JAYELL FROATS

v. Docket No. 93-15-453

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant, Jayell Froats, employed by the Hancock County Board of Education (Board) as a bus operator, filed a level four grievance appeal on November 10, 1993, in which she complained that the Board failed to reimburse her for the use of her private automobile when she attended the 1993 West Virginia School Bus Roadeo. She requests compensation at the rate of twenty-five cents per mile for a total of $74.00. After numerous continuances, primarily requested by Grievant, a level four hearing was held on April 21, 1995. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by Grievant on June 8, 1995, and a response by the Board on June 13, 1995.

The facts of this matter are undisputed.

1. Grievant is a long-term employee of the HancockCounty Board of Education and is classified as a school bus operator.

2. With the Board's approval, Grievant attended the West Virginia State School Bus Roadeo in Sutton on June 16-17, 1993. Grievant was the only Board employee to attend this event.

3. Transportation Director Charles Pugh testified that he advised Grievant that she had been approved to attend the event "and that the expenses would be paid, normal expenses would be paid, but we would use a county car in lieu of transportation or paying mileage." (Level II Transcript p. 14.)

4. Upon her return, Grievant filed a travel expense reimbursement form on which she included $30.74 for lodging, $57.14 for meals and $74.00 for mileage (296 miles round trip at twenty-five cents per mile).

5. On or about June 22, 1993, Transportation Director Charles L. Pugh approved the expense

account as submitted by Grievant, but advised her that she might not be reimbursed for the mileage.

6. On or about July 27, 1993, Grievant was reimbursed $75.12 for motel and meal costs. A note attached to the check indicated "[c]ounty car made available so no personal mileage; $20.00 limit per day on meals." (See footnote 1)

7. Grievant requested a conference concerning the matter, on July 30, 1993. Both she and then Superintendent Daniel Curry agreed to waive the time limits of the grievance conference to coincide with the commencement of the 1993-94 school year.

Grievant testified that she knew a county car and credit card were available for the trip, but that she understood their use to be optional. She also stated that she had received no specific direction to not take her own vehicle. Amending the grievance at level four, Grievant additionally alleges that as a result of this grievance the Board acted with reprisal in 1994 when the State Roadeo sign-up sheet specifically stated that two drivers would be chosen and that anyone who had participated in the previous two years was ineligible to attend. Three drivers, including Grievant, signed the sheet indicating they wished to attend the Roadeo. Grievant was not selected to attend the Roadeo in 1994.

The Board asserts that Grievant is not eligible for reimbursement because she unilaterally elected to use her own vehicle when the county car was available. Additionally, the Board argues that the grievance was not timely filed. The Board denies the criteria for attending the 1994 Roadeo was established as reprisal toward Grievant and explains that the purpose was only to give all bus operators the opportunity to attend the Roadeo.

Grievant offers no basis for her understanding that shewould be compensated for driving her own vehicle. Testimony indicates that bus operators were advised at an inservice that they were to use a Board vehicle. While it was not established whether Grievant attended that meeting, she testified that she knew the car was available for use in this instance. Grievant offered no reason or need for driving her own vehicle and is not entitled to reimbursement if she misunderstood or misinterpreted the Board's directive regarding transportation.

In reviewing the allegation of reprisal, it is determined that while the Board's reason for limiting the number of bus operators approved to attend the Roadeo is somewhat disingenuous considering that Grievant was the sole attendee in 1993, and only three bus operators, including Grievant, indicated an interest in 1994, there is no inherent prohibition in setting such a limitation. Further, Grievant's

complaint that she was improperly denied permission to attend the Roadeo is rendered moot by her own testimony that she has not been allowed to operate a school bus since October 1993 due to high blood pressure. Grievant's testimony at the level four hearing that she "possibly could" have participated in the Roadeo lacks any medical basis and is contradicted by her inability to perform the duties of a bus operator at the relevant time.

In addition to the foregoing findings of fact and discussion it is appropriate to make the following conclusionsof law.

CONCLUSIONS OF LAW

1. Grievant is not entitled to reimbursement for driving her private automobile to a work-related event when the Board had specifically provided transportation in the form of a county car and a credit car for gasoline.

2. "Reprisal" is defined as the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it. W.Va. Code §18-29-2(p).

3. Grievant has failed to prove that the Board's denial of her request to attend the Roadeo in 1994 was an act of reprisal as defined by statute.

Accordingly, the grievance is **DENIED**.

DATED 8/28/95 SUE KELLER, SENIOR ADMN. LAW JUDGE

Footnote: 1 The Board notes in Finding of Fact Number 6 of the level two decision that the reimbursement exceeded the allowance for hotel and meals by $5.00. No explanation was offered as to why Grievant was paid in excess of the amount to which she was entitled or how the amount was computed.