

PAMELA JACKSON,

Grievant,

v. DOCKET NO. 96-31-208

MONROE COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Ms. Pamela Jackson, Grievant, was employed as a teacher by the Monroe County Board of Education (Respondent). She challenges her termination and alleges:

The Monroe County Board of Education violated WV Code 18A-4-7b by terminating be [sic] as a professional teacher with the rational [sic] that I was the least senior Secondary [sic] Social Studies teacher in the county, when they failed to give me credit for the 1985- 86 school year that I substituted for 189 days in the same position.

As relief, Grievant requests that her seniority be recalculated to include an additional year for the 1985-86 school year.

Grievant was denied relief at Level I on March 20, 1996. On April 22, 1996, a Level II hearing was conducted by Superintendent Lyn Guy, and the grievance was subsequently denied. On May 20, 1996, Respondent waived participation in the grievance pursuant to W. Va. Code §18-29-4(c). Grievant appealed to Level IV on June 4, 1996. At Level IV, the parties agreed to submit the case on the record developed at the lower levels of the grievance procedure, with the right to file proposed findings of fact and conclusions of law. [\(See footnote 1\)](#) The case became mature on August 20, 1996, upon receipt of the exhibits admitted at the lower levels of the grievance procedure.

The following Findings of Fact were derived from the sparse record in this case developed at Level II.

FINDINGS OF FACT

1. Grievant was first employed by Respondent for the 1985-86 school year as a substitute teacher. During that school year, she taught 189 days.

2. The contract for the 1988-89 school year was the first contract Grievant received from Respondent. A notation on Grievant's 1988-89 contract, entitled Teacher's Continuing Contract of Employment, states: "Due to Court action, personnel due a continuing contract after successfully completing the third contract regardless of substitute or regular. 3/20/89[.]"

3. Respondent credits Grievant for three years of experience when calculating pay, but not towards seniority when determining which employees should be reduced-in-force (RIF'd).

DISCUSSION

The record in this case is not well developed, and fails to contain many important facts. Grievant alleges a W. Va. Code §18A- 4-7a violation. That Code section provides, in pertinent part:

that [w]henver a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§18A-2-2],

However, Grievant failed to elicit any evidence concerning seniority dates of any employees, including classroom teachers. Without this information, it would impossible to determine whether Grievant was the least senior professional employee. Furthermore, Grievant failed to prove by a preponderance of the evidence that she was not RIF'd in accordance with W. Va. Code §18A-4-7a. Grievant merely testified:

He [John Mustain [\(See footnote 2\)](#)] was hired the same year I was but there was a matter of difference of a few days. It's, I believe, less than two weeks. I'm not sure of the dates, but it's very close.

Moreover, it is well established that substitute service cannot be considered when seniority is determined for RIF purposes. See Ankrum v. Brooke County Bd. of Educ., Docket No. 93-05-130 (June 23, 1993); Landers v. Kanawha County Bd. of Educ., Docket No. 92-20-170 (Nov. 4, 1992); Hoffman v. Kanawha County Bd. of Educ., Docket No. 91-20-278 (Jan. 31, 1992).

In summary, Grievant failed to prove by a preponderance of the evidence the allegations contained in her "Statement of Grievance."

To evaluate whether her seniority has been properly calculated under these circumstances would be merely advisory, and the Grievance Board does not issue advisory opinions. Wagner v. Hardy

County Bd. of Educ., Docket No. 95-16-504 (Feb. 23, 1996); Dunleavy v. Kanawha County Bd. of Educ., Docket No. 20-87-102-1 (June 30, 1987).

In addition to the foregoing findings of fact and narration, it is appropriate to make the following conclusions of law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. W. Va. Code §18A-4-7a provides, in pertinent part:

that [w]hensoever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority shall be properly notified and released from employment pursuant to the provisions of section two [§18A-2-2],

3. Grievant failed to prove by a preponderance of the evidence she was not "the employee with the least amount of seniority."

4. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, or regulation.

Accordingly, the grievance is **DENIED**.

Any party may appeal this DECISION to the Circuit of Kanawha County or to the Circuit Court of Monroe 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.

DATED: August 29, 1996

JEFFREY N. WEATHERHOLT
ADMINISTRATIVE LAW JUDGE

Footnote: 1 Respondent elected not to submit proposed findings of fact and conclusions of law.

[Footnote: 2](#) *The record fails to specify Mr. Mustain's employment classification or status with Respondent.*