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

**v.**

**Docket No. 89-23-92**

**LOGAN COUNTY BOARD OF EDUCATION**

**DECISION**

Grievant, Kenneth Simpson, is employed by the Logan County Board of Education (Board) as a substitute bus driver. He initiated the following grievance at Level I December 1, 1988:

Job was taken from Kenneth Simpson Aileen Peters - she took bus run Paiding (sic) Kenneth Simpson for days she worked, plus reinstating Kenneth Simpson for the remaining time up to the thirty day limit.

The grievance was denied at that Level and at Level II following a hearing held February 17, 1989. The Board waived Level III proceedings<sup>1</sup> and a Level IV hearing was held May 2, 1989. The parties declined to submit proposed findings of fact and conclusions of law.

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<sup>1</sup>The case reached the Board prior to a Level II hearing and was remanded to that level. It is not clear as to when the Board waived Level III proceedings but the parties proceeded as if such action was taken.

The parties do not dispute the facts of the case but offer varying interpretations of applicable law. On or about November 13, 1988, Mr. Kim Hurley, a regularly employed bus driver assigned to the Accoville Hollow run, requested a leave of absence of up to thirty days<sup>2</sup> for health reasons. That request was approved by the Board November 16, 1989. Grievant was assigned the run on November 14, 1988 and kept it for eleven days during which the Board posted the position for a period of five days. Ms. Aileen Peters, another substitute driver, bid upon and received the position, which she held approximately seven days. It is conceded that Ms. Peters is the substitute driver with the greatest length of service time in that classification in the county. Mr. Hurley returned to work on or about December 12, 1988.

Grievant contends he should have been allowed to remain in the position for a full thirty days or at least until Mr. Hurley returned. He maintains this has always been the past practice of the Board and is in compliance with W.Va. Code §18A-4-15, which in pertinent part provides:

The county board of education shall employ and the county superintendent, subject to the approval of the county board of education, shall assign substitute service personnel on the basis of seniority to perform any of the following duties:

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<sup>2</sup>There was some confusion over whether Mr. Hurley informed his supervisor of the length of the leave at the time of the request or after his admission to a hospital. For the purposes herein, it is sufficient to merely note that shortly after he began the leave the Board's administrative personnel were put on notice that he might be absent for up to thirty days.

. . . .

(2) To fill the position of a regular service employee on leave of absence: Provided, that if such leave of absence is to extend beyond thirty days, the board, within twenty working days from the commencement of the leave of absence, shall give regular employee status to a person hired to fill such position. The person employed on a regular basis shall be selected under the procedure set forth in section eight-b [§18A-4-8b] of this article. The substitute shall hold such position and regular employee status only until the regular employee shall be returned to such position and the substitute shall have and shall be accorded all rights, privileges and benefits pertaining to such position;

. . . .

(6) . . . .

Substitutes shall be assigned in the following manner: A substitute with the greatest length of service time, that is, from the date he began his assigned duties as a substitute in that particular category of employment, shall be given priority in accepting the assignment throughout the period of the regular employee's absence or until the vacancy is filled on a regular basis under the procedures set out in section eight-b [§18A-4-8b] of this article.

Grievant emphasizes the language in subsection (2) and essentially concludes subsection (6) is not applicable. The Board maintains it complied with the requirements contained in the latter by posting the temporary vacancy and awarding the assignment to Ms. Peters.

In addition to the foregoing, the following findings of fact and conclusions of law are made.

#### FINDINGS OF FACT

1. On or about November 14, 1988 grievant, a substitute bus driver employed by the Board, was assigned the duties of Mr. Kim

Hurley, a regularly employed bus driver who had requested and received approval for a leave of absence which was to last up to thirty days.

2. Grievant was so assigned for eleven days during which the Board posted the temporary vacancy. Ms. Aileen Peters, the substitute bus driver with the greatest length of service in that classification in the county, bid upon and received the assignment which she held until Mr. Hurley's return on or about December 12, 1988.

#### CONCLUSIONS OF LAW

1. Substitute service personnel with the greatest length of service in a particular category of employment must be given priority in accepting substitute assignments for service employees in that category of employment who are on leave of absence. W.Va. Code §18A-4-15(6).

2. The Board's decision to give Ms. Peters priority in filling the temporary vacancy created by Mr. Hurley's leave of absence was in compliance with the provisions of W.Va. Code §18A-4-15(6).

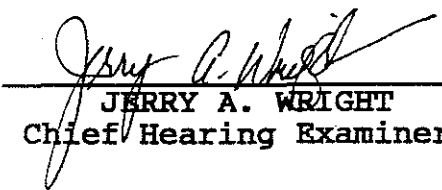
3. It is incumbent upon a grievant to prove all the allegations constituting the grievance by a preponderance of the evidence. Butler v. McDowell County Board of Education, Docket No. 33-88-208 (March 31, 1989); Lucas v. Mercer County Board of

Education, Docket No. 27-88-180 (December 15, 1988); Helton v. Kanawha County Board of Education, Docket No. 20-87-028-1 (October 26, 1988).

4. Grievant has failed to establish that there was any past practice on the Board's part to fill temporary vacancies in bus driver positions on any other basis than the provisions of W.Va. Code §18A-4-15.

Accordingly, the grievance is **DENIED**.

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

  
JERRY A. WRIGHT  
Chief Hearing Examiner

Dated: August 30, 1989