

THE WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD

**AMANDA STANLEY,
Grievant,**

v.

Docket No. 2019-1361MasED

**MASON COUNTY BOARD OF EDUCATION,
Respondent.**

DECISION

Amanda Stanley, Grievant, is employed as an Aide III by Respondent, Mason County Board of Education. Ms. Stanley filed a grievance form dated April 2, 2019, alleging:

Grievant is regularly employed by Respondent and is currently holding the multi-classification title of Aide/ECCAT. On or about March 26, 2019, Respondent approved the Superintendent's recommendation to place Grievant on transfer to an Aide position, which would result in a reduction of pay. In doing so, Respondent disregarded Grievant's accumulated seniority as an Aide/ECCAT. Upon information and belief, Respondent has improperly and unlawfully deleted or "zeroed out" Grievant's accumulated seniority as an Aide/ECCAT, and this action has resulted in a demotion and loss of pay, benefits and seniority vis-à-vis the transfer/demotion of Grievant from Aide/ECCAT to Aide. Respondent's actions are in violation of W. VA. CODE §§ 18A-2-7, 18A-4-8, 18A-4-8a, 18A-4-8b and 18A-4-8g.

As relief, Grievant seeks to be placed in a multi-classified Aide/ECCAT position, plus back pay with interest, and all pay and benefits commensurate with that classification. Pursuant to W. VA. CODE § 6C-2-4(a)(4) the parties agreed to proceed directly to level three.

A level three hearing was conducted in the Charleston office of the West Virginia Public Employees Grievance Board on August 16, 2019. Grievant personally appeared

and was represented by George B. Morrone III, Esquire, West Virginia School Service Personnel Association. Respondent appeared through its Human Resources Director, Tonya Martin, and was represented by Leslie Tyree, Esquire. This matter became mature for decision on October 9, 2019, upon receipt of the last of the parties' Proposed Findings of Fact and Conclusions of Law.

Synopsis

Grievant alleges that Respondent violated its policy and the State statute related to the calculation of her ECCAT seniority. She claims that this violation resulted in a less senior Aide/ECCAT to be improperly recalled to an Aide/ECCAT position before Grievant. Respondent asserts that their system of subtracting a day of Grievant's accumulated ECCAT seniority for each day that she worked outside of that classification was proper.

Grievant proved that Respondent did not follow the ECCAT seniority calculation process required by statute and Board policy, and that this violation caused Grievant to not be recalled to an Aide/ECCAT position ahead of a less senior employee.

The following facts are found to be proven by a preponderance of the evidence based upon an examination of the entire record developed in this matter.

Findings of Fact

1. On June 23, 2015, Grievant, Amanda Stanley, was employed by Respondent for the 2015-2016. Her position was classified as Aide/ECCAT.¹

2. Grievant's first day of employment for Respondent was August 17, 2015, which became her seniority date in both the Aide and ECCAT classifications.

¹ ECCAT is an acronym for Early Childhood Assistant Teacher.

3. Grievant was laid off in a reduction in force (“RIF”) at the end of the 2015-2016 school year and was placed on the preferred recall list for filling future service personnel vacancies in her classifications.

4. Grievant was recalled to employment in the 2016-2017 school year as an Aide in special education classrooms. She was in the Aide classification but not the ECCAT classification. She worked as a special education Aide in the 2017-2018 school year as well. While she was working these positions, she was not earning additional seniority in the ECCAT classification.

5. Grievant was transferred into a position which was a multi-classified Aide/ECCAT position effective August 13, 2018.

6. Respondent set Grievant’s new ECCAT seniority date at August 13, 2018. The Board’s Human Resources Department reached that decision by subtracting one day from her accumulated Aide/ECCAT seniority for each day she worked outside of that classification. Thus, they assumed Grievant ran out of ECCAT seniority at the end of the 2016-2017 school year, after working one year in a different Aide classification.²

7. Sonya Davis, Certification Coordinator and Executive Secretary for the Board’s Human Resources Department, calculated past seniority by subtracting one day of seniority for each day the employee worked in a different classification because that “was the way she was trained” and she believes other county boards of education do it that way too.³

² (Grievant Exhibit 5) The Board’s Human Resources Director testified that Mason County does not include previously earned ECCAT if the employee has been out of the classification for more time than he/she originally served as an ECCAT.

³ No testimony was offered citing a specific board of education which also calculates seniority in this way.

8. Respondent used the date of August 13, 2018, as Grievant's ECCAT seniority date when it reduced four ECCAT positions in a RIF at the end of the 2018-2019 school year.

9. Four employees in the Aide/ECCAT classification were rifed and placed on the preferred recall list for Aide/ECCAT positions based upon the Board's calculation of ECCAT seniority. Their names and alleged seniority dates are as follows:

<u>Aide/ECCAT</u>	<u>Aide Seniority Date</u>	<u>ECCAT Seniority Date</u>
Angela Lloyd	January 22, 2007	November 30, 2017
Lisa Hill	October 27, 2008	March 29, 2018
Amanda Stanley	August 17, 2017	August 13, 2018
Angela Eddy	October 12, 2017	October 12, 2017

Grievant was initially hired as an Aide/ECCAT before the other three Aide/ECCATs involved in the reduction in force. She was not given any seniority credit for her prior service in that classification.

10. The *Mason County Schools By-Laws and Policies* contains *Policy 4370 – Seniority for Service Personnel* ("Policy 4370"). The section of policy 4370 which related to *Transfer Out of Classification* states the following:

The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returned to that class title or classification category of employment shall be calculated as follows: The County Board shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return of the class title or classification category of employment. This number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the

class title or classification category from the newly established seniority date.

Id.

11. The *Multiclassification* section of Policy 4370 states in part:

. . . [I]f a multiclassified employee is reduced in force in one (1) classification category, the employee shall retain employment in any of the other classification categories that s/he holds within his/her multiclassification title. In that case, the County Board shall delete the appropriate classification title or classification category from the contract of the multiclassified employee.

Id.

12. After Grievant was rified from her original Aide/ECCAT classification and employed as an Aide for special education, the ECCAT classification was removed from her contract until August 13, 2018, when she was again placed in an Aide/ECCAT position. She did not accumulate additional ECCAT seniority during that period.

13. W. VA. CODE § 18A-4-8g(g) similarly states the following:

(g) The seniority of a service person who transfers out of a class title or classification category of employment and subsequently returns to that class title or classification category of employment is calculated as follows:

(1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the service person's initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

Id.

14. On June 11, 2018, Angela Eddy was recalled to employment as an Aide/ECCAT at Ashton Elementary from the Aide/ECCAT preferred recall list, because Respondent believed she had the earliest ECCAT seniority date based upon Respondent's calculations.

15. Grievant was placed in an Aide III position for the 2018-2019 school year. This assignment resulted in a reduction from pay grade E as an Aide/ECCAT to pay grade C in the Aide III position.

16. Grievant was no longer employed in the ECCAT classification as of June 30, 2016.⁴ Grievant returned to the Aide/ECCAT classification on August 13, 2018. 773 calendar days passed between the date Grievant was rified from her ECCAT classification and the date she was returned to the Aide/ECCAT classification.

Discussion

This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. VA. CODE R §156-1-3. *Burden of Proof*. "The 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). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

Grievant argues that Respondent improperly calculated her seniority in the Aide/ECCAT classification by subtracting a day from her accumulated seniority in the ECCAT classification for each day that she worked as a non-ECCAT Aide. This method

⁴ The last day of the 2015-2016 School Year contracts.

erased all Grievant's ECCAT seniority after she worked as an Aide for one year, rendering her the least senior of all Aide/ECCATs. Grievant points to Respondent's Policy 4370 and W. VA. CODE § 18A-4-8g(g), neither of which say anything about subtracting previously earned seniority. Rather both the policy and the statute require that a multiclassified employee will cease to accrue seniority in one of their classifications if they are no longer employed in that classification. Thus, when Grievant was rified from her Aide/ECCAT position at the end of the 2015/2016 school year she no longer accumulated ECCAT seniority until she was reemployed in that classification. However, she continued to accumulate Aide seniority.

The essential question is, what was Grievant's new ECCAT seniority date when she was reemployed into the Aide/ECCAT classification? W. VA. CODE § 18A-4-8g(g), requires that the new Aide/ECCAT seniority date must be establish by the following three step procedure:

- (1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.
- (2) This number of days shall be added to the service person's initial seniority date to establish a new beginning seniority date within the class title or classification category.
- (3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

In step one, the Board must establish the number of calendar days that passed between the end of Grievant's release from the ECCAT and the day she returned to that

classification. 773 calendar days⁵ passed between the date Grievant was no longer employed in an ECCAT position, June 30, 2016, and August 13, 2018, when she was rehired as an Aide/ECCAT.

Step two requires that 773 calendar days be added to Grievant's original ECCAT seniority date of August 17, 2015. When those calendar days are added to Grievant's original ECCAT seniority date the new seniority date is September 5, 2017, a little more than two years later than her original seniority date. According to step three, that is Grievant's newly established ECCAT seniority date as if she had held the Aide/ECCAT classification continuously from that date. There is nothing in either Policy 4370 nor W. VA. CODE § 18A-4-8g(g) that would authorize Respondent to subtract from Grievant's accrued ECCAT seniority or determine Grievant's new seniority date in any other way. Respondent was required to follow the statutory and policy method for calculation of Grievant's ECCAT seniority after her break in service in that classification. An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, *Powell v. Brown*, 160 W. Va. 723, 238 S.E.2d 220 (1977); *Bailey v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-389 (Dec. 20, 1994). *Riddle v. Dep't of Health & Human Ser.*, Docket No. 2016-1268-DHHR (Feb. 23, 2017).

The remaining issue is where Grievant's newly established ECCAT seniority date ranks among the remaining laid off Aide/ECCATs. There was no evidence that any of the other Aides had a break in their ECCAT service so based upon the evidence, the ECCAT seniority dates listed for the remaining three Aides are correct. According to Respondent's calculations, Angela Eddy held the earliest ECCAT seniority date of October 12, 2017.

⁵ This number was found by applying the statutory law to the dates provided in evidence.

(See FOF 9. *supra*). However, when Grievant's newly established ECCAT seniority of September 5, 2017 is compared to the others, Grievant has more than a month more ECCAT seniority than Ms. Eddy.

Ms. Eddy was recalled to an Aide/ECCAT position at Ashton Elementary School on June 11, 2019, for the 2019/2020 school year based upon the Board's belief that she was the most senior Aide/ECCAT on the preferred recall list. However, according to statute and Board policy, Grievant held the most ECCAT seniority among all the Aide/ECCATs on the preferred recall list, and should have been the employee recalled to the Aide/ECCAT position at Ashton Elementary for the 2019/2020 school year.⁶ Grievant proved by a preponderance of the evidence that Respondent inaccurately calculated her ECCAT seniority date and consequently denied her the right to be recalled to an Aide/ECCAT position. This error caused Grievant's pay grade to be reduced by two steps. Accordingly, the grievance is **GRANTED**.

Conclusions of Law

1. This grievance does not challenge a disciplinary action, so Grievant bears the burden of proof. Grievant's allegations must be proven by a preponderance of the evidence. See, W. VA. CODE R §156-1-3. *Burden of Proof*. "The 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*

⁶ See W. VA. CODE § 18A-4-8b(m) All service personnel whose seniority with the county board is insufficient to allow their retention by the county board during a reduction in work force are placed upon a preferred recall list and shall be recalled to employment by the county board on the basis of seniority.

Res., Docket No. 92-HHR-486 (May 17, 1993). Where the evidence equally supports both sides, the party bearing the burden has not met its burden. *Id.*

2. W. VA. CODE § 18A-4-8g(g), requires that the new Aide/ECCAT seniority date must be established by the following three step procedure:

(1) The county board shall establish the number of calendar days between the date the service person left the class title or category of employment in question and the date of return to the class title or classification category of employment.

(2) This number of days shall be added to the service person's initial seniority date to establish a new beginning seniority date within the class title or classification category.

(3) The service person then shall be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

3. The *Mason County Schools By-Laws and Policies* contains *Policy 4370 – Seniority for Service Personnel* (“Policy 4370). The section of policy 4370 which related to *Transfer Out of Classification* states the following:

The seniority of an employee who transfers out of a class title or classification category of employment and subsequently returned to that class title or classification category of employment shall be calculated as follows: The County Board shall establish the number of calendar days between the date the employee left the class title or category of employment in question and the date of return of the class title or classification category of employment this number of days shall be added to the employee's initial seniority date to establish a new beginning seniority date within the class title or classification category. The employee shall then be considered as having held uninterrupted service within the class title or classification category from the newly established seniority date.

4. An administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. Pt. 1, *Powell v. Brown*, 160 W. Va. 723,

238 S.E.2d 220 (1977); *Bailey v. W. Va. Dept. of Transp.*, Docket No. 94-DOH-389 (Dec. 20, 1994). *Riddle v. Dep't of Health & Human Ser.*, Docket No. 2016-1268-DHHR (Feb. 23, 2017).

5. Grievant proved by a preponderance of the evidence that Respondent inaccurately calculated her ECCAT seniority date, and that the proper calculation of her seniority date resulted in her having the most ECCAT seniority of the four Aide/ECCAT employees on the preferred recall list.

6. Grievant proved by a preponderance of the evidence that Respondent's miscalculation of her ECCAT seniority date denied her the statutory right to be recalled into a vacant Aide/ECCAT position which was erroneously given to a different person on the Aide/ECCAT preferred recall list. As a result, Grievant's salary was paid at two pay grades below what she would have received had she been properly recalled.

Accordingly, the grievance is **GRANTED**.

Respondent is **ORDERED** to immediately place Grievant in the Aide/ECCAT position at Ashton Elementary School and to pay Grievant the difference between her pay at pay grade C and pay grade E from the date Ms. Eddy was recalled to the Ashton Elementary Aide/ECCAT position until Grievant's instatement into that position, plus interest and benefits.

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 (2018).

DATE: November 21, 2019

**WILLIAM B. MCGINLEY
ADMINISTRATIVE LAW JUDGE**