

ARTHUR C. ROBERTS,

Grievant,

v.

DOCKET NO. 96-DOH-017

WEST VIRGINIA DEPARTMENT OF

TRANSPORTATION/DIVISION OF HIGHWAYS,

Respondent.

D E C I S I O N

Grievant, Arthur C. Roberts, a Bridge Safety Inspector IV, is employed by Respondent Division of Highways, District One, Bridge Department. On or about April 21, 1995, Grievant filed the following grievance:

The agencies indicated above have circumvented statewide policies and procedures by allowing two unqualified individuals to hold Level IV positions in the Structures Division (Org. 0061) of the Department of Highways.

On or about the 12th day of April 1995, I became aware of a BRMNIN IV in the Structures Division who has neither attended a bridge inspectors training school or attained a satisfactory score on the bridge inspection certification test, which are required for this position. Furthermore, in this same organization an SETDES (Senior Eng. Tech. Design) shares the duties of BRMNIN IV for half of the bridge inspection organizations statewide and is not qualified for this position by FHWA/NBIS standards.

These unqualified individuals are compensated at a higher rate of pay than all other BRMNIN IV's. I hereby request my salary be adjusted with back pay for as many years as the BRSFIN IV in Org. 0061 has been compensated at a higher rate. "Make Me Whole".

Following adverse decisions at the lower levels, Grievant appealed to Level IV on January 17, 1996. Hearing was held in this Board's Charleston, West Virginia office on April 16, 1996, at which time this case became mature for decision.

Grievant appears by his statement to be challenging the two individuals'

classifications based upon their qualifications. Grievant seeks as relief not that those individuals be reclassified, but that his salary be increased to be in parity with theirs. Neither is a viable avenue of recourse for Grievant.

An employee has no standing to challenge another employee's classification without showing he or she has been directly harmed in some way by that classification. Here, Grievant has not shown any harm as a result of those individuals' classifications. He has not shown that he would have been eligible for a promotion, salary adjustment, or any other benefit, but for their being allegedly erroneously classified.

Grievant's only claim is that he should be paid at least as much as an unqualified individual within the same classification as he. Grievant has not cited any rule, law or statute which would permit such a remedy. There is nothing inherently unlawful in persons who hold the same job classification being paid different amounts. Largent v. W. Va. Div. of Health, 452 S.E.2d 463 (W. Va. 1994). Moreover, the appropriate remedy in a case such as this is not to compensate Grievant, but rather, to remove the unqualified individuals from their classifications. Of course, that is not the remedy Grievant desires, nor would this Grievance Board have the authority to order such a remedy in this instance.

Conclusion of Law

Grievant has failed to establish by a preponderance of the evidence that the two individuals' positions or salaries have any bearing on his position and salary, thereby failing to show that he is entitled to any relief.

Accordingly, this grievance is **DENIED**.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A- 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.

MARY JO SWARTZ
Administrative Law Judge

Dated: May 2, 1996