

**GARY SHOULDIS,**

**Grievant,**

**v.**

**Docket No. 95-18-385**

**JACKSON COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **DECISION**

Grievant, Gary Shouldis, is a bus operator with the Jackson County Board of Education ("JCBOE"). He charges JCBOE violated W. Va. Code §18A-4-8b when it denied him the right to take several extra-duty assignments. ([See footnote 1](#)) He requested as relief compensation for the missed runs and the opportunity to take extra-duty runs in the future. This grievance was denied at Levels I and II and waived at Level III. After an appeal to Level IV, the parties agreed to submit the case on the record, and this case became mature for decision on November 21, 1995, the deadline for proposed findings of fact and conclusions of law.,

Respondent argues this grievance is untimely filed and states Grievant knew in December 1994 that there was a change in policy when he was "passed over" for two extra- duty runs. Grievant states he did not know of the new policy until he was "passed over" for the April 28, 1995 trip. He filed this grievance on May 2, 1995. He also testified he did not know he was passed over for the December trips, because he had an arrangement with Ms. Pam Stewart, the secretary in the Transportation Department, to not call him, but to "pass over" him if the potential extra-duty trip was a short midday run. The only testimony to the contrary is that of Jack Parson, Transportation Director. He stated:

I'm sure he had that information around the first part of December[,] but I don't have it documented as to anything written on it . . . that he was advised of it, but since he was passed over I feel sure he was advised early in December.

Level II Trans. at 33.

Given Grievant had an arrangement with Ms. Stewart to pass over him without speaking to him for certain extra-duty trips, Grievant's testimony is credible that he did not know of the change in policy

until April 1995. Therefore, this grievance is timely filed. See W. Va. Code §18-29-4(a)(1); Spahr v. Preston County Bd. of Educ., 391 S.E.2d 739 (W. Va. 1990).

The remaining issue is whether Mr. Parsons could institute a policy change, preventing bus operators with a midday supplementary run from taking extra-duty trips, if the trip interfered with their supplemental run. This policy change occurred with JCBOE's approval and knowledge, but without official Board action or a two-thirds vote of the bus operators.

### Findings of Fact

The question raised is essentially a legal one requiring few factual findings. The pertinent facts are:

1. Grievant has been a bus operator with JCBOE for twelve years.
2. Because of his seniority, Grievant bid on and received a supplementary Vo- Tech midday run in September 1994.
3. Three other bus operators have similar runs, and they do not take an extra- duty assignment if it would interfere with their supplementary run. Grievant did take extra- duty assignments that interfered with his Vo-Tech run if the amount of money involved was somewhat greater than the \$25.00 he earned each day for this supplementary run.
4. In December 1994, Mr. Parsons, with JCBOE's approval, but no official action, instituted a policy preventing bus operators from receiving extra-duty runs if it interfered with their supplementary run. These four bus operators were still allowed to make extra- duty runs which did not interfere with their supplementary runs.
5. Grievant receives \$25.00 a day for the supplementary run, and the salary he receives for any extra-duty run is based on 1/7 of his daily pay, including the supplementary run, whether he makes it or not. Because of Grievant's supplementary run, his hourly pay for an extra-duty run is \$3.57 higher than if he only had the routine a.m. and p.m. runs.
6. The new policy is unwritten, has not been voted on by the bus operators, and has not been the subject of official board action.
7. Regular drivers, who do not have supplemental runs, are allowed to waive their regular a.m. and p.m. runs to make extra-duty runs.

### Discussion

W. Va. Code §18A-4-8b requires extra-duty assignments to be rotated among regular employees within the appropriate classification in seniority order. An alternative procedure for making extra-duty assignments may be utilized if the new method is “approved by both the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment.” Id.

This case is very similar to Stafford v. Hancock County Bd. of Educ., Docket No. 89- 15-385 (Jan. 31, 1990). In that grievance, Ms. Stafford, a bus operator, was prevented by an oral directive from the Transportation Director from accepting extra-duty runs which conflicted or overlapped with her extra-curricular run. Administrative Law Judge Koval held that, while the county board could make reasonable work assignments, it was arbitrary and capricious for the transportation director to change an existing practice on the allocation of extra-duty runs without written ratification by the county board and ratification by the bus operators. See Williamson v. Lincoln County Bd. of Educ., Docket No. 90-22-322 (Oct. 31, 1990). In the instant grievance, the Transportation Director orally changed an existing practice without written Board action and without ratification by the bus operators. Thus, consistent with Stafford, Grievant has demonstrated a violation of W. Va. Code §18A-4-8b.

The above-discussion will be supplemented by the following conclusions of law.

#### Conclusions of Law

1. Extra-duty assignments must be offered to appropriately classified, regular employees in rotation on a seniority basis. W. Va. Code §18A-4-8b.
2. An alternative method of making extra-duty assignments may be utilized if the procedure is approved by both the county board of education and two-thirds of the employees within the classification. W. Va. Code §18A-4-8b. See also, Stafford v. Hancock Bd. of Educ., Docket No. 89-15-385 (Jan. 31, 1990); Williamson v. Lincoln County Bd. of Educ., Docket No. 90-22-322 (Jan. 31, 1990).
3. JCBOE's Transportation Director arbitrarily and capriciously instituted a change to the prior practice of making extra-duty assignments without written action by JCBOE and ratification by the bus operators. Stafford, *supra*.
4. Grievant demonstrated a violation of W. Va. Code §18A-4-8b by JCBOE.

Accordingly, this grievance is **GRANTED**. JCBOE is **ORDERED** to pay Grievant the appropriate

wages for the two extra-duty assignments it prevented Grievant from taking, and to place Grievant's name on the roster for extra-duty assignments, even if they conflict with his daily supplementary run.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Jackson 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: February 29, 1996**

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[Footnote: 1](#)

*Grievant filed this grievance shortly after he was denied an April 28, 1995 trip. When he appealed to Level II he added the denial of a May 23, 1995 trip. Respondent made no objection to this amendment of the grievance, thus both extra-duty runs will be considered.*