

**CHARLES MILLER,**

**Grievant,**

**v. DOCKET NO. 96-CORR-168**

**WEST VIRGINIA DIVISION OF CORRECTIONS\  
PRUNTYTOWN CORRECTIONAL CENTER,**

**Respondent.**

### **DECISION**

Grievant, Charles Miller, filed this grievance against his employer, the West Virginia Division of Corrections, Respondent, on February 20, 1996. Grievant, a Correctional Officer IV, alleges that Respondent is obligated to supply or reimburse him for one meal when he works two eight hour shifts in a row. As relief, he requests to be reimbursed or made whole for the meal during the second straight shift.

Grievant was denied relief at the lower levels of the grievance procedure. At Level IV, an evidentiary hearing was held at the Grievance Board's office in Elkins, West Virginia, on October 15, 1996. The case became mature for decision on December 6, 1996.

The following findings of fact were derived from the record.

### **FINDINGS OF FACT**

1. Prior to February 20, 1996, Grievant worked two eight hour shifts in a row. At the time, Grievant was working day shift, from 7 a.m. to 3 p.m. Grievant purchased a meal (lunch) at the facility during the day shift. The same day, Grievant also worked the evening shift, from 3 p.m. to 11 p.m., and purchased a meal (supper) at the facility during the evening shift.

2. One meal at the Pruntytown Correctional Center costs \$1.06.

### **DISCUSSION**

Respondent's Policy Directive #367.01, Collection of Monies for Food, provides in pertinent part:

All food which is the property of the state and which is eaten by any person other than an inmate or resident at any institution operated by the Department of Corrections will be paid for at a rate established by the Commissioner. Food tickets must be purchased and no individual other than a resident or inmate will be permitted to obtain food without a food ticket for exchange.

Grievant disagrees with the above policy when he works a second eight hour shift in a row, and feels that Respondent should either provide him with a free meal or reimburse him for a meal purchased off the premises. [\(See footnote 1\)](#) He bases this assertion on 42 W.Va. C.S.R. §8-10.2 of the Legislative Rules, West Virginia Department of Labor, which, under the heading of Meal Allowance, provides in pertinent part:

The credit -- A credit of one dollars [sic] (\$1.00) per day shall be allowed for meals made available and eaten if an employee completes a workday of at least eight (8) hours.

However, the State Department of Labor rules do not apply to state employees because the definition of "employer" found at 42 W.Va. C.S.R. §8-2.9 excludes any employer if eighty percent (80%) of its employees are subject to any federal act. State of West Virginia employees fall within this exception. See Adkins v. City of Huntington, 191 W.Va. 317, 445 S.E.2d 500 (1994).

Grievant also relied on the following paragraph taken from page ten of a U.S. Department of Labor publication, WH Publication 1325, Revised April 1985, entitled Overtime Compensation Under the Fair Labor Standards Act:

Reimbursement for Expenses: When an employee incurs expenses on the employer's behalf or where the employee is required to spend sums solely for the convenience of the employer, payments to cover such expenses are not included in the employee's regular rate of pay. Examples of such expenses are sums spent by the employee to buy supplies for the employer; travel expenses while traveling on the employer's business; and supper money where an employee works past the normal quitting time. Reimbursement for such expenses is not compensation for services rendered by the employees.

Emphasis added.

The above provision does not support Grievant's claim. This provision merely specifies that if and employer does pay, then such

payments are not included in the employee's regular rate of pay. It is written in the context of what

compensation may be included by an employer in determining an employee's wage rate to aid in the computation of an overtime wage rate.

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

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### **CONCLUSIONS OF LAW**

1. In nondisciplinary matters the grievant must prove all of the allegations constituting the grievance by a preponderance of the evidence. Unrue v. W. Va. Div. of Highways, Docket No. 95-DOH- 287 (Jan. 22, 1996).

2. Grievant failed to prove, by a preponderance of the evidence, a violation of the Federal Fair Labor Standards Act, 29 U.S.C §201 et seq., or West Virginia Department of Labor legislative rule 42 W. Va. C.S.R. §8-10.2.

Accordingly, the grievance is **DENIED**.

Any party 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.

Dated: 12/23/96 \_\_\_\_\_

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

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[Footnote: 1](#)

*Respondent in its post-hearing submission asserts that "if [Grievant] has a legitimate gripe it should be before the State Department of labor, or under the Fair Labor Standards Act [FLSA], not the Grievance Board. [Grievant's] documents refer to the FLSA or the West Virginia Department of Labor regulations." However, the Grievance Board is an appropriate forum for grievances involving the FLSA, or State Department of Labor regulations. See Belcher v. W. Va. Div. of Highways, Docket No. 94-DOH-341 (Apr. 27, 1995).*