

JOAN PARKER

v.

Docket No. 96-CORR-028

DIVISION OF CORRECTIONS

DECISION

Joan Parker ("Grievant"), who is employed as a correctional officer at the Northern Regional Jail and Correctional Facility ("NRJ"), filed this grievance pursuant to the provisions of W.Va. Code §§29-6A-1, et seq., requesting reimbursement for mileage incurred on her personal vehicle and overtime pay during a temporary assignment to Mount Olive Correctional Center ("MOCC") in August of 1995. Grievant alleges that, due to the substandard housing provided to correctional officers during the assignment, she was forced to find other lodging, which resulted in an extensive commute each day she was working at the MOCC facility. After denials at the lower grievance levels ([See footnote 1](#)), she appealed to level four. A level four hearing was conducted on September 26, 1996, and the matter became mature for decision with receipt of Grievant's arguments on October 15, 1996. Respondent declined to submit written argument.

The following factual findings have been properly developed from all evidence submitted in this grievance.

Findings of Fact

1. Grievant and other correctional officers employed at NRJ were temporarily assigned to MOCC for "assistance training exercises" ([See footnote 2](#)) for one week in August of 1995.
2. The correctional officers on the temporary assignment were housed in the "P" building, which was part of the facilities at MOCC.
3. The "P" building housed both male and female officers and had only one shower facility; females had to walk through the men's sleeping quarters to reach the shower.
4. The "P" building had no locks on the doors to the sleeping or shower rooms, no dressers, closets, or other facilities in which to store belongings or valuables, and no curtains on the windows.
5. When she arrived at MOCC and saw the poor housing accommodations, Grievant asked

her supervisor if other arrangements could be made for her lodging during the temporary assignment. He advised her that nothing could be done. 6. Although she did not ask permission to do so, Grievant chose to stay with relatives in Beckley, West Virginia, during her assignment at MOCC, and she drove her personal vehicle between Beckley and MOCC each day for work.

7. A state vehicle was made available by NRJ for the correctional officers to use to travel to MOCC for the temporary assignment. Other NRJ officers on the same assignment as Grievant used the state vehicle, but she voluntarily used her personal vehicle and gave no reason for doing so. She was unaware of the housing situation at MOCC when she initially decided to drive her own car to the facility.

8. Another NRJ employee, "Gert" Campbell, was assigned to MOCC temporarily at or around the same time as Grievant's group of correctional officers. She performed payroll and other administrative work and was housed in a motel during the assignment.

Discussion

The issues raised in the instant grievance are substantially similar to those involved in Knight, et al., v. W.Va. Div. Of Corrections, Docket No. 95-CORR-389 (Dec. 11, 1995). Knight was a grievance brought by several other correctional officers who, like Grievant, were temporarily assigned to MOCC in the summer of 1995 for assistance and training exercises. Along with other issues, these officers also alleged they were victims of discrimination and favoritism [\(See footnote 3\)](#) when they were required to stay in the "P" building at MOCC. Grievant Knight in particular had requested reimbursement for mileage to and from the facility in his personal car and the cost of motel lodging (although the Decision indicates that Mr. Knight did not actually stay in a motel). As in the instant case, Gertrude Campbell was cited as an example of an employee who was treated differently by being housed in a motel rather than the "P" building.

It was determined that the Knight grievants failed to show any discrimination or favoritism, because employees who were given motel accommodations were not similarly situated to grievants. The same reasoning applies here. Dennis Eisenhower, Director of Operations at NRJ, testified at level four that Ms. Campbell's role while at MOCC differed from that of the correctional officers; she was there to perform administrative duties, and the officers were there for the purpose of controlling the inmates. Grievant Parker has provided no other examples of employees who were provided

different housing accommodations, and it is undisputed that all correctional officers on temporary assignment were given the same lodging at the "P" building. Therefore, Grievant in this case has likewise failed to prove that Respondent's actions with regard to accommodations during the MOCC assignment were discriminatory or constituted favoritism in violation of Code §29-6A-2. ([See footnote 4\)](#)

The Administrative Law Judge in Knight also ruled that, because the grievants did not offer "any compelling reason to drive a private automobile to MOCC", they were not entitled to mileage reimbursement when the employer had provided transportation. Knight at 7 [citing Froats v. Hancock County Bd. of Educ., Docket No. 93-15-453 (Aug. 28, 1995)]. Grievant Parker has provided no explanation as to why she drove her personal vehicle to MOCC in the first place, instead of riding with the other officers assigned there for the same week, who all traveled together in a state car. Respondent has violated no provision of law or policy in its refusal to grant Grievant mileage reimbursement associated with the MOCC assignment.

While Grievant's reluctance to take advantage of the less-than-comfortable accommodations provided in the "P" building is certainly understandable ([See footnote 5](#)), she simply has not established that her personal choice to stay elsewhere requires that her employer reimburse her for the expenses associated with that choice. Grievant testified that, although she did discuss the housing conditions with her supervisor, she did not ask permission to stay elsewhere. Mr. Eisenhower stated that advance permission is required to be reimbursed for mileage on a personal vehicle when a state car has been provided.

With regard to overtime pay for the time Grievant spent commuting to and from MOCC, Grievant has cited no law, statute, rule, regulation or policy which would entitle her to such pay.

In addition to the foregoing findings and discussion, the following conclusions of law are made.

Conclusions of Law

1. A grievant must prove all the allegations constituting his or her grievance by a preponderance of the evidence. Crow v. W.Va. Dept. Of Corrections, Docket No. 89- CORR-116 (June 30, 1989).
2. Grievant did not prove by a preponderance of the evidence that Respondent's actions constituted discrimination or favoritism as contemplated by W.Va. Code §29-6A-2.

3. Grievant is not entitled to reimbursement for driving a private automobile to a temporary work assignment when the employer provided adequate transportation via a state vehicle. Froats v. Hancock County Bd. of Educ., Docket No. 93-15-453 (Aug. 28, 1995).

4. Grievant is not entitled to mileage reimbursement for a daily commute to and from a temporary work assignment when the employer has provided reasonable accommodations, and permission to stay elsewhere has not been requested. See Knight, et al., v. W.Va. Division of Corrections, Docket No. 95-CORR-389 (Dec. 11, 1995).

5. Grievant has not established entitlement to overtime pay while commuting to and from her temporary work assignment under any law, policy, rule or regulation.

Accordingly, this grievance is **DENIED**.

Any party 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.

DATE: December 2, 1996

DENISE MANNING

Administrative Law Judge

[Footnote: 1](#)

The grievance was granted at level three with regard to reimbursement for meal allowances. Also, the level three evaluator denied Grievant's claims related to extra pay for lunch breaks. However, the evidence and arguments submitted at level four do not indicate that Grievant wishes to pursue any claims related to this issue. Therefore, the lunch break allegations will not be addressed in this Decision and are considered abandoned.

[Footnote: 2](#)

It was not explained at level four what "assistance training exercises" are. However, the undersigned has gleaned from the record that the purpose of the assignment was to assist in controlling prisoners and training correctional officers

at the newly opened MOCC.

[Footnote: 3](#)

Code § 29-6A-2 defines “discrimination” as “any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees” and “favoritism” as “unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.”

[Footnote: 4](#)

It should be mentioned that, in her post-hearing submission, Grievant alleged that the housing provided to her at MOCC was in violation of the legislative rule regarding Jail and Prison Standards. However, these regulations apply to housing facilities for inmates, and have no applicability to the situation which is the subject of this grievance.

[Footnote: 5](#)

This Decision should in no way be construed as a condonation of the substandard housing provided to correctional officers assigned temporarily to MOCC. An employee should, at the very least, be able to expect the minimal comforts of an inexpensive motel room when required to work on such out-of-town assignments. However, Grievant's failure to obtain permission for making other arrangements precludes her from any entitlement to reimbursement for her expenses.