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**WEST VIRGINIA EDUCATION AND
STATE EMPLOYEES GRIEVANCE BOARD**
GASTON CAPERTON
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CAROLYN WILKINSON

v.

Docket No. 89-20-71

KANAWHA COUNTY BOARD OF EDUCATION

DECISION

Grievant Carolyn Wilkinson is employed as a bus operator by Respondent Kanawha County Board of Education and assigned to the Sissonville Terminal. Claiming that she "was denied extra-curricular trip¹ which I was in line for" and asking that she "be reimbursed the hours it took to run trip," she initiated this grievance at Level I on November 14, 1988. After denials there and at Level II and waiver at Level III, she advanced her complaint to Level IV on February 28, 1988. Hearing was conducted on April 17² and the

¹ This "extra-curricular trip" was actually an extra-duty assignment per W.Va. Code §18A-4-8b(b) and not a Code §18A-4-16 extracurricular run. See this Decision, infra.

² An earlier hearing was continued upon Grievant's motion due to family illness. Respondent did not object to this delay.

parties agreed to submit their proposals as to fact and law no later than May 1, 1989.³ Accordingly, the matter is mature for disposition.

Joint Exhibit 1 is a portion of "Pupil Transportation Administrative Regulations and Personnel Manual for Kanawha County Schools," and provides, at VIII-J-4 and -6,⁴ as follows:

4. Trips will be assigned in the order of departure for the week for which they are scheduled. All available extra trips will be assigned on the first work day of the week. Extra trips that are refused will be assigned to the next available unassigned operator on the roster. Trading of trips will not be allowed. Trip slips that are not signed within twenty-four (24) hours will be considered a refusal.

6. Extra trip requests received after assignment for that week has been made will be assigned to the next available unassigned operator on the roster. Employees refusing a trip who do not have a twenty-four (24) hour notice prior to trip will be charged with refusal.

The facts of this case are essentially unrefuted and will be presented as formal findings, followed by attendant conclusions of law.

³ At the Level IV hearing, Respondent requested that the findings of fact and conclusions of law appended to the Level II decision be considered its proposals at Level IV.

⁴ Grievant argued that the policies espoused in VIII-J-4 and -6 could easily be manipulated to the detriment of bus drivers. While the undersigned recognizes this potential, he notes no indication of such impropriety in this case.

FINDINGS OF FACT

1. For the workweek beginning November 7, 1988, Grievant was second in line behind bus driver Nathaniel Looney to be offered an extra-duty run.

2. On November 7, Mr. Looney was offered, and he accepted, a November 11 assignment to drive a girls' sports team to a tournament in Ripley. On November 9, this run was changed to November 10; Mr. Looney nevertheless worked it.

3. On November 9, at approximately 6:00 a.m., Grievant was offered a November 12 assignment to drive this same team back to Ripley for further tournament participation. She refused this offer, instead expressing interest in an anticipated twelve-hour band trip to New Martinsville, West Virginia, on November 11. Grievant also was apparently under the mistaken belief that the November 12 Ripley job would be cancelled if the girls' sports team lost its Thursday competition. Grievant's refusal relegated her to the bottom of the list of those bus operators available for extra-duty assignments.

4. Sometime shortly thereafter on November 9, Mr. Shirley Massey, the bus operator next in line after Grievant for consideration for an extra-duty run, was offered and accepted the November 12 Ripley job.

5. Orders for extra-duty bus trips, along with appropriate documentation, must be received by Respondent's

Terminal Supervisor prior to any such runs being authorized or drivers scheduled.

6. Orders for the two runs to Ripley were received by Sissonville Terminal Supervisor Coleman in August 1988. Orders for the November 11 New Martinsville assignment were not delivered to Coleman until approximately noon, November 10, 1988.

7. While there were rumors that there would be a band trip to New Martinsville on November 11, for purposes of performing at a football playoff game, no such trip had been confirmed or ordered, so that a bus operator could be assigned the same, until approximately noon, November 10. Supervisor Coleman acted responsibly and promptly to determine if such run indeed would be authorized upon first hearing the rumors on November 9.

8. Sometime after noon, November 10, the New Martinsville trip was offered to and accepted by the next two drivers in line for extra-duty assignments after Mr. Massey.

CONCLUSIONS OF LAW

1. All runs referenced in this Decision were extra-duty assignments per W.Va. Code §18A-4-8b(b).

2. Respondent failed to post, or to timely offer, the November 12 extra-duty run to Grievant, as required by Code

§18A-4-8b(b) and/or its own policy, see Joint Exhibit 1.⁵ However, under the facts of this case, even if Grievant had followed law and policy to the letter, Grievant would have been and would be in no different position.⁶

3. Since Grievant's refusal to accept the November 12 run relegated her to the bottom of the list of those drivers available for extra-duty assignments, see Finding of Fact 3, she was appropriately not offered the belatedly-authorized November 11 New Martinsville job.

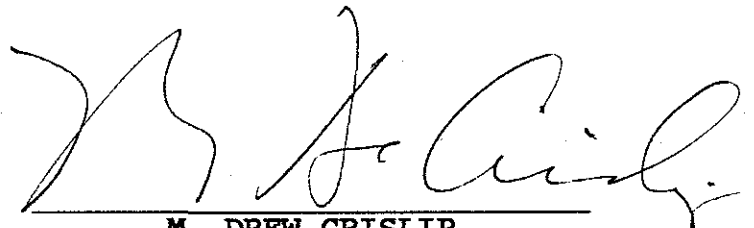
Accordingly, this grievance is DENIED.

⁵ By adopting the Level II findings of fact and conclusions of law as its proposal at Level IV, Respondent has admitted its error in this regard; by expressly requesting this Grievance Board to "uphold the Level II Decision," as it did at the Level IV hearing, Respondent is assenting to the Level II order that it comply with relevant law and policy.

⁶ In Conner v. Barbour Co. Bd. of Educ., Docket No. 01-86-197-2 (Jan. 26, 1987), the grievant, a bus operator, was passed over for an extra-duty assignment due to a clerical error. The respondent board of education, in an attempt to rectify the mistake, offered the grievant two subsequent similar assignments, both of which she refused because they offered less compensation than the job she should have had. The board of education in Conner was found to have acted promptly and reasonably, and the grievant was held unentitled to relief.

Grievant in the instant case is actually in a better position than her counterpart in Conner, since the failure of Respondent to comport to law and policy, while certainly unsettling, did not in and of itself cause her any definite injury.

Either party may appeal this decision 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.

A handwritten signature in cursive script, appearing to read 'M. Drew Crislip', written over a horizontal line.

M. DREW CRISLIP
HEARING EXAMINER

Dated:

May 2, 1989