DONALD BUMGARNER, ET AL., .

Grievants, .

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v. . Docket Number: 94-23-583

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LOGAN COUNTY BOARD OF EDUCATION, .

Respondent. .

D E C I S I O N

Donald Bumgarner, Peggy Browning, Bertie Moore and Calla Jo Hileman (hereinafter Grievants) have filed this appeal to level four of the Grievance Procedure for Education Employees, West Virginia Code §§18-29-1, et seq., alleging that their employer, the Logan County Board of Education (hereinafter Respondent) has violated W. Va. Code §18A-4-10, by denying each of them personal leave benefits. (See footnote 1) The parties have agreed that this Decision should be based upon the record developed at the lower levels of the grievance procedure and, in addition, stipulations of fact havebeen submitted for consideration. The parties submitted briefs on or before April 21, 1995, and the case became mature for decision thereafter. The parties' stipulations of fact are reproduced herein as follows:

Stipulations of Fact

1. The Grievants are all currently employed by the Respondent as full-time, regular school service employees and have been so employed by the Respondent during the 1993-94 and 1994-95

school years.

2. The Grievants all hold continuing contracts of employment with the Respondent for the 1994-95 school year and held continuing contracts of employment during the 1993-94 school year.

3. Grievant Bumgarner is employed as a carpenter/mason. Grievant Bumgarner held an employment term of 261 days during the 1993-94 and 1994-95 school years.

4. Grievant Browning is employed as a teachers' aide. Grievant Browning held an employment term of 200 days during the 1993-94 and 1994-95 school years.

5. Grievant Moore is employed as a school bus operator. Grievant Moore held an employment term of 200 days during the 1993-94 and 1994-95 school years.

6. Grievant Hileman is employed as a cook. Grievant Hileman held an employment term of 200 days during the 1993-94 and 1994-95 school years.

7. Grievants Browning, Moore and Hileman had suffered work-related injuries during the 1993-94 school year. Grievants' claimshave been ruled compensable by the West Virginia Workers' Compensation Fund.

8. Grievant Bumgarner had successfully reopened a previously filed workers' compensation claim during the 1993-94 school year.

9. Grievant Browning was unable to work after March 1, 1994 due to a work-related injury and was unable to return to work during the 1993-94 school year. A substitute employee was called out to work during Grievant Browning's absence.

10. Grievant Moore was unable to work after March 3, 1994 due to a work-related injury and was unable to return to work during the 1993-94 school year. A substitute employee was called out to work during Grievant Moore's absence.

11. Grievant Hileman was unable to work after February 9, 1994 due to a work-related injury and was unable to return to work during the 1993-94 school year. A substitute employee was called out to work during Grievant Hileman's absence.

12. Grievant Bumgarner was unable to work after March 4, 1994 due to a work-related injury and was unable to return to work during the 1993-94 school year. A substitute employee was called out to work during Grievant Bumgarner's absence.

13. Grievants Browning, Moore, and Hileman each receive fifteen (15) days of personal leave on July 1st of each school year. Grievant Bumgarner receives 19.5 days of personal leave on

July 1st of each school year.

14. The Respondent deducted 5 days from Grievant Browning's personal leave allotment for the 1994-95 school year due to thefact that she was not able to return to work during the 1993-94 school year.

15. The Respondent deducted 4.5 days from Grievant Moore's personal leave allotment for the 1994-95 school year due to the fact that she was not able to return to work during the 1993-94 school year.

16. The Respondent deducted 5.8 days from Grievant Hileman's personal leave allotment for the 1994-95 school year due to the fact that she was not able to return to work during the 1993-94 school year.

17. The Respondent deducted 5.8 days from Grievant Bumgarner's personal leave allotment for the 1994-95 school year due to the fact that he was not able to return to work during the 1993-94 school year.

Discussion

This case brings into issue an interpretation and application of the following language of W.Va. Code §18A-4-10 (1991):

> At the beginning of the employment term, any full-time employee of a county board of education shall be entitled annually to at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be transferable within the state. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

Grievants contend that the Respondent has erred in considering that they had not earned the personal leave days in question because they were not physically at work during the period of their respective injuries; therefore, they contend that they should becredited with those personal leave days deducted from them just as if they had never been injured on the job. The Respondent contends that it was authorized under Code §18A-4-10 to deduct the various amounts of personal leave from the Grievants' accumulation of leave as they were not working during that accumulation of leave period. It contends that Code §18A-4-10 only permits an employee to accrue personal leave days upon actually working either a full or partial employment term.

Based upon a thorough review of this Grievance Board's prior cases addressing the same legal issue, the following conclusions of law are hereby appropriate in this case:

Conclusions of Law

1. A board of education employee is entitled to earn and accrue personal leave for the time that he/she is off from work due to an injury suffered while at work and which is determined to be compensable by the Workers' Compensation Fund. Sanders v. Monongalia Co. Bd. of Educ., Docket No. 92-30-368 (May 10, 1993); Beverly v. Wyoming Co. Bd. of Educ., Docket No. 91-55-408 (Jan. 23, 1992); Parker v. Summers Co. Bd. of Educ., Docket No. 45-89-052 (Aug. 8, 1989); Aftanas v. Brooke Co. Bd. of Educ., Docket No. 05-87-295-3 (Jan. 29, 1988); Cline v. Mingo Co. Bd. of Educ., Docket No. 29-86-287-4 (Mar. 3, 1987).

2. Grievants have established by a preponderance of the evidence that the Respondent has violated W. Va. Code §18A-4-10 (1991) by deducting from their accrued personal leave days thenumber of days Grievants had earned while off work due to an injury sustained while on the job.

Therefore, this grievance is hereby **GRANTED .** The Respondent is **ORDERED** to credit each Grievant with the respective number of days of personal leave deducted from their accrued number of days earned for the period they were off work due to injury for the 1993-1994 school year, limited only to the extent that these days have not been used by the Grievants.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Logan 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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ALBERT C. DUNN, JR.

Administrative Law Judge

May 9, 1995

Footnote: 1There were three separate grievances filed and processed through the lower three levels of the grievance procedure. These three grievances were consolidated for decision at level four pursuant to Order dated December 9, 1994.