

**LESLIE WORKMAN,**  
**Grievant,**

**v.**

**Docket No. 95-22-363**

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

**DECISION**

Grievant, Leslie Workman, states she has been employed by the Lincoln County Board of Education ("LCBOE") as an Adult Basic Education ("ABE") teacher since May 1993, and has never received any travel compensation. She requests back pay for all her travel expenses since she began work. This grievance was denied at Levels I and II, and waived at Level III. Grievant appealed to Level IV, and a hearing was held on October 6, 1995, but Grievant did not attend. This case became mature for decision on November 24, 1995, the deadline for the parties' proposed Findings of Fact and Conclusions of Law.

The facts in this case are not in dispute, and will be set out below.

**Findings of Fact**

1. On April 12, 1993, LCBOE posted two part-time ABE positions. Both of these positions were for 25 hours a week. The hours for the Harts position ran from 8:00 a.m. to 12:00 noon. The hours for the Alum Creek position ran from 12:00 noon to 4:00 p.m.

2. ABE positions are funded by yearly grants from the West Virginia Department of Health and Human Resources.

3. Grievant applied for and received both posted, part-time positions. She signed a separate contract for each position and neither contract addressed travel expenses.<sup>1</sup>

4. Grievant must travel approximately 47 miles a day from one location to the other.

5. Grievant filed this grievance in June 1995, after she submitted her first request for travel reimbursement in May 1995, and it was refused. LCBOE made no timeliness objections at the Level II hearing.

6. Grievant stated she did not learn she “should” be compensated for travel expenses until a May 1995 conversation with a full-time, school-based teacher.

7. Grievant's daily rate of pay is \$129.22. The daily rate of pay for a non-ABE teacher with the same years of service and degree is \$111.43.<sup>2</sup>

8. LCBOE allows Grievant to accrue retirement benefits; to receive personal and sick leave; and to participate in life and health insurance programs.

---

#### Discussion

W. Va. Code §18-5-19b discusses professionals hired to teach Adult Education classes.

This Code Section calls such teachers "temporary", and states:

---

<sup>1</sup>No information was received by the undersigned concerning how Grievant was able to fill the posted duties of both positions since she could not start the second job at the posted time.

<sup>2</sup>LCBOE contends that "the difference in pay has always been considered as a means to cover any additional expenses that may be incurred by these teachers, including travel." Level II Decision.

The appointment of a temporary teacher is a contract of agreement for the duration of the class or program and the temporary teacher shall not accrue benefits of retirement, personal leave, medical or life insurance, seniority rights, or any other provisions relating to salaries, wages and benefits pursuant to [18A-4-1 et seq.]. . . ."

It is unclear why Grievant is allowed to receive the benefits stated in Finding of Fact 8, since such practice is clearly prohibited in the above-cited Code Section. Contrary to Grievant's contentions, the fact she receives these benefits has no bearing on the issue of travel reimbursement. The terms of Grievant's employment are controlled by the above-cited Code Section and her contracts.

The case of Sexton v. Boone County Bd. of Educ.<sup>3</sup> relates to the issue presented here and is instructive. In Sexton, the grievant requested travel expenses for travel from his morning position to his afternoon duties. Administrative Law Judge Dunn found the grievant was entitled to this compensation because the grievant was a full-time, itinerant employee, scheduled daily to work in two different areas. Here, although Grievant works the hours of a full-time schedule because of two separate contracts, she is still considered a temporary, contract employee and as such is not entitled to the "salaries, wages and benefits" afforded regular school teachers. W. Va. Code §18-5-9b.

Further, a September 4, 1990 Opinion issued by State Superintendent Henry Marockie states that while an ABE teacher may be employed under two different ABE contracts, these two positions would be "independent of one another." Because Grievant's travel from one position to another is not connected by any employment contract, she is responsible for the expenses connected with travel to her employment site, the same as any other employee.

---

<sup>3</sup>Docket No. 94-03-044 (June 22, 1994).

Accord, Cool v. Webster County Bd. of Educ., Docket No. 51-86-118-2 (Oct. 15, 1986).

Clearly, Grievant is not entitled to travel reimbursement.

The above-discussion will be supplemented by the following formal 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. Napier v. Logan County Bd. of Educ., Docket No. 94-23-541 (Apr. 23, 1995).

2. Because Grievant holds two separate part-time contracts with LCBOE, she is not entitled to compensation for travel from one contract site to another. Accord, Sexton v. Boone County Bd. of Educ., Docket No. 94-93-044 (June 22, 1994); Cool v. Webster County Bd. of Educ., Docket No. 51-86-118-2 (Oct. 15, 1986).

3. Grievant neither alleged or proved any violation of any statute, rule, regulation, or policy, governing travel expense reimbursement.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of 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: March 18, 1996**