

WILLARD COOK

v. Docket No. 96-PEDTA-295

WEST VIRGINIA PARKWAYS AUTHORITY

DECISION

The grievant, Willard Cook, filed a grievance at Level IV, July 12, 1996, protesting the termination of his employment with the West Virginia Parkways Economic Development and Tourism Authority (Parkways). A telephone conference was held August 13, 1996, to address and take testimony on the agency's motion to dismiss for lack of jurisdiction; for the reasons discussed below, the motion was granted.

The grievant was hired by Parkways on or about April 29, 1996. His contract of employment, signed May 6, 1996, was designated "1996 Summer Temporary Employment" and provided as follows:

1. The rate of pay is \$6.25 per hour.
2. I work at the discretion of my Section Supervisor or Foreman.
3. I will work four (4) ten (10) hour shifts.
4. I am not eligible for overtime except for emergencies approved by the Section Supervisor.
5. I will work only when weather permits, in cases of inclement weather I will be paid two (2) hours of wages for travel.

6. The supervisor has the right to cancel a scheduled shift of work.

7. I am not eligible for annual and sick leave accrual.

8. I am not eligible for holiday pay.

9. I understand that I may apply for any parkways Authority positions for which I am qualified that are posted during my active temporary employment.

10. I will be paid for the training period of April 22, 23, 24, 25 and 26.

11. The employment period will begin April 29, 1996 and will end October 19, 1996.

12. Upon completion of my Summer Temporary Status my Section Supervisor will complete an Exit Evaluation that will be placed in my inactive Personnel File.

13. I understand that absences, tardiness and unsatisfactory performance of duties are grounds for immediate dismissal.

These conditions have been explained to me and I understand and agree to the terms.

The grievant represented that he was advised by Supervisor Fred Combs on June 27, 1996, that he was dismissed, effective immediately, for making "racist" remarks and other misconduct; [\(See footnote 1\)](#) he denied the charges. The grievant conceded, however, that he understood from the beginning of his employment with Parkways that he would be a temporary employee. W.Va. Code §29-6A-2(e) restricts access to the grievance procedure contained therein to "any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the Legislature. . ." Temporary employees, i.e., those who are not hired for permanent employment, are excluded from the process. Taylor v. W.Va. Div. of Natural Resources, Docket No. 95-PEDTA-023 (April 11, 1995).

Accordingly, the grievance is **DISMISSED** from the docket of the West Virginia Education and State Employees Grievance Board for lack of jurisdiction.

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: August 26, 1996

[Footnote: 1](#)

Because the conference was focused on the grievant's standing to utilize the grievance procedure for state employees found in W.Va. Code §29-6A-1 et seq., there was little discussion of the events which led to the termination. The holdings herein do not address whether the grievant committed the acts with which he was charged.