

RODNEY D. MOORE

v. Docket No. 95-30-111

MONONGALIA COUNTY BOARD OF EDUCATION

DECISION

Grievant, Rodney D. Moore, employed by the Monongalia County Board of Education (Board) as a bus operator, initiated grievance proceedings in 1994 complaining that he was not paid for a mid-day run on holidays, snow days, and sick or personal leave days. The level one decision was not made part of the record. The grievance was denied at level two, Grievant elected to bypass level three, and appeal was made to level four on March 14, 1995. An evidentiary hearing was conducted on September 14, 1995, to supplement the lower-level record. The matter became mature for decision with the conclusion of responsive briefing on November 8, 1995.

The facts of this matter are as follows. Grievant was first employed by the Board as a substitute bus operator during the 1984-85 school year. He became a regular, full-time employee beginning the 1985-86 school year when he was awarded bus run number four. This run consisted of a morning/evening run and a mid-day

Kindergarten run which required another two and a quarter hours to complete. It is undisputed that the reason for this combined posting was that it was for a very rural route and the Board had experienced difficulty in attracting employees to bid for the assignment. Compensation for the mid-day run was listed as \$3.50 per hour. In October 1985, Grievant was provided a separate contract for the mid-day run indicating compensation would be \$10.50 per hour. He stated at hearing it was his understanding that if he did not sign the contract he would retain the run at the lower rate of pay.

Grievant was provided a supplemental contract only for the 1985-86 school year, but continued to perform the run until it was eliminated in 1994. Throughout this period of time, Grievant claims that he was led to believe that his salary and the mid-day run were fixed, and that the run was no longer a supplemental assignment. Grievant was not compensated for the mid-day run while on leave, holidays, or snow days for the entire ten years.

Grievant argues that he held a unique position in that no other assignment was ever posted with a

mandatory mid-day run. Because the Kindergarten run was never posted as a separate assignment, but was listed as an original job requirement for bus run number four, Grievant argues that as a full-time employee with a full-time contract he should be compensated at his hourly rate of pay for each day he did not perform the Kindergarten run, including snow days, sick days, personal days, etc. from 1985 through 1994, and that his salary be continued at the same level it was prior to termination of the run. [\(See footnote 1\)](#)

It is the Board's position that the contract for the mid-day Kindergarten run was a separate document which clearly set forth the conditions of that employment, i.e., the terms of the run for a specific amount of money for each day the run was made. Further, it claims that any conditions of employment outlined in the job posting are not controlling because only contracts approved by the Board are binding. Grievant was compensated consistent with the terms of the supplemental contract, which were the same terms provided to all bus operators with similar contracts. The Board asserts that the supplemental contract was for one year only and that it cannot be responsible for any misconception Grievant may have held that he was required to continue the mid-day run as part of his regular duties. Finally, the Board argues that the grievance was not timely filed because it involves a contract made several years ago. Grievant has provided copies of the Notice of Vacancy advertising the position for which he was hired in 1985. That document specifically provides that the run was for "Blacksville Bus Garage Bus #4 Run must except [sic] noon run." The Recommendation Form on which the Transportation Director recommended Grievant for employment listed the position as "Full Time 10 month + noon run." It is also established that Grievant was employed as a ten month, full-time bus operator for the 1985-86 school year and that he signed a separate contract for the mid- day Kindergarten run. Although the extra-duty contract was specifically limited to the 1985- 86 school year, it is undisputed that Grievant continued to hold the assignment through the 1993-94 school year.

Grievant's arguments that this complaint was timely filed within fifteen days of receipt of notice that the run would be terminated, and/or because there is a ten year statute of limitations regarding breaches of contract in West Virginia, are not persuasive. Grievant was aware, or should have been aware, in 1985 that he was not being paid for days he did not complete the mid-day run. The grievance arose in 1985 when Grievant received a paycheck which did not include compensation for days he did not make the run. The termination of the assignment cannot be construed as the

grievable event in a claim for backpay. Further, because Grievant performed this assignment without benefit of a contract beginning in 1986, it is inappropriate to apply the statute of limitations for contractual issues.

Grievant's alternative argument, that the mid-day run merged into his regular assignment, is also rejected. Bus operators are compensated based upon a salary schedule and their years of experience. Grievant was compensated in this manner for his regular assignment but received additional compensation for the supplemental run. Had the mid-day run ever been made a part of his regular assignment, Grievant's salary would have been adjusted at that time.

Grievant does not allege that the mid-day run was improperly eliminated. It is undisputed that he no longer performs this assignment. Therefore, there is no basis upon which he is entitled to future compensation generated from the mid-day run. A board of education cannot compensate an employee for work he does not perform, nor may it compensate an individual service employee in excess of the salary schedule plus experience formula. It is unfortunate that Grievant must now realize a reduction in his total income; however, he has failed to prove an entitlement to compensation for an assignment which he no longer performs.

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

FINDINGS OF FACT

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1. Grievant has been employed on a full-time basis as a bus operator by the Monongalia County Board of Education since 1985.
 2. Grievant was initially employed to complete the regular morning/evening duties for Run #4 and a mid-day Kindergarten run, for which he received additional compensation.
 3. Grievant entered into a separate contract for the mid-day run only during the 1985- 86 school year. Grievant continued to hold the assignment until it was eliminated in 1994.
 4. Grievant was never compensated for the days on which the mid-day run was not completed. This practice was consistent with supplemental contracts awarded to all other bus operators.
 5. The mid-day run was terminated at the conclusion of the 1994-95 school year. Grievant does not allege that the position was improperly eliminated.
 6. Grievant initiated grievance proceedings in September 1994.

CONCLUSIONS OF LAW

1. A grievant must prove all of the allegations constituting his grievance by a preponderance of the evidence. Black v. Cabell County Bd. of Educ., Docket No. 06-88-238 (Jan. 31, 1989).

2. Grievant failed to timely file a claim for the supplemental pay. W.Va. Code §18-29- 4.

3. Grievant has failed to prove any entitlement to future compensation for an assignment which he no longer performs.

Accordingly, the grievance is DENIED.

DATE: January 31, 1996

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

Grievant also held a second mid-day run from 1990-95; however, it does not appear to be a part of this claim.