HOWARD CONNER and SUE CONNER

v. Docket No. 94-01-1051

BARBOUR COUNTY BOARD OF EDUCATION

D E C I S I O N

The Grievants, Howard Conner and Sue Conner, are bus operators employed by the Barbour County Board of Education ("BCBOE"). They allege harassment, favoritism, discrimination, and retaliation because they were not allowed to take their regular buses on an extra-duty assignment on May 3, 1994, while the substitute driver, who accepted the run, did take a regular bus. This grievance was denied at Levels I and II and waived at Level III. A Level IV hearing was held on March 2, 1995, and this grievance case became mature for decision on April 7, 1995, following submission of proposed findings of fact and conclusions of law.

Issue

Grievants argue they were treated unfairly when they were not allowed to take the buses assigned to them on an extra-duty trip, but a substitute driver was allowed to take a regular bus instead of a spare bus. Respondent argues there was no preferentialtreatment because the regular driver, who loaned his regular bus to the substitute driver to make the extra-duty run, did so without the permission or the prior knowledge of the Director of Transportation. This driver and the substitute were subsequently formally reprimanded for their actions.

The following facts are not in dispute.

Findings of Fact

1. **Grievants are bus operators for the BCBOE.**
2. **Grievants have filed numerous grievances over the years.**
3. **Mr. Charles Zinn is the Director of Transportation for BCBOE.**

4. Grievants were called to take an extra-duty bus run for May 3, 1994. They refused to take this run because they were not allowed to take the buses regularly assigned to them and would have had to make the run in a spare bus.

5. No regular driver accepted the run, and a substitute, Stephen Price, was assigned to the run. Mr. Price was told by Mr. Zinn to take a spare bus.

6. It is county and state policy that an extra-curricular run "shall not interfere" with the regular transportation schedule. State Bd. of Educ. Policy 4336, §XII A 2. This policy is especially important with elementary students. Younger students may not know which bus to board when a spare bus (without the proper number) is driven by a substitute driver. On long or overnight trips, a driver may be permitted to take the bus regularly assigned to him, because these buses are newer.

7. The Director of Transportation is responsible for assigning and reassigning all buses for all scheduled runs as well as assigning buses for all curricular and extra-curricular trips.

8. The head bus mechanic has Mr. Zinn's permission to reassign buses in special circumstances, such as when a bus breaks down during the morning and the runs must still be made.

9. On May 3, 1994, Jerry Burner, a regular bus operator, told Mr. Price he could take the bus assigned to him on the extra-duty assignment. Mr. Burner did not have the authority to allow Mr. Price to take his bus.

10. Neither Mr. Zinn nor the head mechanic gave permission to Mr. Burner and Mr. Price to switch buses. Mr. Zinn did not know of this incident until this grievance was filed.

11. Both Mr. Burner and Mr. Price received formal reprimands as a result of this incident.

Discussion

To prove discrimination, favoritism, harassment, or retaliation the Grievants must demonstrate a prima facie case. This showing requires a grievant to establish:

(a) that he is similarly situated in a pertinent way, to one or more employee(s);

(b) that he has to his detriment, been treated by his employer in a manner that the other employee(s) has/have not, in a significant particular;

and,

(c) that such differences were unrelated to actual job responsibilities of the grievant and/or the other employee(s), and were not agreed to by the grievant in writing.

Steele v. Wayne County Bd. of Educ., Docket No. 89-50-260 (Oct. 19, 1989).

Grievants have failed to establish a prima facie case of discrimination, retaliation, harassment, or favoritism. Grievants have not been treated differently than other bus operators by their employer. Although Mr. Price did take a regular bus on the extra-duty run, he was not authorized to do so and was subsequently formally reprimanded for his actions, as was Mr. Burner, who loaned his bus.

In addition to the above discussion, the following Conclusions of Law are made.

Conclusions of Law

1. In a non-disciplinary action Grievants have the burden of proving their case by a preponderance of the evidence. Taylor v. Putnam County Bd. of Educ., Docket No. 89-40-429 (Sept. 21, 1989).

2. Grievants did not establish that the BCBOE contravened any policy, statute, rule or regulation, and did not establish a prima facie case of discrimination, harassment, favoritism, or retaliation.

Accordingly, this grievance is DENIED.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Barbour 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 intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

_____

JANIS I. REYNOLDS

Administrative Law Judge

Dated: May 31, 1995