

**CHARLES WILLETT,**  
**Grievant,**

**v. Docket No. 95-26-468**

**MASON COUNTY BOARD OF EDUCATION,**  
**Respondent.**

### **DECISION**

Charles Willett, Grievant, states the Mason County Board of Education ("MCBOE") violated W. Va. Code §§18A-4-5b and 18A-4-8a(7) when it changed his route and required additional runs without his consent. Because of these added duties he requests, as relief, an additional half day's pay, and argues that although he performs the same duties as another bus operator, he is not paid the same. ([See footnote 1](#)) This grievance was denied at Levels I, II and waived at Level III. A Level IV hearing was held on March 26, 1996 and this case became mature for decision on April 26, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

The material facts of this case are not in dispute and will be set out below as formal findings of fact.

#### **Findings of Fact**

1. Grievant is employed by MCBOE as a bus operator.
2. On April 6, 1995, MCBOE posted a position for a Bus Operator, Rt 933 for the 1995-96 school year. This position was a full day position.
3. The Position Announcement stated the position was "Bus Operator, Rt 933 WITH VOCATIONAL STUDENTS AS ASSIGNED."
4. Because Grievant's prior position would be abolished at the end of the 1994-95 school year, he bid on and received Rt 933.
5. Grievant did not verify the duties of the position with the Director of Transportation or any

prior driver, but assumed that he would only be taking Wahama High School students to the Pt. Pleasant Vocational School and back.

6. The Rt 933 position includes, and has included for the past several years, transporting vocational students to a variety of places, including dropping them off and picking them up at work locations in Pt. Pleasant. This route also includes stops at the Lakin Alternative School.

7. The first three days Grievant performed the run at issue, he did not take students to their work locations, because not all the work assignments were set and the necessary contracts signed. This three-day delay is the normal practice with vocational runs involving working students.

8. Grievant first discovered he was required to transport students to and from their work locations on the fourth day of the run, when told to do so by the Director of Transportation.

9. Ms. Kay Lynch has been a bus operator for MCBOE for at least nineteen years. 10. Ms. Lynch has an a.m. and p.m. run, transporting students to and from school, and a half day vocational run. She receives a day and a half pay for these two positions.

11. Ms. Lynch's work day for her two position runs from approximately 6:30 a.m. to 4:15 p.m.

12. Grievant's work day, for his one position runs from approximately 7:30 a.m. to 3:30 p.m.

### Issues

Grievant contends MCBOE violated W. Va. Code §18A-4-8a(7) when it changed his route on the fourth day without his consent. He also alleges MCBOE violated W. Va. Code §18A-4-5b because he is not paid the same as a similarly situated bus operator, Ms. Lynch. MCBOE argues Grievant's run was not changed, that this run has remained the same for several years, and that it is the normal order of events for the vocational students not to report to their work sites until the fourth day of class. MCBOE also avers Grievant and Ms. Lynch are not similarly-situated; thus, there is no violation of W. Va. Code §18A-4-8b uniformity provision.

### Discussion

W. Va. Code §18A-4-8a(7) states:

No service employee shall have his or her daily work schedule changed during the school year without such employee's written consent, and such employee's required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another

employee.

The testimony is clear; Grievant's bus route was never changed without his permission. The route he bid on and accepted was the one he received, and includes taking vocational students to and from work [\(See footnote 2\)](#). While it is true that a county board of education cannot add students to a bus operator's schedule causing him to make extra runs without his consent, this is not the case here. Beddow v. Morgan County Bd. of Educ., Docket No. 91-22-217 (Mar. 16, 1992); See also Harper v. Jackson County Bd. of Educ., Docket No. 92-18-071 (June 9, 1992).

Grievant testified that with his route being abolished, this was the only route he could bid on and because he wanted and needed a job, he did not check into the position. Unfortunately for Grievant, what he assumed the position was, is not what it turned out to be. MCBOE cannot be held responsible for Grievant's assumption and cannot be obligated to pay Grievant more than a days pay for his day work. The posting stated, in all capitals and underlined: "WITH VOCATIONAL STUDENTS AS ASSIGNED." MCBOE did not violate W. Va. Code §18A-4-8a(7) in requiring Grievant to take vocational students to and from their places of employment as these runs were a part of the position.

Grievant's uniformity argument must fail as well. W. Va. Code §18A-4-5b requires uniformity of compensation for all persons performing like assignments and duties. Weiner-Godwin v. Bd. of Educ., 369 S.E.2d 726 (W. Va. 1988); Mersing v. Preston County Bd. of Educ., Docket No. 89-39-513 (July 12, 1991); Hardbarger v. Ritchie County Bd. of Educ., Docket No. 89-43-74 (Aug. 31, 1989). The purpose of W. Va. Code §18A-4-8b is a correct situations where employees performing comparable or similar work receive dissimilar pay. Fowler v. Mason County Bd. of Educ., Docket No. 94-26-037 (Oct. 6, 1994).

W. Va. Code §18A-4-8b does not apply to Grievant's situation. Ms. Lynch has an a.m. and p.m. bus run, transporting students to and from school for which she is paid a day's wages. Additionally, she has a morning vocational run for which she is paid a half day's wages. Grievant has one position, an all day vocational assignment, for which he is paid a day's wages. Grievant and Ms. Lynch are not similarly situated and do not perform like assignments and duties; thus, the uniformity provision does not apply. See Gleason v. Mason County Bd. of Educ., Docket No. 94-26- 282 (Dec. 22, 1994).

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

## Conclusions of Law

1. In order to prevail in a non-disciplinary grievance, a grievant must establish his case by a preponderance of evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Grievant did not establish MCBOE changed the schedule of his bus run; and thus, violated W. Va. Code §18A-4-8a(7). 3. Grievant did not establish a violation of the uniformity provision of W. Va. Code §18A-4-5b. See Fowler v. Mason County Bd. of Educ., Docket No. 94-26-037 (Oct. 6, 1994).

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Mason 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.

---

**JANIS I. REYNOLDS**

**Administrative Law Judge**

**Dated:** June 27, 1996

---

[Footnote: 1](#)

*As Grievant no longer performs this run, his request is for back pay only.*

---

[Footnote: 2](#)

*Payment for this route has been at issue in several Grievance Board cases. For several years the route included the duties Grievant has and the compensation for this route was one day's pay. Gleason v. Mason County Bd. of Educ., Docket No. 94-26-282 (Dec. 22, 1994); Farley and Downing v. Mason County Bd. of Educ., Docket No. 94-26-234 (Dec. 14, 1994).*