

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**JACK A. JARRELLS,  
Grievant,**

**v.**

**Docket No. 2017-2163-DOT**

**DIVISION OF HIGHWAYS,  
Respondent.**

**DISMISSAL ORDER**

Grievant, Jack A. Jarrells, filed a grievance against his employer, Division of Highways, on April 28, 2017, in which he alleged that false statements were made against him to management by co-workers. Grievant seeks as relief that his co-workers be dismissed due to this harassment against him. A Level One hearing was conducted on May 16, 2017, and the grievance was dismissed by the Level One Grievance Evaluator Sandra Castillo. Grievant appealed to Level Two on or about May 31, 2017. Subsequently, Respondent renewed its Motion to Dismiss following an appeal of the Level One Order granting Respondent's Motion to Dismiss. Grievant was given an opportunity to respond to this motion on June 12, 2017. Grievant appeared *pro se*. Respondent appeared its counsel, Jason Workman, Legal Division. This case was reassigned to the undersigned for a ruling on the motion for administrative reasons on September 19, 2017.

**Synopsis**

Grievant seeks disciplinary action against other employees. It is well settled that the relief sought by Grievant is not within the authority of the undersigned to grant.

Respondent has demonstrated that the relief requested cannot be granted based on the applicable law. Therefore, the grievance is dismissed.

The following Findings of Fact are based on the record of this case.

### **Findings of Fact**

1. Grievant is a Transportation Worker 2 and is assigned to Wayne County.
2. James Williamson, Keith Viers, and Joshua Farley are co-workers at the Wayne County garage.
3. Based upon facts unclear from the record, Grievant made allegations against his co-workers that they made false statements resulting in defamation of character, retaliation, and harassment.
4. Grievant is requesting that his co-workers be dismissed from employment with the Division of Highways.

### **Discussion**

Respondent asserts that the grievance fails to provide for relief which could be granted, and therefore it must be dismissed. Pursuant to the Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 156-1-6 6.11(2008), “[a] grievance may be dismissed, in the discretion of the administrative law judge, if no claim upon which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” In instances where “it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. ‘This Grievance Board does not issue advisory opinions. *Dooley v. Dep’t of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd.*

*of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).’ *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000).” *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

As defined by statute, a grievance must allege “a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee.” W. VA. CODE § 6C-2-2(i). The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997). Any party asserting the application of an affirmative defense bears the burden of proving that defense by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 156 C.S.R. 1 § 156-1-3 (2008).

The Grievance Board does not have the authority to order an agency to impose discipline on an employee. Relief which entails an adverse personnel action against another employee is extraordinary, and is generally unavailable from the Grievance Board. *Stewart v. Div. of Corr.*, Docket No. 04-CORR-430 (May 31, 2005); *Jarrell v. Raleigh County Bd. of Educ.*, Docket No. 95-41-479 (July 8, 1996). A decision concerning disciplinary action resides with the employer. This Grievance Board may award relief against the employer based upon conduct of which the employer is aware, and which it in effect “condones.” *White v. Monongalia County Bd. of Educ.*, Docket No. 93-30-371 (Mar. 30, 1994). However, this Board is without authority, statutory or otherwise, to order that disciplinary action be taken against another employee. *Daugherty v. Bd. of Directors*, Docket No. 93-BOD-295 (Apr. 27, 1994); *Coster v. W. Va. Div. of Corr.*, Docket No. 98-CORR-506 (Feb. 24, 1999). An exception to this rule is where a supervisor retaliates

against an employee for participation in the grievance process. *Grant & Grant v. Cabell County Bd. of Educ.*, Docket No. 06-06-012 (Oct. 17, 2006).<sup>1</sup> No such allegation was made in the statement of grievance. The punishment remedy requested by Grievant is contrary to law and, consequently, unavailable to Grievant.

Based upon the above, no claim upon which relief can be granted is stated and the remedy requested is wholly unavailable to the Grievant; these facts present no case in controversy. When there is no case in controversy, the Grievance Board will not issue advisory opinions. *Brackman v. Div. of Corr./Anthony Corr. Center*, Docket No. 02-CORR-104 (Feb. 20, 2003); *Gibb v. W. Va. Div. of Corr.*, Docket No. 98-CORR-152 (Sept. 30, 1998).

The following Conclusions of Law support the dismissal of this grievance.

#### **Conclusions of Law**

1. “A grievance may be dismissed, in the discretion of the administrative law judge, if no claim on which relief can be granted is stated or a remedy wholly unavailable to the grievant is requested.” Procedural Rules of the Public Employees Grievance Board, 156 C.S.R. 1 § 6.11 (2008).

2. As defined by statute, a grievance must allege “a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee.” W. VA. CODE § 6C-2-2(g)(1).

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<sup>1</sup>In this case the Grievance Board ordered the employer to discipline a supervisor for retaliation under W. VA. CODE § 18-29-3(h) which contained language similar to that found in the new grievance statute at W. VA. CODE § 6C-2-3(h).

3. The scope of the authority of the Grievance Board is limited to that set forth in the Grievance statutes. *Skaff v. Pridemore*, 200 W. Va. 700, 490 S.E.2d 787 (1997).

4. It is a well-settled rule that the Grievance Board does not have the authority to order an agency to impose discipline on an employee. Relief which entails an adverse personnel action against another employee is extraordinary, and is generally unavailable from the Grievance Board. *Stewart v. Div. of Corr.*, Docket No. 04-CORR-430 (May 31, 2005); *Jarrell v. Raleigh County Bd. of Educ.* Docket No. 95-41-479 (July 8, 1996). Any decision concerning disciplinary action generally resides with the employer. *Dunlap v. Dep't of Env'tl. Prot.*, Docket No. 2008-0808-DEP (March 20, 2009).

5. "Because it is not possible for any actual relief to be granted, any ruling issued by the undersigned regarding the question raised by this grievance would merely be an advisory opinion. 'This Grievance Board does not issue advisory opinions. *Dooley v. Dep't of Transp.*, Docket No. 94-DOH-255 (Nov. 30, 1994); *Pascoli & Kriner v. Ohio County Bd. of Educ.*, Docket No. 91-35-229/239 (Nov. 27, 1991).' *Priest v. Kanawha County Bd. of Educ.*, Docket No. 00-20-144 (Aug. 15, 2000)." *Smith v. Lewis County Bd. of Educ.*, Docket No. 02-21-028 (June 21, 2002).

6. This grievance presents no claim upon which relief can be granted and a remedy wholly unavailable is requested.

Accordingly, this grievance is **DISMISSED**.

Any party may appeal this Order to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Order. See W. VA. CODE § 6C-2-5. Neither the West Virginia Public Employees Grievance Board nor any of its

Administrative Law Judges is a party to such appeal and should not be so named. However, the appealing party is required by W. Va. Code § 29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The Civil Action number should be included so that the certified record can be properly filed with the circuit court. See *a/so* 156 C.S.R. 1 § 6.20 (2008).

**Date: September 29, 2017**

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**Ronald L. Reece**  
**Administrative Law Judge**