

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

ROBERT REED,
Grievant,

v.

Docket No. 2019-0844-MrnED

MARION COUNTY BOARD OF EDUCATION,
Respondent.

DECISION

Grievant, Robert Reed, is currently employed by Respondent, Marion County Board of Education, as a Bus Operator. Grievant filed a Level One grievance form on January 30, 2019, alleging a “Failure of Board to Multi-classify and add seniority in Both classifications 18A-4-8(L) 18A-4-8(11)18A-4-8(65)” and “Not following State Code, Marion B.O.E. Policy, Adm Guidelines, or Job Description.” Grievant seeks the following relief “My mechanics seniority is correct but they will not update and place me in the proper place on my Bus Operator list to make it accurate and current when I was required to do both when needed.”

A Level One conference was conducted on February 19, 2019. A Level Two mediation session was conducted on June 3, 2019. A Level Three evidentiary hearing was conducted before the undersigned on October 16, 2019, at the Grievance Board’s Westover office. Grievant appeared in person and by his counsel, George B. Morrone, III, West Virginia School Service Personnel Association. Respondent appeared by its counsel, Richard S. Boothby, Bowles Rice LLP, and by Rockie DeLorenzo, Respondent’s representative. This matter became mature for consideration upon receipt of the last of the parties’ fact/law proposals on December 2, 2019.

Synopsis

Grievant has been regularly employed by Respondent as a service personnel employee since February 1996. Grievant initially held the school bus operator classification title and later held mechanic classification titles. Respondent acknowledges that Grievant was required to operate a school bus on a regular basis during the time that he held the mechanic classification titles. Respondent also acknowledges that it did not conduct a reclassification review of Grievant's job duties at any time. Grievant proved by a preponderance of the evidence that he regularly operated a school bus during the time he was classified as a mechanic and that he should have held a multi-classification during that time. This grievance is granted. Respondent is ordered to assign Grievant his original bus operator date of February 20, 1996, for seniority in that classification.

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

Findings of Fact

1. Grievant has been regularly employed by Respondent as service personnel employee since February 20, 1996. Grievant held the school bus operator classification title from February 20, 1996 to August 21, 2000. Grievant held the classification titles of assistant mechanic, mechanic and chief mechanic, from August 21, 2000, to August 16, 2018.

2. R. A. Reed, Grievant's father, was the school bus dispatcher from 1990 to 2005. Mr. Reed explained that Grievant was required to operate a school bus, on average, one-to-two days per week between 2000 and 2005.

3. Tim James was the Transportation Director from 2000 to 2008. Mr. James explained that Grievant was required to operate a school bus a significant amount while employed as a mechanic for an average of three-to-four times per week. Extra-curricular trips would have been canceled and/or students would not have been transported to and from school if Grievant had not operated a school bus for Respondent. Mr. James was never directed by Respondent to conduct a reclassification review of Grievant's job duties.

4. Gary Shuck was a mechanic from 1980-2005, and the school bus dispatcher from 2008 to 2015. Mr. Shuck explained that Grievant was required to operate a school bus, on the average of two or more days per week between 2000 and 2015, while he was working as a mechanic.

5. Mr. Reed, Mr. James and Mr. Shuck kept records of the number of days Grievant drove a bus, but Respondent destroyed all of the records over time.

6. Former Superintendent Gary Price directly supervised Mr. James and Mr. Shuck when he served as Assistant Superintendent. Mr. Price opined that Grievant had operated a school bus more than he had realized at the time, but that he later learned of the significance of time he operated a school bus after he became Superintendent. Mr. Price had no opposition to Grievant's claims that he drove enough to hold the classification title of bus operator.

7. Respondent did not perform annual reclassification reviews of service personnel.

8. Danny Gooch was a school bus operator for Respondent from 2006 to 2017. Mr. Gooch indicated that Grievant operated a school bus on the average of three-to-four times per week.

9. Kevin Gump has been a school bus operator for Respondent since 2005. Mr. Gump indicated that Grievant operated a school bus weekly, at least once per week while he was working as a mechanic.

10. Clarence Miller has been a school bus operator for Respondent since 2000. Mr. Miller indicated that Grievant operated a school bus approximately three days per week, while he was working as a mechanic.

11. Kim Porter has been a school bus operator since 2005. Ms. Porter indicated that Grievant operated a school bus at least one-to-two days per week, and sometimes more, while he was working as a mechanic.

12. Crystal Reynolds has been a school bus operator since 2005. Ms. Reynolds indicated that Grievant operated a school bus three-to-four times per week, on the average, while he was working as a mechanic.

13. David Butcher has been a school bus operator since 1999. Mr. Butcher indicated that Grievant operated a school bus two times per week, on the average, while he was working as a mechanic.

14. Tane Toothman has been a school bus operator since 2003. Ms. Toothman indicated that Grievant operated a school bus on a weekly basis more than once a week, while he was working as a mechanic.

15. Grievant explained that he operated a school bus for Respondent on a regular basis during his entire tenure of employment as a mechanic and that a review of his job duties was never performed by Respondent for reclassification purposes.

16. Grievant was required by Respondent to operate a school bus several days a week from August 21, 2000 to August 16, 2018, in order for Respondent to meet its obligation to transport the students of Marion County Schools.

17. Grievant was transferred by Respondent from his mechanic classification title to the school bus operator classification title on August 16, 2018.

18. Respondent's Policy 4120 provides, in pertinent part, that "[s]eniority begins on the date that s/he enters into his/her assigned duties."

19. Grievant entered his regular duties as a school bus operator on February 20, 1996. Since then, Respondent has consistently assigned the duty of operating a school bus to Grievant in order to transport students.

20. Respondent's *Job Descriptions* for mechanic and chief mechanic include the job responsibility to "[s]erve as an emergency sub bus operator."

21. Grievant's operation of a school bus while he was employed as a mechanic was needed by Respondent to transport students, not always on an emergency basis.

22. Grievant has been regularly employed by Respondent since February 20, 1996, and he executed a continuing contract of employment as a bus operator on July 1, 1999. Grievant has never signed a contract of employment as a mechanic. Grievant was regularly required to operate a school bus during the time of his employment, including

the time he was classified as a mechanic, between August 21, 2000, and August 16, 2018.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988). "A preponderance of the evidence is evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." *Petry v. Kanawha County Bd. of Educ.*, Docket No. 96-20-380 (Mar. 18, 1997). In other words, "[t]he preponderance standard generally requires proof that a reasonable person would accept as sufficient that a contested fact is more likely true than not." *Leichliter v. W. Va. Dep't of Health & Human Res.*, Docket No. 92-HHR-486 (May 17, 1993).

The controlling issue in this case is Grievant's seniority date as a school bus operator. "For purposes of determining seniority under [W. VA. CODE § 18A-4-8b], a service persons seniority begins on the date that he or she enters into the assigned duties." W. VA. CODE § 18A-4-8b(e). See *also*, Respondent's Policy 4120. Grievant seeks to hold his initial hire date of February 20, 1996, as his school bus operator seniority date, claiming that Respondent has assigned him the duty of operating a school bus throughout his entire time of employment. Respondent contends that Grievant's school bus operator seniority did not accrue during the period he was classified as a

mechanic, which was August 21, 2000 to August 16, 2018, even though Respondent acknowledges it required Grievant to operate a school bus during that time.

Grievant was regularly employed by Respondent as a school bus operator on February 20, 1996. A "bus operator" is defined in WEST VIRGINIA CODE § 18A-4-8b(i)(16) as "a person employed to operate school buses and other school transportation vehicles as provided by the state board." Respondent's Job Description for a "school bus operator" includes the responsibility to "[r]un the schedule at the assigned time" and to "[t]ransport only students authorized to ride the school bus." Grievant performed the duties of school bus operator from February 20, 1996, until he was transferred to the mechanic classification title on August 21, 2000. Grievant was transferred back to the school bus operator classification title on August 16, 2018, and his assigned job duties have been exclusively to operate a school bus.

The record supports a finding that Grievant was entitled to accrue school bus seniority during the time he was classified as a mechanic, or between August 21, 2000 and August 16, 2018. Grievant established by a preponderance of the evidence that he was required by Respondent to operate a school bus on a regular basis during that time period and that he should have accrued bus operator seniority. Grievant also established that Respondent was required to conduct an annual review of his job duties for reclassification and that Respondent has failed to do so at any time. A reclassification review of Grievant's job duties would have made clear that he should have been multi-classified as a mechanic/bus operator from August 21, 2000 to August 16, 2018, because he was required to operate a school bus on a regular basis.

Grievant presented witnesses who supported his claim that he operated a school bus on a regular basis during the period that he was classified as a mechanic. Respondent has not maintained records of the dates that Grievant was required to operate a school bus and did not present evidence to rebut Grievant's assertions. The record established that Grievant proved by a preponderance of the evidence that he was required to operate a school bus two-to-three days per week, on the average, from August 21, 2000 to August 16, 2018.

The record also supports a finding that a reclassification review by Respondent would have resulted in a multi-classification as mechanic/bus operator. "Muticlassification" means a person employed to perform tasks that involve the combination of two or more class titles. W. VA. CODE § 18A-4-8(i)(67), in part. To prevail in a misclassification grievance, an employee must establish that his duties more closely match those of another classification than that under which his position is categorized. *Arnold v. Monongalia County Bd. of Educ.*, Docket No. 01-30-505 (Jan. 10, 2002); *Carver v. Kanawha County Bd. of Educ.*, Docket No. 01-20-057 (Apr. 13, 2001). Grievant was required to perform and was performing tasks that involved the combination of both mechanic and bus operator class titles and he should have been multi-classified as a result of an annual reclassification review.

Turning back to Grievant's bus operator seniority date, "A school service person who holds a multiclassification title accrues seniority in each classification category of employment that the employee holds and is considered an employee of each classification category contained within his or her multiclassification title." W. VA. CODE § 18A-4-8g(l). The undersigned agrees with Grievant's counsel that Grievant should not

be punished because Respondent failed to conduct an annual reclassification review. A timely reclassification review would have established that Grievant should have been multi-classified as a mechanic/bus operator and that he was entitled to accrue seniority in both classification titles. Grievant is not seeking a higher rate of pay. Grievant is simply seeking seniority credit for the years he has regularly performed the duties of a bus operator.

Grievant has proven by a preponderance of the evidence that Respondent failed to perform a review of his job duties for reclassification purposes, which is a mandatory statutory duty. Grievant proved by a preponderance of the evidence that he regularly operated a school bus during the time of his employment, including the time he was classified as a mechanic. Grievant has proven by a preponderance of the evidence that he should have held a multi-classification title of mechanic/bus operator during the time he was also working as a mechanic.

The following Conclusions of Law support the decision reached.

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievant has the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Bd. 156 C.S.R. 1 § 3 (2018); *Holly v. Logan County Bd. of Educ.*, Docket No. 96-23-174 (Apr. 30, 1997); *Hanshaw v. McDowell County Bd. of Educ.*, Docket No. 33-88-130 (Aug. 19, 1988).

2. “For the purposes of determining seniority under this section a service persons seniority begins on the date that he or she enters into the assigned duties.” W. VA. CODE § 18A-4-8b and Respondent’s Policy 4120.

3. “Each county board shall review each service person’s job classification annually and shall reclassify all service persons as required by the job classifications.” W. VA. CODE § 18A-4-8(l), in part.

4. School personnel laws and regulations must be strictly construed and in favor of the employees that they were designed to protect. *Morgan v. Pizzino*, 256 S.E.2d 592 (W. Va. 1979).

5. Grievant proved by a preponderance of the evidence that he regularly operated a school bus during the time of his employment, including the time he was classified as a mechanic.

Accordingly, this grievance is **GRANTED**.

Respondent is **ORDERED** to assign Grievant his original bus operator date of February 20, 1996, for the purpose of bus operator seniority.

Any party may appeal this Decision to the Circuit Court of Kanawha County. Any such appeal must be filed within thirty (30) days of receipt of this Decision. 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 *also* 156 C.S.R. 1 § 6.20 (eff. July 7, 2018).

Date: December 27, 2019

Ronald L. Reece
Administrative Law Judge