**ARCHIE SELF**

**v. Docket No. 94-DOH-410**

**WEST VIRGINIA DIVISION OF HIGHWAYS**

## DECISION

Grievant, Archie Self, employed by the Division of Highways (DOH) as a Transportation Worker II (TWII), filed a grievance at level one on December 20, 1993, in which he alleged that his assignment operating a Tiger Mower (See footnote 1) warranted classification as a Transportation Worker III (TWIII). (See footnote 2) Mineral County Supervisor John Lusk advised Grievant that he had no authority to grant the requested relief at level one and the grievance was denied by District Engineer Nicholas Bromhal at level two. At level three, the evaluators determined that the Tiger Mower should be reviewedby a panel or committee to determine the proper classification for the position held by the operators of that equipment. When the results of that review confirmed the correct classification to be TWII, Grievant advanced his complaint to level four on August 12, 1994. An evidentiary hearing was conducted on October 26. Both parties waived the opportunity to file proposed findings of fact and conclusions of law, and the matter became mature for decision on November 7, 1994, when DOH submitted a video tape depicting the Tiger Mower in use.

Testifying on his own behalf, Grievant stated that he has been employed by DOH for 29 years and that he has operated a Tiger Mower since they were first introduced in 1985. At level two Grievant estimated that approximately 75% of his time was allocated to operating the Tiger Mower; however, at level four that estimate was revised to 80% of his time. Grievant asserts that he is entitled to the higher classification due to the complex operation of, and the potential danger created by, the equipment. Mr. Self states that he works under constant stress caused by the numerous security measures which must be completed throughout the day to ensure the Mower is functioning safely. Grievant also described the difficultly in operating the Mower which requires the manipulation of

numerous pedals and levers. Safety is a major concern expressed by Grievant, who stated that the operator's vision and hearing are somewhat impairedby the machine, requiring close attention to avoid throwing debris onto the highway, possibly injuring another individual. Grievant notes that the Tiger Mower is the only equipment which requires annual certification of its operators due to the aforementioned considerations. To illustrate his position, Grievant submitted a videotape of the Tiger Mower in use. Additionally, Grievant elicited testimony from several co-workers and county supervisors who substantiated his claims regarding the equipment's complexity and opined that the operator should be classified as a TWIII. Finally, Grievant submitted the classification description utilized by the state of Maryland for Highway Technician III. One of the duties listed on this form is the operation of tractor mounted telescopic/articulating boom mowers, such as the Tiger Mower. Grievant argues that this document is supportive of his position because the classification descriptions for Highway Technician I, II, and III mirror West Virginia's Transportation Worker I, II and III classifications.

DOH explains that the classification of TWI, II, or III is dependent on the type of equipment the employee is assigned to operate. While the operation of mowers is generally included in the TWI classification, those employees assigned to Tiger Mowers are classified as TWIIs as determined by the findings and recommendations of the review committee convened pursuant to the level three decision. DOH asserts that the classification descriptions from Maryland are irrelevant inthis matter because the equipment used may be different than the Tiger Mower.

Jeff Black, Director of DOH's Human Resources Division, testified that based upon the committee review, it has been determined that those employees assigned as TWI's will operate light equipment, TWII's will operate the Tiger Mower and endloaders, and TWIII's will be responsible for graders, dozers, tractor-trailers, and other heavy equipment. Mr. Black opined that while the classification system used in Maryland is similar to West Virginia's, differences do exist. For example, while mowers with a boom are assigned to Class III in Maryland, so are tandem axle trucks, which are considered Class II equipment in West Virginia.

While acknowledging that the Tiger Mower is a hazardous piece of equipment, Mr. Black notes that all operators are required to complete safety training and maintain annual certification. He also points out that the purpose of the equipment is destructive, cutting grass, brush, etc., rather than constructive. It is not used to build or finish roadwork. Therefore, the nature of the work completed

with the Tiger Mower is not as crucial as that completed with other equipment. Because the work product is to remove excessive vegetation along the roadways, Mr. Black suggests that the purpose of the Tiger Mower is similar to the sickle bar which is Class I equipment. However, given the more advanced skills required of Tiger Mower operators, he opines that the correct classification for Grievant would be TWII.

In order to prevail upon a claim of misclassification, a grievant must prove by a preponderance of the evidence that his duties are those of a classification higher than the one assigned, as described by the specifications for that classification promulgated by the West Virginia Division of Personnel. Bannister v. W. Va. Dept. of Human Services, Docket No. 89-DHS-251 (Nov. 3, 1989). The analysis is focused upon whether the grievant's current classification constitutes the "best fit" for his required duties. Simmons v. W.Va. Dept. of HHR/Div. of Personnel, Docket No. 90-H-433 (Mar. 28, 1991).

The class specifications at issue in this matter are:

**TRANSPORTATION WORKER III**

**Nature of Work**

At the journey level performs skilled work in the construction and maintenance of highways and related buildings and structures. Operates a variety of heavy motorized maintenance equipment such a power graders, bulldozer, semi-trailer. Transports equipment across state to construction or maintenance sites; makes major repairs to roads and bridges. Performs major overhaul of gasoline and diesel powered automotive and highway maintenance equipment. Performs skilled work in carpentry, plumbing, electrical and other building maintenance in construction areas. Performs related work as required.

**Examples of Work**

-Positions drilling rig on drilling site using a winch and steel cables.

-Assembles drilling rig and related equipment on location using wrenches, hammers and other tools.

-Interprets boring layout to determine location of drilling site and equipment needed.

-Operates drilling rig to collect core samples.

-Drives medium to heavy truck to transport drilling rig to drilling site.

-Prepares reports of drilling activity, materials and equipment used.

-Fabricates engine and machinery parts from blueprints and drawings using machinist skills and equipment lathes, drills, grinders and milling machines).

-Performs carpentry, masonry, painting, plumbing, electrical, air conditioning and heating work on buildings, building equipment and property.

-Estimates materials and costs and sketches plans for building construction and maintenance projects.

-Designs, lays out and fabricates highway signs.

-May lead and train lower level workers in performing skilled and semi-skilled work.

-Constructs concrete forms from plans and specifications with plywood and dimensional lumber using hand and power tools such as hammers, electric saws, drills, levels and rulers.

-Installs and ties reinforcing steel bars in concrete forms using wire, pliers and rulers to comply with the required specifications of bridge foundations.

-Pours, vibrates and finishes concrete using power vibrators and trowels.

-Climbs high steel structures to repair damage steel bridge components.

-Fabricates and installs structural steel by cutting steel to exact specification with acetylene torches, placing and bolting steel in correct position to repair existing or construct new bridges.

**Knowledge, Skills and Abilities**

-Knowledge of the type of rock, aggregate and soil found in core drilling.

-Knowledge of safety practices for core drilling work.

-Knowledge of safety practices used in structural steel construction.

-Knowledge of the procedures, techniques and equipment in the assigned areas.

-Knowledge of applicable safety standards.

-Knowledge of basic blueprint reading.

-Ability to operate a drilling rig, water pump, air compressor and related equipment to drill for core samples.

-Ability to operate a heavy truck to transport drilling rig and related equipment.

-Ability to read operation manuals, blueprints, and specifications in the assigned areas.

-Ability to use hand tools and operate motorized equipment in the assigned areas.

-Ability to perform skilled trades work in bridge construction and maintenance.

-Ability to operate and maintain highway equipment and attachments.

**Minimum Qualifications**

-Training: No formal education required.

-Experience: Three years of full-time or equivalent part-time paid or non-paid experience in one or more of the assigned areas.

-Special Requirements: (1) A valid West Virginia Motor Vehicle Operator's License or a Commercial Driver's License may be required after employment. (2) Some positions in the class may require certification in the assigned area after appointment.

**TRANSPORTATION WORKER II**

**Nature of Work**

Under general supervision, at the full-performance level, performs skilled work in the construction and maintenance of highways and related buildings and structures. Operates motorized highway maintenance equipment such as backhoe, mudjack, front-end loader, tandem-axle truck and snow plow. Makes major repairs to highways, culverts, bridge structures; welds, and erects steel girders and supports; builds forms and finishes concrete; performs overhaul of gasoline-powered engines and/or diesel powered equipment; performs major body repairs for automotive and maintenance equipment. Performs finish carpentry, electrical, plumbing and other building maintenance duties. May be exposed to hazardous working conditions and inclement weather. Performs related work as required.

**Examples of Work**

-Constructs concrete forms out of plywood and dimensional lumber using hand tools, such as hammers, electric saws, levels and rules.

-Installs and ties reinforcing steel bars in concrete forms using wire, pliers and rulers.

-Pours, vibrates and finishes concrete using electric vibrators and trowels.

-Performs carpentry, masonry, painting, plumbing, electrical, air conditioning or heating equipment work to repair buildings, building equipment and property.

-Constructs concrete forms for inlets, manholes, headwalls, and retaining walls; repairs or replaces rubble, masonry, or stone walls.

-Paints vehicles and equipment using air compressors and paint sprayers.

-Repairs and forges hand tools and minor machinery parts using blacksmithing techniques and tools.

-Operates one or more pieces of equipment such as: asphaltdistributor, rubber tire endloader, roller, trench machine, culvert cleaner, or mudjack.

-Drives dump, flat-bed, or tandem-axle trucks to transport equipment and materials to and from work sites.

-Checks equipment to determine operational readiness and makes minor corrections as required.

-Makes minor mechanical repairs in the field such as changing tires, blades, or filters.

-Performs maintenance, repair and minor overhaul on gasoline powered equipment and may work with components on diesel powered equipment.

-Repairs hydraulic brake system, (i.e. rebuild wheel cylinders, install brake shoes, rebuild disc brake calipers, install disc brake pads, replace master cylinders, etc.).

-Cleans, sands, tapes, repairs dents and replaces rusted parts of vehicle bodies in preparation for painting.

-Installs windshields and door glass on vehicles and equipment.

-Repairs highway maintenance vehicles and equipment using gas welders and other welding equipment.

-Changes and repairs tires on vehicles and heavy equipment using tire cage, hoists, impact wrenches and air compressors.

-May set and detonate explosive charges for earth removal purposes.

-May be required to operate other highway maintenance equipment as employee training permits.

-Patches portland cement pavement and bridge decks.

-Installs and removes sign posts; erects traffic control signs and barricades on construction and maintenance projects.

-Seals joints and cracks in paved surfaces.

-May be required to drive a pickup truck.

-Repairs and constructs asphalt paved culverts.

-Fabricates road signs by cutting and punching aluminum and placing reflective sheeting and ribbing

on blanks using rivet guns, electric drills, roller applicator, power punch presses and metal sheers.

-Service drive line components, (i.e., universal joints, axle seals, and auto transmission, etc.).

-Remove and replace alternators, starters, generators and batteries.

-May inspect vehicles for compliance with state regulations.

-Service components of chassis assembly to include such repairs as replacing ball joints, tie rod ends, control arms, idler arms, wheel bearings, etc.

-Performs minor engine tune-ups.

-Assists higher level mechanics in heavy equipment repairs.

-Maintains safe, orderly work area.

-Drives equipment after repairs to test operation.

**Knowledge, Skills and Abilities**

-Knowledge of the procedures, techniques and equipment in the assigned area.

-Knowledge of the methods, materials, tools, and equipment used in the maintenance and repairs of vehicles and other motor driven equipment.

-Knowledge of applicable safety standards.

-Ability to read operating manuals and specifications in the assigned area.

-Ability to use basic hand and power tools.

-Ability to climb high steel structures.

-Ability to operate and maintain highway equipment and attachments.

-Ability to diagnose less complex mechanical problems and follow appropriate procedures for repair.

-Ability to maintain routine records (time cards, work repair orders).

-Ability to use hand tools and operate motorized equipment in the assigned area.

-Ability to understand and follow oral and written instructions.

-Ability to train and work cooperatively with other skilled and semi-skilled workers.

**Minimum Qualifications**

-Training: No formal education required.

-Experience: Two years of full-time or equivalent part-time paid or non-paid experience in automotive body repair, building trades, equipment operation or repair, highway maintenance or metal work. No experience required for Bridge Maintenance position.

-Substitution: Successful completion of an approved vocational school program in automotive mechanics of at least 1,080 clock hours may be substituted for one year of the required experience. -Special Requirements: (1) A valid West Virginia Motor Vehicle Operator's license; (2) a valid class A or B Commercial Driver's License is required in the area of Equipment Operation; (3) some positions in the class may require certification in the assigned areas after appointment.

These specifications are to be read in "pyramid fashion," i.e., from top to bottom, with the different sections to be considered as going from the more general/more critical to the more specific/less critical, Captain v. W.Va. Div. of Health, Docket No. 90-H-471 (Apr. 4, 1991); for these purposes, the "Nature of Work" section of a classification specification is its most critical section. Atchison v. W.Va. Div. of Health,Docket No. 90-H-444 (Apr. 22, 1991). The key to the analysis is to ascertain the predominant duties of the position in question insofar as they are class-controlling. Broaddus v. W.Va. Div. of Human Serv., Docket No. 89-DHS-606, 607, 609 (Aug. 31, 1990).

In the present matter Grievant states that the predominant duty he performs, consuming 75-80% of his work time, is the operation of the Tiger Mower. A comparison of the TWIII and TWII class specifications reveals that the primary difference in these positions is that the TWIII is required to operate heavy equipment and perform more complex work. A TWII is required to perform skilled work, including the operation of many types of motorized equipment, and may be exposed to hazardous working conditions.

Although the Tiger Mower requires all the operator's attention to manipulate the numerous levers and pedals, and the safety factors expressed by Grievant are not disputed by DOH, it does not appear that it falls within the category of heavy equipment as contemplated by TWIII. On the contrary, the mower appears to be comparable to other equipment operated by a TWII. Exposure to hazardous working conditions is specifically stated in the class specifications of TWII. The record reflects that a significant amount of debate has occurred within DOH regarding the Tiger Mower and the classification of those who operate that equipment. Grievant has shown that numerous DOH employees consider the appropriateclassification for this assignment to be TWIII; however, unless and until Personnel's class specifications are amended, the appropriate classification for employees who operate the Tiger Mower remains TWII.

In addition to the foregoing narration, it is appropriate to make the following formal findings of fact and conclusions of law.

## FINDINGS OF FACT

1. Grievant is employed by the Division of Highways and is presently classified as a Transportation Worker II.

2. Grievant is assigned to operate a tractor mounted telescopic articulating boom mower, referred to herein as a Tiger Mower, 75-80% of his work time.

3. Operation of the Tiger Mower requires the manipulation of numerous levers and pedals, involves some visual impairment, and necessitates great attention to detail regarding safety factors.

4. A committee selected to review the Tiger Mower and recommend the proper classification for the operator supported the classification of TWII.

## CONCLUSIONS OF LAW

1. Grievant has not proven by a preponderance of the evidence that the classification of Transportation Worker III is the "best fit" for the duties he performs. See Simmons v.W. Va. Dept. of Health and Human Resources, Docket No. 90-H-433 (Mar. 28, 1991).

2. Interpretation of the classification specifications by DOH for the positions of TWII and TWIII, as they apply to the duties performed by Grievant, are not clearly erroneous.

3. Grievant's job duties best fit within the classification for Transportation Worker II.

Accordingly, the grievance is **DENIED**.

DATED: January 31, 1995 Sue Keller

Senior Admn. Law Judge

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*Footnote: 1"Tiger Mower" is the brand name for the tractor mounted telescopic articulating boom mower.*

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*Footnote: 2The West Virginia Division of Personnel (Personnel) did not participate at any of the lower levels of the grievance process. Personnel was given Notice of the level four hearing but did not appear or request that it be made a party. Neither DOH nor Grievant requested that Personnel be made a party.*