MAC HALL,

Grievant,

v. Docket No. 95-29-227

MINGO COUNTY BOARD OF EDUCATION,

Respondent,

DECISION

Grievant, Mac Hall, who is the Director of the Chapter I Reading Program, alleges he did not receive proper notice under W. Va. Code §18A-2-2 that his contract would be reduced from 240 days to 200 days per the school term. He seeks reinstatement of his prior contract. This grievance was waived at Levels I and III and denied at Level II. The case was appealed to Level IV, and a hearing was held on August 25, 1995. This grievance became mature for decision on September 25, 1995, the deadline for the submission of Findings of Fact and Conclusions of Law.

The majority of facts in this case are not in dispute and are set forth below. The final decision in this case rests on the issue of credibility of the Grievant's testimony and will be discussed in some detail.

Findings of Fact

1. Superintendent Everett Conn, by letter dated February 23, 1995, advised Grievant he would recommend to the Mingo County Boardof Education ("MCBOE") on April 1, 1995, that he be transferred within the building, and his contract be reduced from 240 days to 200 days. This letter was sent to Grievant by certified mail.

2. Grievant received a certified letter from MCBOE on or about February 27, 1995. The letter Grievant received was addressed to him on the outside, but contained a letter addressed to a Mr. Delmar Blankenship, an acquaintance, on the inside.

3. Within three to seven days, Grievant called Mr. Blankenship and discussed the letter. Mr. Blankenship had received Grievant's letter. Grievant does not remember the exact date of this call, but did remember he did not call Mr. Blankenship immediately.

4. On or about March 29, 1995, Grievant received a second letter from MCBOE stating the MCBOE had voted on March 27, 1995, to approve Superintendent Conn's recommendation to transfer Grievant and decrease his contracted days.

5. Grievant filed a grievance on or about April 2, 1995.

6. A copy of the first letter was remailed to Grievant on April 7, 1995, by certified mail and signed for by his sister on April 8, 1995.

7. Eventually Mr. Blankenship sent Grievant his original letter that was mismailed. Grievant was unsure when he received this letter, but was certain it was after April 1, 1995.

Discussion

W. Va. Code § 18A-2-2 states:

The continuing contract of any teacher shall remain in full force and effect except as modified by mutualconsent of the school board and the teacher, unless and until terminated (1) by a majority vote of the full membership of the board before the first day of April of the then current year, after written notice, served upon the teacher, return receipt requested, stating cause or causes, and an opportunity to be heard at a meeting of the board prior to the board's action thereon. . . .

It is clear Grievant did not receive the first letter MCBOE addressed to him. What is unclear, and a matter of credibility, is whether Grievant received actual notice of the contents of the letter.

Grievant stated at the Level IV hearing that he did not believe he had testified at Level II that he had called Mr. Blankenship. When confronted with his testimony from Level II, he then stated he had called Mr. Blankenship, but not for at least three days after receipt of the letter, and it may have been as many as seven days. When asked why he had not called Mr. Blankenship sooner Grievant had no adequate response.

Grievant's testimony on the issue of what was said during the conversation with Mr. Blankenship was highly evasive, even after the undersigned directed him to answer directly and with the yes and no answers required by the questions. Grievant's testimony about the conversation with Mr. Blankenship contained the following comments:

"He [Mr. Blankenship] may have told me he received a letter addressed to me."

"I wouldn't say for sure that I asked him about the content of the [my] letter.

"I don't know whether I asked him [about the content of theletter] or not."

"[Mr. Blankenship] said something about a transfer if I remember correctly."

"I was thinking about transfer not reduction."

"I don't know if he said I would be reduced or not."

"I can't testify (pause) I would be reduced or not."

On the issue of why he did not call MCBOE and tell it of the mistake and request the proper letter Grievant stated:

"I may have been [curious]."

"I don't know why I didn't call."

"I assumed they sent the letters the way they wanted to."

When asked to clarify the above sentence Grievant paused and stated, "I don't know what to tell." When questioned about the inability of MCBOE to know they had made a mistake without someone informing them, Grievant stated this was not his responsibility. Grievant also stated he would not have requested a hearing on the issue of his transfer.

An Administrative Law Judge is charged with assessing the credibility of the witnesses that appear before her. Perdue v. Dept. of Health and Human Res./Huntington State Hosp., Docket No. 93-HHR-050 (Feb. 4, 1993). In this instance the undersigned finds Grievant's testimony to be implausible. The fact Grievant's testimony was evasive adds credence to this finding. That an individual would know that he has been mailed a certified letter and not want to know the contents when it affects his livelihood is exceedingly difficult to believe. Accordingly, the undersignedfinds Grievant received actual notice of the contents of the February letter when he spoke to Mr. Blankenship.

The next issue to consider is whether Grievant's actual notice makes any difference, when school personnel regulations and laws are to be strictly construed in favor of the employee, and it is accepted Grievant did not personally receive the letter. Morgan v. Pizzino, 256 S.E.2d 109 (W. Va. 1984). This Grievance Board has ruled previously that the failure of a school board to comply with the notice provisions of certain W. Va. Code sections vitiates the nonrenewal of a grievant's contract. Warren v. Logan County Bd. of Educ., Docket No. 23-86-375-1 (July 14, 1987). In Warren the employee never received notice of the board's action, and only found out when the position was posted for bids the following August. In this case, since Grievant received actual notice, MCBOE made only a clerical error that was unknown to them but known to Grievant, and Grievant failed to

notify MCBOE of their clerical error. MCBOE is found to have complied with the statute. The reduction in days of employment will stand.

Given the above discussion the undersigned makes the additional findings of fact and conclusions of law.

Additional Findings of Fact

8. Grievant received actual notice of his reduction of employment.

9. MCBOE's failure to give Grievant written notice was due to a clerical error.

Conclusions of Law

1. School personnel laws and regulations are to be strictly construed in favor of the employee. Morgan v. Pizzino, 256 S.E.2d 592 (W. Va. 1979).

2. Although MCBOE did not technically comply with the notice requirements of W. Va. Code §18A-2-2, due to a clerical error, Grievant's reduction in days of employment will stand because Grievant received actual notice in a timely manner.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mingo 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.

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: October 31, 1995