville Dingess, on June 6, 1988. Respondent argues that Grievant's case is untimely and should be dismissed on that basis, citing W.Va. Code §18-29-4(a) which provides, in pertinent part:

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 remedy sought.

The remainder of this Decision will be presented as formal findings of fact and conclusions of law.

³ This was not the same individual who appeared on Grievant's behalf at the Level IV hearing.

⁴ Grievant further admitted that if he enjoyed teaching seventh grade, he likely would not have pursued this claim.

FINDINGS OF FACT

1. Grievant, since the beginning of school year 1987-88, has been assigned as a seventh grade mathematics teacher for Respondent at Chapmanville Junior High School (CJHS). Prior to school year 1987-88, he was a ninth grade math instructor at CJHS.

2. Grievant first initiated W.Va. Code §18-29-4(a) proceedings related to his assignment to seventh grade students in early June 1988.

CONCLUSIONS OF LAW

1. "'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,' a grievant must initiate a conference with his immediate supervisor to discuss the matter. A Level I grievance may be submitted shortly thereafter, if the problem remains unsettled. W.Va. Code §18-29-4(a)." Dennison v. Braxton Co. Bd. of Educ., Docket No. 04-88-251 (Mar. 17, 1989).

2. "The term 'practice,' as used in the phrase 'continuing practice' in §18-29-4(a), implies affirmative activity on the part of the employer." Id.

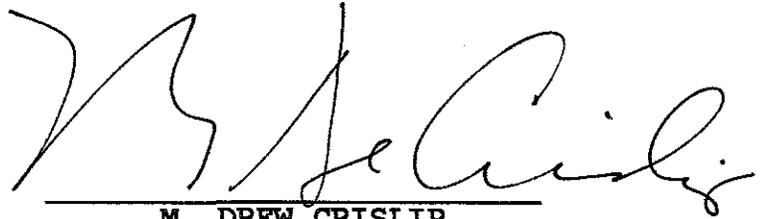
3. Insofar as this grievance involves Grievant's reassignment from ninth grade to seventh grade within CJHS, which reassignment occurred prior to the 1987-88 school term, it is clearly untimely per §18-29-4(a),⁵ in that there is no "continuing practice" or other proven basis for filing having been delayed until June 1988.

Accordingly, this grievance is **DENIED**.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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

⁵ Evidence presented at Level IV concerning rather shocking personal difficulties between Grievant and some of his students' parents; his formal evaluations, and allegations that his work performance was not appropriately reviewed during school year 1987-88; a student survey conducted by Mr. Dingess concerning Grievant; an alleged "settlement" of a previous grievance, including an agreement that Grievant would accept a switch to seventh grade; and other matters, are rendered irrelevant by the outcome herein and thus will not be addressed.

office of any intent to appeal so that the record can be prepared and transmitted to the appropriate Court.

A handwritten signature in cursive script, appearing to read "M. Drew Crislip". The signature is written in black ink and is positioned above a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Date: April 28, 1989