

**THE WEST VIRGINIA PUBLIC EMPLOYEES  
GRIEVANCE BOARD**

**JAMES LUEVANO AND JOHN BARBER,**  
**Grievants,**

**v.**

**Docket No. 2021-0052-CONS**

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

**DECISION**

Grievants, James Luevano and John Barber, filed this action at level one on or about July 16, 2020, against their employer, Hancock County Board of Education, seeking a payment bonus for unused sick leave, and back pay with statutory interest. This case was transferred to level three by agreement of the parties on November 16, 2020. The parties also agreed to submit this case to the undersigned for a decision based upon stipulations and proposals addressing the relevant law. Grievants appeared by their representative, Jeremy Radabaugh, West Virginia Education Association. Respondent appeared by its counsel, Denise M. Spatafore, Dinsmore & Shohl LLP. This matter became mature for consideration upon receipt of the parties' fact/law proposals on April 15, 2021.

**Synopsis**

Grievants are employed as adult student instructors by the Hancock County Board of Education as Commercial Driver's License (CDL) Teachers at the John D. Rockefeller Career Center. Grievants seek a leave bonus of \$500 paid to classroom teachers for missing less than 4 sick and/or personal days. Grievants failed to meet their burden of

proof and demonstrate by a preponderance of the evidence an entitlement to the leave bonus.

The following Findings of Fact are stipulated to by the parties.

### **Findings of Fact**

1. Grievants are employed by the Hancock County Board of Education as Commercial Driver's License (CDL) Teachers at the John D. Rockefeller Career Center. Grievant Luevano is a full-time CDL Instructor and part-time Diesel Instructor. Grievant Barber is a full-time CDL Instructor.

2. WEST VIRGINIA CODE § 18A-4-10(c) provides "classroom teachers" with a \$500 bonus for missing less than 4 sick and/or personal days.

3. Grievants discovered that they did not receive the \$500 bonus, following the pay day of June 25, 2020, through an email from the Hancock County Schools' finance department.

4. Grievants spoke with the Hancock County Schools Treasurer, Joe Campinelli, who instructed them that they were not eligible for the bonus, pursuant to the directive of the West Virginia State Department. This denial of the bonus was based upon the undisputed fact that Grievants did not teach K-12 students.

5. The West Virginia Department of Education Finance Office does not categorize adult instructors as "classroom teachers," as set forth in WEST VIRGINIA CODE § 18A-1-1 and WEST VIRGINIA CODE § 18-4-10(c).

6. As CDL Teachers, Grievants instruct adults and spend the entirety of their day in the instruction of adult students in their program.

## Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievances by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 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).

Grievants argue that they are entitled to the leave incentive that is provided to classroom teachers pursuant to WEST VIRGINIA CODE § 18-4-10(c), which provides:

Effective July 1, 2019, a classroom teacher who has not utilized more than four days of personal leave during the 200-day employment term shall receive a bonus of \$500 at the end of the school year. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable classroom teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all eligible classroom teachers. This bonus may not be counted as part of the final average salary for the purpose of calculating retirement.

Grievants assert that because they work in an instructional capacity with adult students, they should be considered classroom teachers for the purpose of the bonus of \$500. "Classroom teacher" is defined by WEST VIRGINIA CODE § 18A-1-1 as "a professional

educator who has a direct instructional or counseling relationship with students and who spends the majority of his or her time in this capacity.”

This would seem to address the issue, but Grievants’ argument overlooks the statutory provisions by which adult education programs exist, and the method for employing instructors in such programs. WEST VIRGINIA CODE § 18-5-19b provides for adult education programs to be provided by boards of education, and states:

The Board of Education of any county shall have authority to enter into contracts of agreement with temporary teachers for the purpose of teaching adult education classes or programs which do not exceed ninety days or seven hundred twenty hours. The appointment of a temporary teacher is a contract of agreement for the duration of the class or program, and the temporary teacher shall not accrue benefits of retirement, personal leave, medical or life insurance, seniority rights, or any other provisions relating to salaries, wages and benefits pursuant to article four, chapter eighteen-a of this code: Provided, That such temporary appointment does not preclude the benefits mandated by federal law, workers’ compensation and liability insurance coverage for the duration of the class or programs.

The limited record of this case and the stipulations did not provide the undersigned with any supporting documentation relating to the representation that the West Virginia Department of Education does not categorize adult instructors as classroom teachers. However, this categorization was stipulated to by the Grievants. In addition, the record does not contain any contracts of agreement setting out the Grievants’ status as instructors other than teaching adult education. The record is also silent on the length of the CDL and Diesel classes. Accordingly, it is impossible for the undersigned to make any further analysis concerning the merit of Grievants’ claim.

In any event, the Grievance Board has held that teachers such as Grievants are not entitled to any of the same benefits of regularly employed teachers who provide instruction to K-12 students, even if a board of education chooses to provide some of

those benefits. It was held that, despite any additional benefits which had been provided to an adult education teacher, in violation of the above statute, their employment was specifically governed by the provisions of WEST VIRGINIA CODE § 18-5-19b. *Workman v. Lincoln County Bd. of Educ.*, Docket No. 95-22-363 (Mar. 18, 1996).

There is no dispute that Grievants are employed in adult education programs and they are classified as adult instructors by the Department of Education. Their employment is governed by WEST VIRGINIA CODE § 18-5-19b, which exempts them from the benefits provided for in Chapter 18A, Article 4, with regard to salary, benefits and leave. These exemptions would appear to include the leave bonus provided for in WEST VIRGINIA CODE § 18A-4-10(c). Grievants failed to meet their burden of proof and demonstrate by a preponderance of the evidence an entitlement to the leave bonus.

The following Conclusions of Law support the decision reached.

### **Conclusions of Law**

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving their grievances by a preponderance of the evidence. Procedural Rules of the W. Va. Public Employees Grievance Board 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).

2. Grievants failed to meet their burden of proof and demonstrate by a preponderance of the evidence an entitlement to the leave bonus.

Accordingly, this grievance is **DENIED**.

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: April 30, 2021**

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