

JUDY TELLER

v.

Docket No. 96-15-188

HANCOCK COUNTY BOARD OF EDUCATION

DECISION

Grievant Judy Teller is employed as a bus operator by Respondent Hancock County Board of Education (HCBE). She complains that a change in her driving schedule without her consent after the beginning of the school year added seventeen minutes to her driving schedule, for which she received no additional compensation, in violation of W.Va Code §§18A-4-5b and 18A-4-8a(7). Upon adverse lower-level decisions, Grievant appealed to level four and eventually requested a decision based on the record developed below. Grievant filed fact/law proposals on June 10, 1996, and the case became mature for decision on that day. ([See footnote 1](#))

The underlying facts which gave rise to this grievance are essentially uncontroverted. Based on the record as a whole, the following findings of fact can be made.

Findings of Fact

1. Most of HCBE's bus operators drive under a five and three- quarter contract (full-time statutory wages); however, in the few instances when an operator's driving time exceeds five and a half hours, the driver receives a seven-hour contract (full-time statutory wages plus supplemental salary for the extended driving time).
2. Grievant, who holds a five and three-quarter hour contract, was assigned to Bus/Route (BR) No. 6 during the 1995-96 school year and for four years prior.
3. Joanne McClain, another bus operator, was assigned to BR No. 31 during the 1995-96 school year.
4. Both Grievant and Ms. McClain drove in the southern, Weir High School driving district as opposed to the northern, Oak Glen High School district.

5. In prior years, Grievant's first scheduled a.m. pick-up had been adjusted from 6:41 a.m. to 6:51 a.m., a ten minute reduction without any loss of wages.

6. When the 1995-96 school year began, Grievant's driving route was comprised of three distinct runs serving three different schools. However, her afternoon Weir High driving schedule included twenty-five more students and three or four more drop-off stops, along Wylie Ridge Road, than her morning pick-up schedule. In other words, she was scheduled to take the twenty-five Wylie Ridge students home in the afternoon that Ms. McClain had picked up in the morning.

7. On November 28, 1995, Grievant received a schedule change from HCBE Transportation Supervisor Elbert Allison, regarding both her morning and afternoon driving routes. EX 4. Essentially, the change was made so she could transport a student who had relocated just inside the Oak Glen driving area, but who wanted to remain at Weir High School. In turn, Grievant was relieved of a portion of her afternoon drop-off schedule, three or four drop-off stops along Wylie Ridge Road (about six minutes driving time), an assignment concurrently transferred to Ms. McClain. [\(See footnote 2\)](#)

8. Prior to the schedule change, Grievant's initial morning pick-up was to occur at 7:01 a.m., but after the schedule change, her first pick-up was to occur at 6:44 a.m., a net change of seventeen minutes. See EXs 2- 3. The change also required Grievant to drive two and a half miles out of the Weir High School driving area. [\(See footnote 3\)](#) T.6.

10. Grievant's bus operator duties, including driving time and other administrative tasks, were completed within five and three quarter hours by a substitute who affirmed he was not a "fast" driver. T.37-38.

11. Grievant knew of another bus driver who had filed a grievance the prior school year because he had had fifteen minutes added to his driving schedule and, as a result, had been upgraded from a five and three-quarter driving contract to a seven-hour contract. Purportedly, the contract was upgraded because the additional time extended the driver's working hours beyond his contracted time of five and three-quarter hours.

12. Grievant requested extra compensation for her schedule change and was refused.

13. Whether the current, regularly-scheduled working time of the man who was awarded the seven hour contract exceeded five and three quarter hours was not established at Grievant's level two hearing.

14. Grievant never requested, for evidentiary purposes at her level two hearing, that a time study of the other driver's route be conducted.

Discussion

Grievances which contend that a bus operator's route has been changed in violation of the statutes governing service workers employment must be decided on a case-by-case, fact-specific basis. See McClain v. Hancock County Bd. of Educ., Docket No. 96-15-114 (June 27, 1996); Tolliver v. Mingo County Bd. of Educ., Docket No. 95-29-475 (May 31, 1996); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995). Here, Grievant claims the alteration to her schedule after the beginning of the school year was unlawful under W.Va. Code §18A-4- 8a because she did not agree to it.

Code §18A-4-8a(7) provides that "[n]o service employee shall have his daily work schedule changed during the school year without such employee's written consent. . . ." In this regard, Grievant relies on the holdings in Smith v. Lewis County Bd. of Educ., Docket No. 21-88-043-3 (Dec. 30, 1989); Froats v. Hancock County Bd. of Educ., Docket Nos. 89-15-164/202 (Aug. 31, 1989); Terek v. Ohio County Bd. of Educ., Docket No. 35-87-294-3 (July 20, 1988).

Simply put, the cases relied upon by Grievant are not controlling in this case for they involve altogether different factual situations, in that the operators in Smith, Froats, and Terek, were given significant, unreasonable and/or unnecessary schedule changes after the beginning of the school year, which, in at least one case, exceeded the operator's contracted work time. In this case, the change in Grievant's morning driving schedule falls under those minor, necessary schedule alterations the Grievance Board has ruled are permissible and not violative of W.Va. Code §18A-4-8a(7).

McClain, supra; Conner, supra. See also Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995).

In her brief, Grievant also argued that HCBE's "policy of extending a bus operator's 5 3/4 hour contract to 7 hours should be applied uniformly when their contracted time exceeds 5 3/4 hours." GR Brief at 2. According to Grievant, the uniformity provisions of W.Va. Code §18A-4-5b apply in this situation. In support, Grievant cited Swisher et al. v. Preston County Bd. of Educ., Docket No. 39-87-266-2 (Apr. 29, 1988), and Mayle, et al. v. Barbour County Bd. of Educ., Docket No. 01-86-173-2 (Mar. 3, 1987).

However, at the level two hearing, Grievant's representative never argued that Grievant's duties exceeded five and three quarter hours. Rather, he objected to any efforts to establish the amount of time it takes currently for Grievant to perform her driving duties. T.19-21. He argued that the grievance issue "is the extension of the overall schedule at the beginning of the day" and "the whole schedule in general." T.20. Thereafter, it was established at the level two hearing that Grievant's duties can be performed in five and three quarter hours. On the other hand, there was no showing that another driver, identified by Grievant, who held a seven hour contract could perform his duties within five and three quarter hours.

W.Va. Code §18A-4-5b provides that "uniformity shall apply to all salaries, rates of pay, benefits, increments or compensation for all persons regularly employed and performing like assignments and duties within the county[.]" While it certainly appears that a driver during the prior year had time added to his driving schedule which resulted in a contract upgrade, and that Grievant had approximately the same time added to her driving schedule the current year, there is no evidence of record that the two drivers currently perform like assignments and duties (the same amount of driving hours) so as to satisfy the "uniformity" claim Grievant has raised. See Hart v. Randolph County Bd. of Educ., Docket No. 95-42-583 (May 30, 1996).

In summary, simply because a necessary, minor schedule change added a net balance of perhaps ten minutes to Grievant's driving time per day does not entitle her to an upgraded contract. This is especially true when the alterations to her schedule

did not extend her work day beyond her contracted five and three quarter hours.

In addition to the foregoing, the following conclusions of law are appropriate.

Conclusions of Law

1. Grievances which contend that a bus operator's route has been changed in violation of W.Va. Code §18A-4-8a, must be decided on a case-by-case, fact-specific basis. McClain v. Hancock County Bd. of Educ., Docket No. 96-15-114 (June 27, 1996); Tolliver v. Mingo County Bd. of Educ., Docket No. 95-29-475 (May 31, 1996); Conner v. Barbour County Bd. of Educ., Docket Nos. 93-01-543/544 (Jan. 31, 1995).

2. Grievant failed to establish by a preponderance of the evidence that the necessary, minor alteration to her bus driving schedule within her contracted driving hours violated W.Va. Code §18A-4-8a(7). Id. Accord Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1100 (Aug. 2, 1995).

3. Because Grievant failed to establish she performed similar duties, time-wise, as another driver who was awarded a seven hour contract after he was given additional driving duties, she failed to establish any uniformity claim under Code §18A-4-5b. See Hart v. Randolph County Bd. of Educ., Docket No. 95-42-583 (May 30, 1996).

4. The extension to Grievant's driving time per day does not automatically entitle her to an upgraded, seven-hour contract when the alterations to her schedule have not extended her work day beyond her contracted five and three quarter hours.

5. Grievant has failed to establish by a preponderance of the evidence any violation of W.Va. Code §§18A-4-5b and 18A-4-8a(7), and she has otherwise failed to establish any legal entitlement to the relief she seeks.

Accordingly, this grievance is **DENIED**.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Hancock 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 appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate Court.

NEDRA KOVAL

Administrative Law Judge

Date: June 28, 1996

[Footnote: 1](#)

The record consists of the grievance pleading, lower-level decisions and the transcript/exhibits of the February 29, 1996 level two hearing.

[Footnote: 2](#)

Ms. McClain also filed a grievance over the schedule changes. For all intents and purposes, the two grievances arose over virtually the same set of underlying facts. See McClain v. Hancock County Bd. of Educ., Docket No. 96-15-114 (June 27, 1996).

[Footnote: 3](#)

It does not appear from the record that HCBE has two distinct bus garages or dispatch terminals associated with the driving areas mentioned in Finding of Fact No. 4.