

JAMES SIMMONS

v. Docket No. 96-PEDTA-091

WEST VIRGINIA PARKWAYS ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY

DECISION

The grievant, James Simmons, is employed by the West Virginia Parkways Economic Development and Tourism Authority (Parkways) as a highway sign shop Foreman in its Beckley garage. He filed a grievance October 30, 1995, alleging that since October 1994, he had served as Supervisor of the shop and was owed back pay for the difference in salaries for the two positions. [\(See footnote 1\)](#) His supervisor was without authority to grant relief, and the grievance was denied at Level II. The complaint was again denied at Level III following a January 19, 1996 hearing, and appeal to Level IV was made February 29, 1996. The parties subsequently agreed to submit the case for decision on the record developed at Level III. Proposed findings of fact and conclusions of law were received by March 5, 1996.

Background

It appears that there is little if any dispute over the facts of the case. In October 1994, Ernest Keller, the sign shop Supervisor, began leave for a work-related injury; it was not known when he would return. The grievant assumed many if not most of Mr. Keller's duties. On the agenda for a Fall 1995 "Post Summer Activities Meeting," the grievant was listed as the sign shop Supervisor.

On or about October 16, 1995, Mr. Keller announced that he was seeking permanent disability benefits and would not continue his employment with Parkways. His position was then posted as vacant. [\(See footnote 2\)](#)

Argument

The grievant's claim is straightforward. He asserts that he performed the duties of a sign shop Supervisor as they are listed in Parkways' job description for that position, and that he should have received the salary delegated to the post. Parkways disputes that he performed all the duties listed in the Supervisor description, and asserts that, in any event, the job description for Foreman encompassed any task he may have performed. Parkways also maintains that its employees are not "classified" employees per W.Va. Code §29-6-10, and that its job specifications and salary schedules are not part of the classification and compensation plan adopted by the West Virginia Division of Personnel (Personnel) pursuant to that statute.

Findings and Conclusions

A job description is normally considered a tool by which an employer identifies and defines a particular position, and does not, in and of itself, impose a legal obligation on the employer to abide by its terms. Whether a public sector employer is bound to adhere to its job specifications is usually determined by resort to statute or the employer's written personnel policy. Chafin v. Southern W.Va. Community and Tech. College, Docket No. 95-BOD-460 (March 31, 1996). Employees who are "classified," i.e., they have civil service coverage, per Code §29-6-10, can maintain a claim that the employer has assigned them duties outside the specifications designated for their position by Personnel. See, e.g., Brogan v. Dept., of Tax and Revenue, Docket No. 95-T&R-153 (Nov. 6, 1995).

Parkways is correct that its employees are "classified exempt," and that their positions are not included in Personnel's classification plan. Graley v. Parkways Econ. Dev. & Tourism Auth., Docket No. 91-PEDTA-225 (Dec. 23, 1991). Further, the grievant did not produce any policy which even suggests that Parkways has obligated itself to adhere to the lists of duties contained in a particular job description. Indeed, all evidence of record indicates that Parkways has always considered its descriptions to be broad guidelines, and that it has never defined them differently in its written personnel policies. The undersigned concludes that the grievant has failed to establish a legal basis for his claim that he must be compensated for any duties performed outside of his Foreman job description.

Moreover, assuming that Parkways is, by some authority, bound to strictly adhere to its job specifications, the grievant has failed to show that the duties he performed during Mr. Keller's absence were outside the specifications for his Foreman position. The descriptions for the Foreman and Supervisor positions are broadly written and markedly similar with respect to the scope of

authority of the two posts. The Foreman description specifically provides that the incumbent "shall be responsible for the supervision of the [sign shop] crew in the absence of the supervisor."

The record otherwise reflects that the grievant and Mr. Keller shared a great many of the responsibilities associated with the operation of the sign shop, including but not limited to personnel evaluations, approval of sick and vacation leave, and delegation of duties to subordinates. The evidence rather clearly establishes that the grievant merely performed those duties on a more regular basis during Mr. Keller's absence. The undersigned concludes that the increase in the regularity of the duties did not render the grievant "misclassified."

Accordingly, the grievance is **DENIED**.

Any party or the West Virginia Division of Personnel 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.

JERRY A. WRIGHT

ADMINISTRATIVE LAW JUDGE

Dated: July 31, 1996

[Footnote: 1](#)

The grievant also made a claim of favoritism at Level I and it appears that he at least discussed this allegation with the Level II evaluator. There was no evidence presented on the issue at Level III; during an April 16, 1996 telephone conference call with the grievant's representative and Parkways counsel, the undersigned ruled that the claim was not cognizable at Level IV per the holdings in W.Va. Dept. of Health and Human Resources v. Hess, 432 S.E.2d 27 (W.Va. 1993). Parkways was directed to hold a Level II hearing on the claim and otherwise treat it as a separate grievance.

[Footnote: 2](#)

At the time of the Level III hearing, interviews had been conducted and an appointment to the post was imminent. The record does not reveal whether the grievant was an applicant.