DEBRA WHEELER,

Grievant,

v. **DOCKET NO. 96-22-535**

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Debra Wheeler, alleges Lincoln County Board of Education ("LCBOE") "improperly eliminated the travel mileage reimbursement which she received for performing duties the Respondent assigned to her. Grievant additionally alleges that the Respondent failed to notify her prior to the cessation of the reimbursement." Grievant seeks, as relief, reimbursement for her mileage. This grievance was denied at Levels I and II, and waived by LCBOE at Level III. Upon Grievant's filing at Level IV, a hearing was scheduled on February 27, 1997. Although both Grievant's attorney and LCBOE's attorney attended the hearing, Grievant did not appear and reported by phone that she had forgotten. The parties agreed to submit the case on the record developed below. This case became mature for decision on March 13, 1997, the deadline for the parties' proposed findings of fact and conclusions of law. The material facts in this case are set out below.

Findings of Fact

1. Grievant is employed in two separate, half-time positions. She works as a Secretary III at Guyan Valley High School ("GVHS") from 8:30 a.m. until 12:30 p.m., and as a Custodian III at LCBOE's central office in Hamlin from 4:00 p.m. to 7:30 p.m.

2. Grievant lives in Griffithsville and goes through Hamlin on her way to GVHS. In the afternoon, Grievant goes through Hamlin to return home.

3. Grievant has received travel money for the past eight years for travel to the bank in Hamlin to deposit money, and for dropping off food service paperwork at the central office in Hamlin, on her way home from her morning position. (See footnote 1) The assistant principal at GVHS, Guy Baisden, told Grievant to make the bank deposits.

4. LBCOE's Treasurer, Ms. Birdie Gandee, strongly recommends that monies received by a school be deposited each day. Level II Trans. at 28.

5. Grievant usually took the deposits to the bank in Hamlin, which is directly on her way home to Griffithsville, but occasionally she deposited the monies at a branch bank, one mile from GVHS. (See footnote 2) 6. Grievant received payment for ten miles each day she made a deposit, for a daily cost to LBCOE of $2.60.

7. Grievant requested payment for the ten miles whether she deposited the monies in the Hamlin bank or in the branch bank near GVHS. Grievant's explanation for this action was, "It's all considered in from [sic] the bank to the [sic] Hamlin." Level II Trans. at 19.

8. School lunch paperwork does not have to be turned in each day, and can be mailed or delivered through LCBOE's internal process. A method for turning in GVHS's food service paperwork had not been devised because LCBOE did not know Grievant was hand- delivering the papers each day and receiving travel reimbursement for it. (See footnote 3)

9. Grievant has never been directed by anyone at GVHS to deliver the food service documents in person or on a daily basis. It is "just [her] practice." Level II Trans. 11 & 12.

10. Grievant's explanation for requesting travel money for hand-delivering paperwork that could be mailed was, "Well, I'll take whatever mileage I can get."

11. No one in authority told Grievant she was to receive travel reimbursement for these activities, and in this manner. Her prior principal at Martin Elementary told her to "turn them in and see what they [did]." Level II Trans. at 7.

12. Ms. Gandee believed Grievant was receiving travel pay between two half-time positions and had recently found out thispayment was not required by the Workman v. Lincoln County Board of Education, Docket No. 95-22-363 (Mar. 18, 1996), case.

13. Grievant turned in her travel reimbursement form for April 1996, sometime in May 1996. She made 17 trips to the bank in April.

14. Ms. Gandee talked to Grievant about the situation some time in May 1996. (See footnote 4) LCBOE did not pay Grievant's April travel.

15. Grievant filed this grievance with Superintendent Dallas Kelley on May 22, 1996.

16. She did not turn in a travel reimbursement form for May or June 1996, even though she continued to make the deposits and deliver the food service paperwork.

Discussion

The first issue to resolve is LCBOE's contention that this grievance was untimely filed. W. Va. Code § 18-29-4(a) states a grievance must be filed:

> within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to thegrievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance. . . .

The parties agree that travel reimbursement checks are issued separately and at no specific time. Also, although Ms. Gandee talked to Grievant sometime during May 1996, she was unclear when this was. Grievant filled this grievance on May 22, 1996. It is impossible to determine exactly when Grievant knew she would not be receiving her money. Given the above data, LCBOE has failed to prove its affirmative defense of untimeliness.

This Grievance Board has ruled that an employee is not entitled to travel pay for travel between two separate, part-time positions. Workman, supra. Thus, Grievant is not entitled to travel pay on this basis. The issue that remains is whether Grievant is entitled to travel reimbursement for performing a duty, depositing school monies, she was requested to perform by her assistant principal. Further, if Grievant is entitled to this reimbursement, is she entitled to reimbursement for one mile of travel, or is she entitled to pick the bank she wishes to use even though it is ten miles away?

The undersigned has found no statutes directly on point, but obviously an employee should be granted travel reimbursement for the duties she is required to perform by her employer. Just as obviously, the employee cannot pick a method for performing these duties that unnecessarily increases the employer's costs. Grievant is also not entitled to payment for a duty she voluntarily assumes, such as hand-delivering paperwork which could be mailed ordelivered through an internal system. Given these two statements, the appropriate remedy in this situation is to pay Grievant for the one mile she is required to travel each day she has a bank deposit to make. Thus, Grievant would be entitled to $4.42 for the month of April 1996. (See footnote 5)

As for the months of May and June, it is unclear how many days Grievant was required to make a daily bank deposit. The undersigned considered directing the parties to meet and reconstruct

Grievant's schedule for these months, but in the interest of resolving this issue as quickly as possible, has chosen to direct LCBOE to pay Grievant an additional $7.80, which would be equivalent to thirty days of reimbursement. This equitable relief falls within the parameters identified in W. Va. Code § 18-29-5(b) which states an administrative law judge may "provide such relief as is deemed fair and equitable in accordance with the provisions of this article . . .".

Grievant also argues she should have received notice that LCBOE was going to stop paying the travel reimbursement before they took this action. Grievant was given notice in May by Ms. Gandee, shortly after she learned Grievant was receiving the reimbursement. Since Grievant should have been receiving reimbursement for only a mile, it would appear that she has not been harmed in any way bythis lack of notice. Also, Grievant would have still gone home through Hamlin, and would still have passed right by the bank.

The above-discussion will be supplemented by the following Conclusions of Law.

Conclusions of Law

1. In a nondisciplinary grievance, the grievant has the burden of proving her case by a preponderance of the evidence. Rupich v. Ohio County Bd. of Educ., Docket No. 89-35-719 (June 29, 1990).

2. An employee is not entitled to compensation for travel between two separate, part-time positions. Workman v. Lincoln County Bd. of Educ., Docket No. 95-22-363 (Mar. 18, 1996).

3. An employee should be granted travel reimbursement for the duties she is required to perform by her employer. Grievant has demonstrated she should be paid the mileage required to perform the duty of making the bank deposit, but has not demonstrated she should receive travel reimbursement for ten miles, when there is a bank within one mile. (See footnote 6)

4. An employee cannot pick a method of performing required duties that unnecessarily increases the employer's costs.

5. Grievant did not prove she was entitled to mileage to the central office to hand-deliver the food service paperwork, as this duty was not required by her employer. Grievant is not entitled to travel reimbursement for a duty she voluntarily assumes. Accordingly, this grievance is **GRANTED**, in part, and **DENIED**, in part. LCBOE is directed to pay Grievant $11.22 for the mileage costs she incurred while performing tasks required by her employer.

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

JANIS I. REYNOLDS

Administrative Law Judge

Dated: July 15, 1997

Footnote: 1

The first five years Grievant performed this duty with travel reimbursement, she worked at Martin School.

Footnote: 2

Grievant did not state whether this branch bank was on her way home or not.

Footnote: 3

See Finding of Fact 12 for further clarification.

Footnote: 4

Grievant testified she talked to no one about payment of her travel money to see why she was not paid. She just filed her grievance on May 22, 1996. This date would only be two or three weeks after she had turned in her reimbursement form. Given the evidence of record, I find Grievant's statement to be incorrect. According to Ms. Gandee, there was no set time to write the travel checks; it depended on cash flow and other issues. The checks would be written before the end of the month, but they could be written as late as the twenty-ninth or the thirtieth. Grievant was aware of this practice as she had been receiving travel checks for eight years. Grievant was notified by Ms. Gandee that her travel check would not be forthcoming, otherwise she would not have known to file a grievance on May 22, 1996.

Footnote: 5

Of course, nothing prevents Grievant from continuing to make the bank deposit in Hamlin since she goes directly by there,if it is easier for her and she does not expect to be paid for the ten miles. Additionally, Grievant could still deliver the food service paperwork to the central office if she chooses.

Footnote: 6

Because Grievant did not say whether the branch bank is on her way home, the undersigned cannot assume it is not.