JUDY TELLER

v. Docket No. 94-15-106

HANCOCK COUNTY BOARD OF EDUCATION

D E C I S I O N

Grievant Judy Teller is employed by Respondent Hancock County Board of Education (HCBE) as a bus operator. During Fall 1993, HCBE's transportation department experienced problems securing operators to take extra-duty driving runs. Grievant claims she notified the transportation director that she was willing to take extra-duty driving assignments but was not offered the opportunity to drive an extra-duty assignment on December 3, 1993. She requests compensation in the form of full payment (eight hours) for the trip. (See footnote 1)

In order to understand the underlying circumstances which gave rise to this grievance, some background information is necessary. Grievant was a party to a previously-decided case, Tibbs, et al. v. Hancock County Bd. of Educ., Docket No. 94-15- 114 (June 7, 1994). In Tibbs, et al., the grievants, nearly all of HCBE's bus operators, sought the restoration of previous hourly rate calculations for extra-duty work and monetary damages for "lost" trips. Among other things, it was determined in Tibbs, et al., at 4-5, that (See footnote 2)

from late September until early December 1993, all but one of HCBE's bus drivers either refused to take an extracurricular driving assignment or to contact the transportation office in writing to denote their availability to drive. The refusal of the bus drivers to accept extra-duty driving caused much chaos and concern within the transportation office.

Customarily, HCBE's transportation director posts a weekly extra-duty trip sheet of scheduled after-school functions, usually athletic events, which require a bus operator for transportation purposes. The list includes the date, time and destination of each trip as well as the assigned bus operator. This process was interrupted during the time HCBE's drivers refused to perform the extra-duty runs.

However, by early December 1993, some of HCBE's drivers indicated their interest in driving again, and the transporta tion director resumed posting the trip sheets. HCBE Exhibit 1 details the trips planned and reported for November 28 through December 4, 1993. Prior to December 4, a new trip sheet wasposted for the pre-scheduled runs for the week of December 5 through December 11,

1993. HCBE Exhibit 2.

Some unscheduled "add-on" runs needed to be incorporated into the December 5-11 posting. In particular, the transporta tion department was notified on December 2, 1993, that a Weirton-based parochial school needed transportation for an athletic event the next day, December 3. This trip was added to the December 5-11 posting as well as six or seven other runs which were needed later in the week.

During late November and early December 1993, at least three bus operators began consistently accepting extra-duty trips. At about that time, specifically, November 29, 1993, Grievant met with the transportation director and indicated her willingness to drive. She was immediately offered an available run, but declined it on the basis that she had a doctor's appointment for the day in question.

In a somewhat chaotic climate and time of uncertainty as to who would be willing to drive, the transportation director trav eled from his New Cumberland-based office to the Weirton bus garage on December 2, 1993, to find a driver willing to take the "add-on" run for the next day, December 3, 1993. Grievant was present when the transportation director made general verbal inquiries in the drivers' lounge as to whether any drivers would be interested in the December 3, 1993 run. Grievant did not express any interest in taking the job at that time.

In any event, Delores Ashcraft drove the trip in question, although the record is silent as to how this run was assigned.Apparently, Ms. Ashcraft is "lower" on the seniority-based rotational driver roster than Grievant. Grievant testified that she thought Terri Nelson, who is above her on the roster was going to drive the December 3 assignment.

Grievant claims a violation of W.Va. Code §18A-4-8b's mandate that extra-duty work be awarded on a most-senior, rotational basis. She claims she learned on the morning of December 3, 1993, that she was "passed over" for the trip because Ms. Ashcraft, and not Ms. Nelson, drove. HCBE counters that Grievant did not meet her burden of proof in this case.

Grievant failed to prove a violation of Code §18A-4-8b. Simply put, Grievant refused an assignment on November 29, 1993. Therefore, Grievant could not have been next in line on the rotational drivers' roster for the job on December 3, 1993. Additionally, she waived any right she may have had to drive an extra-duty assignment on December 3, 1993, when she failed to respond to the transportation director's plea for a willing driver. (See footnote 3)

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

Findings of Fact

1. Between early September and late November 1993 only one bus operator accepted extra-duty driving assignments; therefore, the transportation office abandoned the traditional approach to filling these needs.

2. Grievant had not taken any extra-duty trips between early September and late November 1993. In particular, even after she expressed a desire to be called for available work, she refused a trip offered to her on November 29, 1993.

3. On December 2, 1993, Grievant was present when the transportation director generally asked if any drivers were interested in taking a late-breaking trip the following day, December 3, 1993. Grievant did not respond or otherwise indi cate her willingness to drive at that time.

4. The driver who took the trip was lower on the seniori ty-based drivers' roster than Grievant.

Conclusions of Law

1. Under Code §18A-4-8b, the most-senior employee re ceives priority for extra-duty assignments followed by less-se nior workers on a rotational basis until all have had an oppor tunity to perform similar assignments.

2. Based on Grievant's refusal of an extra-duty assign ment just prior to the trip in question on December 3, 1993, she, in effect, "rotated" to the bottom of the drivers' roster and less-senior operators had priority over her.

3. Under the circumstances, including the fact thatGrievant did not express an interest in driving the assignment in question when given an opportunity to do so, Grievant failed to substantiate her claim of a violation of Code §18A-4-8b.

Accordingly, the grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

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NEDRA KOVAL

Administrative Law Judge

Date: June 23, 1994

Footnote: 1 This matter received adverse lower level decisions on January 14 and March 18, 1994. When Grievant advanced her appeal to level four in late March 1994, she requested a decision based on the evidence adduced below. The transcript of the March 14, 1994 level two hearing was submitted on June 9, 1994. Grievant's and HCBE's fact/law proposals were filed on June 15, 1994 and June 22, 1994, respectively.

Footnote: 2 The grievants in Tibbs, et al., did not prevail on their claims.

Footnote: 3 The record in this case and Tibbs, et al., supra, makes it very clear that the transportation department filled extra-duty driving positions to the best of its ability during the hectic times between early September and early December 1993 brought on by the refusal of most of its operators to accept extra-duty assignments.