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LENA JANE JONES

v.

Docket No. 89-45-524

SUMMERS COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Lena Jones, a twenty-one year employee of respondent Summers County Board of Education (SCBE), seeks payment of daily teaching wages for the three days she departed from her classes at Hinton High School (HHS) to accompany a Bellepoint Elementary School sixth grade class on a out-of-state field trip. She filed this grievance when her pay was docked those days.¹

¹The filing form indicates that the grievance was not processed at level one but proceeded to levels two and three with decisions adverse to grievant issued on August 15 and 25, 1989, respectively.

The matter was filed at level four with request that it be decided on the record below. Processing forms, transcript and exhibits of the level two hearing conducted July 19 (T2A.) and August 2, 1989 (T2B.) and the various responses to the grievance comprise the record of the case. Grievant filed fact-law proposals September 25, 1989, and it is presumed that SCBE opted to stand on its level two fact-law determinations.

The underlying facts in this case are mostly undisputed. Grievant orally inquired of her HHS principal, Michael Allen, if she could accompany the Bellepoint sixth graders, among them her child, on their May 15-17, 1989, field trip to Philadelphia, Pennsylvania. Mr. Allen approved on the condition that she arrange for her classes to be covered so he would not have to employ a substitute in her stead. Prior to her departure, grievant did not submit any paperwork as regards her leave nor did Mr. Allen require such of her.

At some point on or about May 18, 1989, Mr. Allen submitted to Business Manager and Treasurer Billy Joe Kessler HHS's payroll report for the ninth and final month of the 1988-89 school year; that pay period encompassed April 21 to May 18, 1989. According to Mr. Kessler's testimony, Mr. Allen indicated by checkmark grievant's HHS presence on May 15, 16 and 17. However, some question arose about whether grievant should be paid for those days.

As was developed in the record, a number of SCBE personnel accompanied the Bellepoint students on the field trip. For example, Carol Davis, a teacher from Talcott Junior High School, prepared and submitted separate request and claim forms for personal leave prior to the May 17 departure and a substitute was hired during her absence. The Talcott principal noted PL, or personal leave, on her school's payroll report for the days Ms. Davis was absent. Some Bellepoint teachers who accompanied the students and claimed personal leave likewise completed the two forms, and substitutes were hired for their non-sixth grade

classes. A service staffer at the Summers County Career Center, a 261-day employee whose child was a Bellepoint sixth grader, requested three vacation days in order to take the trip.

Three additional Bellepoint teaching personnel went and were granted workshop or WS credit, i.e., the days were considered workdays and those individuals received full wages without debit of personal leave days. Of these three, only Mary Duncan and Steve Jones were sixth grade teachers whose classes were involved in the trip, but Debbie Clark, a non-sixth grade teacher, was permitted the workshop credit when her principal agreed to cover the class and not hire a substitute (T2A.45).

According to Mr. Kessler's testimony, he thought that each Bellepoint teacher granted WS credit had filled out a required "blue workshop form" to obtain approval (T2A.43). However, Mr. Kessler did not state when the blue forms were submitted. Those documents were not placed into the record as were the request and claim forms for personnel taking personal or vacation leave. The Summers County Career Center's payroll records show that Gene Davis, director of that facility, was credited WS for May 15-17, but it was not clear whether Mr. Davis was involved in the Bellepoint field trip. See Resp. Ex. Nos. 3-6.

As also appears evident from the record, grievant was somehow alerted when she returned from the trip that a question existed about her salary and that she might be docked three days' pay for her leave-taking. Mr. Kessler testified that grievant called him about the matter several times after her return, once during payroll processing but before the checks

were cut. He said he informed grievant that Mr. Allen had submitted the payroll form indicating her presence at HHS the three days in question, and on that basis his office was obligated to include those days on her paycheck. He said that he also told her that it was the principal's decision whether or not to alter the submission.

Mr. Kessler stated that during the conversation grievant became upset and finally said she would just take her one remaining day of personal leave and accept being docked for two days. He said she called again after payroll processing and informed him that she had attended a workshop on April 21 which had been erroneously debited as a sick leave day rather than credited WS. He said he told her he would pay her for that day but she called yet a later time and asked to have the leave day carried over to the next school year. No evidence was produced that grievant completed any paperwork to obtain prior approval for WS credit for the April 21 absence.

During cross-examination grievant agreed that she did call several administrators including Mr. Kessler and Superintendent Tassos after her return from the field trip to inquire about the situation. She agreed that she told Mr. Kessler that she would take a personal leave day and be docked two days but said she did so because she was upset and under duress. She also agreed that sometime after May 18 she signed both a blank personal leave request and a blank claim form for Mr. Allen to fill out and process.

Mr. Allen filled out the blank signed forms, dated them May 23, affixed his signature to both and submitted them to central office administration. The completed forms thus appeared to reflect grievant's request and his assent that she be charged one personal leave day and docked two days' pay. Resp. Ex. Nos. 1-2. He followed up with a May 24 letter to grievant which noticed her of his recommendation that she not receive pay for May 15, 16 and 17. Mr. Allen conceded that he originally gave his permission for her leave from HHS on May 15-17, but that he later learned "permission had been denied above me." He concluded the letter by stating that, had he known of certain matters beforehand, he would not have granted permission when she approached him about the trip. Gr. Ex. No. 1. Mr. Allen testified that he filled the forms out in the manner he had because it was his understanding when he discussed the matter with grievant that that was what she wanted (T2B. 4-5).

Grievant contends she is due her salary for the three days in question because she had been originally approved to act as chaperone by a SCBE agent, her principal. She relies on W.Va. Code §18A-4-16, presumably for the proposition that her presence with the students on the field trip constituted an extracurricular assignment and Mr. Allen's permission as "designee" or agent of the Superintendent was all that was necessary to obtain said extracurricular assignment.

W.Va. Code §18A-4-16 provides, in pertinent part:

(1) The assignment of teachers and service personnel to extracurricular assignments shall be made only by mutual agreement of the employee and the superintendent, or designated representative, subject to board

approval. Extracurricular duties shall mean, but not be limited to, any activities that occur at times other than regularly scheduled working hours, which include the instructing, coaching, chaperoning, escorting, providing support services or caring for the needs of students, and which occur on a regularly scheduled basis.

(2) The employee and the superintendent, or a designated representative, subject to board approval, shall mutually agree upon the maximum number of hours of extracurricular assignment in each school year for each extracurricular assignment.

(3) The terms and conditions of the agreement between the employee and the board of education shall be in writing and signed by both parties.

(4) An employee's contract of employment shall be separate from the extracurricular assignment agreement provided for in this section

SCBE argues that, according to the statute, an agreement for an extracurricular assignment must be in writing and board approved. It reasons that, since those conditions had not existed with respect to grievant's leave, she had no entitlement to wages, pursuant to the statute. Both parties' contentions and arguments about the statute can be disposed of quickly. W.Va. Code §18A-4-16 is not applicable in this matter for that statute deals only with the contracted assignment of school personnel to duties beyond the workday "which occur on a regularly scheduled basis."

SCBE also claims grievant knew or should have known of the paper procedures for leave-taking. SCBE reasons that,

It is admitted that Mr. Allen should have checked with his superior, [Superintendent] Tassos, before giving his permission. However, had appropriate paper work been filled out, both he and she would have known of Mr. Tassos' disapproval before the trip. This is not the case.

It is evident that the proper procedures were not followed for [grievant] to take the field trip and be given personal leave or to have no time counted against her. However, [grievant] told Mr. Kessler to "dock her" and [her] signature appears on a document requesting one day personal leave and two days docked (a person should never sign a blank form such as this, because the signature implies consent with what is written on the form). The business office had no other recourse than to comply with these requests and then have no responsibility to go back and pay [grievant].

Grievant must prevail in this dispute. By its own reasoning SCBE admits, in essence, that this controversy arose as a result of poor administrative practice on the part of grievant's principal. W.Va. Code §18A-2-9 provides in pertinent part:

[S]chool principals . . . shall supervise the management and the operation of the school or schools to which they are assigned.

[T]he principal shall assume administrative and instructional supervisory responsibility for the planning, management, [and] operation . . . of the school or schools to which he is assigned.

The principal shall perform such other duties as may be assigned by the superintendent pursuant to the rules and regulations of the county board of education.

Regardless of what grievant knew or should have known about approval for her leave-taking, and this record did not make clear the requirements for WS-workshop approval as opposed to personal, sick, or vacation leave approval, Mr. Allen had the ultimate responsibility to secure prior approval from his superiors, if such is required. It was blatantly unfair for grievant to be penalized for Mr. Allen's neglect. Given the factual circumstances herein, SCBE's refusal to pay grievant her wages for the days in question was arbitrary and capricious.

FINDINGS OF FACT

1. Grievant asked for and received permission from her HHS principal to accompany the sixth grade students from another school, Bellepoint, on a three-day field trip May 15-17. She anticipated that her absence would be credited as paid working days because she arranged for coverage for her classes at no cost to SCBE as per her principal's condition for approval.

2. Grievant's principal did not require her to submit any written forms prior to her leave taking nor did he obtain clearance on the matter from his superiors beforehand.

3. Utilizing personal leave requests and claim forms, several non-sixth grade Bellepoint teachers and other SCBE employees requested in advance and were granted approval from their principals to take personal leave or vacation days to go on the field trip. Substitutes were hired for absent teachers in this group. The two Bellepoint sixth grade teachers who accompanied their students received WS credit, and no substitutes were needed for their classes.

4. There is no evidence of record that the several personnel who took the trip and were credited WS, paid working days, had submitted written forms prior to the May 15-17 trip.

5. School officials did not adequately demonstrate why only one non-sixth grade Bellepoint teacher received WS credit and was not required to take personal leave days, other than to explain that her principal agreed to cover her classes and not

incur the cost of a substitute, the exact terms set forth by grievant's principal.

6. When grievant returned from the trip, her principal withdrew his permission for paid leave because he was advised by his administrative superiors after her departure that they would not approve workday credit and wages for the absence.

7. Because she was upset and confused when she learned that her leave-taking created controversy and that she would probably be docked three days' pay, grievant's initial acquiescence on the matter was understandable. She then filed this grievance requesting payment for the three days.

CONCLUSIONS OF LAW

1. A grievant must prove the allegations of his or her grievance claim by a preponderance of the evidence.

2. A principal is responsible for the management and control of his school and staff and must adhere to his or her school board's policies and regulations. W.Va. Code §18A-2-9. In this case Principal Allen's failure to follow regulations with respect to grievant's leave-taking should not prevent her from receiving her wages as per his express approval prior to her departure.

3. One non-sixth grade teacher arranged for a substitute to cover her class; she was not required to charge leave time and was paid her regular wages. SCBE's refusal to pay grievant three days' wages, after she had obtained her principal's prior

permission on the matter and had arranged for her classes to be covered without cost of a substitute, was arbitrary and capricious under the circumstances.

4. Grievant has met her burden of proof that she was entitled to wages for the three days in question.

Accordingly, the grievance is **GRANTED** and the Summers County Board of Education is **ORDERED** to pay grievant her regular wages for May 15, 16 and 17, 1989.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Summers 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: *Nov. 30, 1989*


NEDRA KOVAL
Hearing Examiner