

**JAMES McCLURE,**

**Grievant,**

**v.**

**DOCKET NO. 96-40-238**

**PUTNAM COUNTY BOARD OF EDUCATION,**

**Respondent.**

## **D E C I S I O N**

Grievant, James McClure, filed this grievance on April 15, 1996, as follows:

Violation of WV Code 18A-4-8b in regard to rotation of grievant for extra- duty assignment bus runs. The assignment being the extra run to Buckhannon for State Special Olympic Competition on March 29-30-31st.

The grievant seeks relief by being compensated for the loss of wages and benefits due.

Following adverse decisions at the lower levels, Grievant advanced his appeal to level four on June 14, 1996. Following several continuances for good cause, hearing was held on September 10, 1996, and this case became mature for decision on or about September 30, 1996, the deadline for the parties' submission of proposed findings of fact and conclusions of law.

The material facts of this grievance are not in dispute and are set forth in the following findings.

### Findings of Fact

1. Grievant has been employed as a regularly employed school bus operator by Respondent Putnam County Board of Education for approximately 11 years.
2. Grievant was the next regularly employed bus operator in the rotation to take an extra-duty trip.

3. The next extra-duty trip was scheduled to take West Virginia Special Olympic students to Buckhannon, West Virginia. The trip was scheduled to leave at 9:00 a.m. on Friday, March 29, 1996, and return the afternoon of March 31, 1996.

4. Grievant was not offered the opportunity to take the extra-duty trip because he was scheduled to make his regular run on Friday afternoon.

5. Grievant was willing to take one half day without pay for his regular run in order to take the extra-duty trip to Buckhannon.

### Discussion

W. Va. Code § 18A-4-8b governs extra-duty trips for school service employees:

Notwithstanding any other provisions of this chapter to the contrary, decisions affecting such personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting such assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments. The cycle shall then be repeated: Provided, That an alternative procedure for making extra-duty assignments within a particular classification category of employment may be utilized if the alternative procedure is approved both by the county board of education and by an affirmative vote of two thirds of the employees within that classification category of employment. For the purpose of this section, extra-duty assignments are defined as irregular jobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

The issue in this grievance is whether Grievant should have been allowed to take a half day off on Friday without pay for his regular run in order to take the extra-duty trip to Buckhannon, or whether Grievant should have been denied the opportunity to take that trip, instead giving it to a substitute driver. Substitutes may be hired after the regular bus drivers have exercised their right to bid upon extra-duty runs. Terek, et al. v. Ohio County Bd. of Educ., Docket No. 17-88-012-3 (July 20, 1988).

Respondent contends that in order for Grievant to have been available for the extra-duty assignment, he must have completed his regular duty assignment, stating that "[e]xtra-duty assignments are just that, i.e. 'extra-duty.' An extra-duty assignment is one that is above and beyond and outside the scope of the regular duty assignment. Accordingly an employee should be required to complete his regular assignment prior to being offered an extra-duty assignment." Respondent's Proposed Findings of Fact and Conclusions of Law, p. 4.

Respondent's Transportation Policy provides that a driver may not be assigned to any

"supplementary route or run which interferes with preexisting assignments", and that "all drivers shall have the opportunity to be assigned a share of special trips when such assignments do not interfere with regular trips." LII R. Ex. 1. Moreover, State Board of Education Policy 4336, XII, A2., provides that the schedule for special trips shall not interfere with the regular transportation schedule. LII R. Ex. 2. Grievant has not shown any alternative policy in Putnam County as provided in W. Va. Code § 18A-4-8b, which would serve to alter the above policies. Grievant has further failed to show that Respondent had permitted regular bus operators to take extra-duty assignments which conflicted with their regular assignments in the past. Absent a showing of such an alternative procedure or past practice, Grievant has failed to prove by a preponderance of the evidence that Respondent violated any policy, statute, rule or regulation. See Conner v. Barbour County Bd. of Educ., Docket No. 94-01-1051 (May 31, 1995). Cf. Shouldis v. Jackson County Bd. of Educ., Docket No. 95-18-385 (Feb. 29, 1996); Stafford v. Hancock County Bd. of Educ., Docket No. 89-15-385 (Jan. 31, 1990).

#### Conclusions of Law

1. In a non-disciplinary action Grievant has the burden of proving his case by a preponderance of the evidence. Taylor v. Putnam County Bd. of Educ., Docket No. 89-40-429 (Sept. 21, 1989).
2. Grievant has failed to establish that Respondent violated any policy, statute, rule or regulation in not offering him an extra-duty assignment which would interfere with his regular assignment. Connor v. Barbour County Bd. of Educ., Docket No. 94-01-1051 (May 31, 1995).

Accordingly, this grievance is **DENIED**.

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

---

**MARY JO SWARTZ**

**Administrative Law Judge**

**Dated: October 30, 1996**