

PAUL EDWARDS,

Grievant,

v.

Docket No. 96-08-064

CLAY COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Paul Edwards (Grievant) complains that Respondent Clay County Board of Education (CCBE) terminated his extracurricular bus run without providing proper notice under W. Va. Code §§ 18A-2-6 or 18A-2-7. This grievance was initiated on September 27, 1995. After the grievance was denied at Level I, Grievant appealed to Level II. A Level II hearing was conducted on January 24, 1996. Following an adverse Level II decision issued by CCBE's Superintendent, Jerry Linkinoggor, on January 30, 1996, Grievant appealed to Level III where CCBE waived participation as permitted by W. Va. Code § 18-29-4(c). Grievant appealed to Level IV on February 12, 1996, and a Level IV evidentiary hearing was held in this Board's office in Charleston, West Virginia, on April 16, 1996. Respondent elected to make an oral closing argument at the conclusion of the hearing. This matter became mature for decision upon receipt of Grievant's written post-hearing argument on May 15, 1996.

The facts which are dispositive of this grievance are essentially undisputed. Accordingly, the following Findings of Fact are derived from the record developed through Level IV.

FINDINGS OF FACT

1. Grievant is employed by the Clay County Board of Education (CCBE) as a regular school bus operator, a school service personnel position.
2. CCBE has employed Grievant in his current capacity for over fourteen years.

3. For approximately five years prior to the 1995-96 school year, Grievant was employed to drive an "activity run" to transport students participating in sports and similar activities.

4. This activity run involved transporting students living in certain portions of Clay County from their homes to school and back home prior to the start of the school term each Fall. Once school started, the activity run involved transporting students from school to their homes, four days per week, after school.

5. When classes were in session, Grievant also drove a "regular run" transporting students from their homes to school in the morning, and from school to their homes in the afternoon.

6. Grievant received a full day's pay as a regular bus operator for each day he drove the activity run prior to the start of school. After the school term commenced, Grievant received one-half of one day's pay for each day he drove the activity run, in addition to the full day's pay he received for driving his regular run. 7. Prior to the 1995-96 school year, the activity run was discontinued at different times based upon available funding. On some occasions, the run continued through basketball season and on other occasions it was halted after football season or during basketball season.

8. James Harper, CCBE Transportation Director, verbally advised Grievant in late May or early June of 1995 that the activity run might not be operated for 1995-96. Sometime in July 1995, Mr. Harper verbally advised Grievant that the activity run would only operate for twelve days during August 1995 due to funding limitations.

9. Grievant accepted the assignment and drove the activity run from August 7 through August 22, 1995, when it was discontinued due to lack of funding.

10. On or about September 26, 1995, Grievant called Kenneth Legg with the West Virginia School Service Personnel Association to discuss concerns over a newly-created bus operator position that CCBE was about to post. In the course of that conversation, Grievant was advised that CCBE should have provided formal written notice during the 1994-95 school year in order to properly curtail his activity run.

11. Grievant initiated his grievance on September 27, 1995, by completing a grievance form and placing it on his immediate supervisor's desk.

12. Respondent asserted at Level I that the grievance was untimely filed, renewing this assertion at Levels II and IV.

DISCUSSION

CCBE contends that this grievance was not initiated within the time limits set forth in W. Va. Code § 18-29-4(a)(1):

Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

Grievant contends that this grievance was not "discovered" until he discussed another similar position with an official in the West Virginia School Service Personnel Association in late September 1995. He initiated his grievance within fifteen days following the conversation in which he discovered that provisions of §§ 18A-2-6, 18A-2-7 and 18A-4-16 might have been violated. (Grievant's brief at 2.)

In support of his position, Grievant cites to Spahr v. Preston County Board of Education, 391 S.E.2d 739 (W. Va. 1990), wherein the Supreme Court of Appeals of West Virginia interpreted this "discovery" provision. In Spahr, the Court found that the grievants there did not learn of the "event" giving rise to the grievance, in that case disparate treatment of similarly situated teachers in regard to a pay supplement, until they met with their union representative. Accordingly, the grievance was timely since it was filed within fifteen days of that "discovery."

In the instant matter, the "event" giving rise to this grievance was the curtailment of Grievant's activity run in August. Grievant was informed of the limited duration of this assignment in July and was fully aware that he had not received any formal written notice of this change from CCBE during the 1994-95 school year.

This Grievance Board has previously held that "the date a [g]rievant finds out an event or continuing practice was illegal is not the date for determining whether a grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or an occurrence of the practice." Harris v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989) (emphasis in original). Thus, mere discovery of a legal theory to support a grievance, or learning of the success of another employee's grievance, does not constitute

discovery of an "event" giving rise to a grievance within the intent of § 18-29-4, as interpreted in Spahr v. W. Va. Dept. of Educ., Docket No. 95-DOE-507 (Apr. 26, 1996). See Floren v. Kanawha County Bd. of Educ., Docket No. 93-20-327 (May 31, 1994); Chambers-Cooper v. Roane County Bd. of Educ., Docket No. 90-44-385 (Jan. 15, 1991). Grievant waited more than 15 working days from the date of the event at issue here and, therefore, this grievance was not timely filed.

Consistent with the foregoing discussion, the following Conclusions of Law are appropriate in this matter.

CONCLUSIONS OF LAW

1. Under the "discovery provision" of W. Va. Code § 18-29-4(a)(1), "the time in which to invoke the grievance procedure does not begin to run until the grievant knows of the facts giving rise to a grievance." Spahr v. Preston County Bd. of Educ., 391 S.E.2d 739, 742 (W. Va. 1990); Morefield v. Mercer County Bd. of Educ., Docket Nos. 91- 27-481/482 (Aug. 19, 1992).

2. Under W. Va. Code § 18-29-4, "the date a [g]rievant finds out an event or continuing practice was illegal is not the date for determining whether a grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or an occurrence of the practice." Harris v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989) (emphasis in original).

3. Grievant here was aware of all the basic facts necessary to file his grievance more than fifteen days before the instant grievance was filed. Accordingly, this grievance is time-barred by the provisions of W. Va. Code § 18-29-4(a)(1). See Adkins v. W. Va. Dept. of Educ., Docket No. 95-DOE-507 (Apr. 26, 1996); Floren v. Kanawha County Bd. of Educ., Docket No. 93-20-327 (May 31, 1994); Chambers-Cooper v. Roane County Bd. of Educ., Docket No. 90-44-385 (Jan. 15, 1991). See also Brown v. Public Employment Relations Bd., 345 N.W.2d 88 (Iowa 1984).

Accordingly, this grievance is DENIED.

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

LEWIS G. BREWER

ADMINISTRATIVE LAW JUDGE

Dated: July 9, 1996