MARY BUCK,

Grievant,

v. Docket No. 96-54-325

WOOD COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Mary Buck, grieves the fact she was not placed in a full-time, bus aide position for the Summer of 1992. She seeks as relief, that she be placed in a full-time, summer bus aide position for the next year. (See footnote 1) This grievance was denied at Levels I and II, as untimely. Additionally, at Level II, the Grievance Evaluator denied the grievance on the merits. The case was appealed to Level IV, and a hearing was scheduled, but the parties decided that it was not needed and submitted the case on the record developed at Level II. This grievance became mature for decision on October 29, 1996, the deadline for the parties' proposed findings of fact and conclusions of law.

The first issue to resolve is whether this grievance is timely filed. The event giving rise to this grievance occurred in the Spring of 1992.

During the Summers of 1990 and 1991, Grievant was employed as a bus and classroom aide in the special education summer program at Martin School ("MS"). This program was reduced, and parts of it were placed elsewhere prior to the start of the 1992 summer program. (See footnote 2) Grievant called the principal of MS, Mr. Ronald Stoops several times before the start of the 1992 summer program and was informed she would no longer have a position at MS for the summer because of the reduction in the number of aides from nineteen to eleven. Thus, grievant knew in the Spring of 1992 that she would not have a position at MS during the Summer of 1992. She voiced her displeasure about this set of circumstances to Mr. Stoops several times. She was aware of the grievance procedure at this time, but did not file a grievance. Level II Trans. at 41.

Grievant's argument for not filing a grievance is that she believed Mr. Stoops when he told her she would not have a position because of her seniority. Grievant states she did not find out until May 23 or 24, 1995, that the information she received was in error, and that she should have retained her

position. She later filed this grievance on July 14, 1995. (See footnote 3)

Respondent argues this grievance is untimely as it was not filed pursuant to the requirements of W. Va. Code § 18-29-4(a)(1). That Code Section states, in pertinent part, that the grievance process should be initiated by the grievant "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 the grievant . . .". Respondent argues Grievant knew of the events in 1992 and did not file until 1995; thus, the grievance is not timely filed and should be dismissed. Grievant counters this argument by saying she was unaware, until recently, that the advice she received in 1992 was in error. Grievant also argues she only recently became aware of W. Va. Code § 18A-5-39, which discusses summer seniority and governs the filling of summer positions. Both parties cite Spahr v. Preston County Board of Education, 182 W. Va. 726, 391 S.E.2d 739 (W. Va. 1990) to support their arguments. Spahr discussed the discovery rule found in W. Va. Code §18-29-4(a)(1) and held "the time in which to invoke the grievance procedure does not begin to run until the grievant knows of the facts giving rise to the grievance." Spahr at Syl. Pt. 1. In this case, Grievant was aware of the facts giving rise to the grievance in the Spring of 1992, and did not file this grievance until July, 1995. "[A]s a general rule, ignorance of the law . . . will not suffice to keep to keep a claim alive." Reeves v. Wood County Bd. of Educ., Docket No. 91-54-337 (Dec. 30, 1991). "[T]he date a Grievant finds out an event or continuing practice was illegal is not the date for determining whether his grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or occurrence of the practice." Harris v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989)(emphasis in original).

Assuming arguendo that Grievant's case was timely filed, she would still lose on the merits. W. Va. Code § 18-5-39 states, in pertinent part:

> An employee who was employed in any service personnel job or position during the immediate previous summer shall have the option of retaining such job or position if such exists during any succeeding summer.
>
> . . .
>
> If a county board reduces in force the number of employees to be employed in a particular summer program or classification from the number employed in such positions in previous summers, such reductions in force and priority of reemployment to such summer positions shall be based upon the length of service time in the

particular summer program or classification.

From the Summer of 1991 to 1992, the number of aide positions was decreased from nineteen to eleven. Mr. Stoops retained the most senior aides to fill these positions. Grievant was less senior than any of the aides retained in their positions at MS during the Summer of 1992.

Grievant states her position as bus aide was not reduced, and the number of bus aide positions did not change; therefore, she should have been retained in her position. The focal point of Grievant's argument is that she was a bus aide, and her position was a separate and distinct one from a classroom aide. A classroom aide, even with more summer seniority, should not have been allowed to fill her summer bus aide position. Thus, she should have been able to keep her position and should not have been replaced by a more senior "classroom aide." W. Va. Code § 18A-4-8 makes no differentiation between bus aides and classroom aides. There are no such specific definitions and limitations on the duties of aides created by this Code Section.

Additionally, Grievant's interpretation would not comport with the clear directive of W. Va. Code § 18-5-39. Reductions in classifications or a particular summer program are to be "based upon the length of service time in the particular summer program or classification." Mr. Stoops correctly interpreted this Code Section, and when faced with a reduction in the classification of aide within his particular summer program, he retained the most senior aides to fill the eleven summer aide positions.

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

Findings of Fact

1. Grievant knew in the Spring of 1992 that she would not be retained as an aide in the summer program at MS. 2. Grievant was aware of the grievance process in the Spring of 1992.

3. Grievant filed this grievance on July 14, 1995.

4. Grievant worked the Summers of 1990 and 1991 as a bus/classroom aide at MS.

5. She was not retained as an aide at MS the Summer of 1992 as she had less seniority than the eleven aides who were retained.

Conclusions of Law

1. This grievance was not timely filed as Grievant knew of the events giving rise to her grievance in the Spring of 1992, but did not file her grievance until July 14, 1995. W. Va. Code § 18-29-4.

2. The discovery rule exception identified in Spahr v. Preston County Board of Education, 182 W.Va. 726, 391 S.E.2d 739 (1990) does not apply to this situation as Grievant knew of the events giving rise to her grievance in 1992.

3. "[A]s a general rule, ignorance of the law . . . will not suffice to keep to keep a claim alive." Reeves v. Wood County Bd. of Educ., Docket No. 91-54-337 (Dec. 30, 1991). "[T]he date a Grievant finds out an event or continuing practice was illegal is not the date for determining whether his grievance is timely filed. Instead, if he knows of the event or practice, he must file within fifteen days of the event or occurrence of the practice." Harris v. Lincoln County Bd. of Educ., Docket No. 89-22-49 (Mar. 23, 1989)(emphasis in original).

4. W. Va. Code § 18A-4-8 does not differentiate between a "bus aide" and a "classroom aide", and an aide may perform any duties assigned to him or her, as long as they are within the scope of the classification.

5. The requirements of W. Va. Code § 18A-5-39 were met when Mr. Stoops retained the most senior aides to fill the remaining aide positions at MS.

Accordingly, this grievance is **DENIED**.

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

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JANIS I. REYNOLDS

Administrative Law Judge

Dated: February 28, 1997

Footnote: 1

This grievance was filed in 1995. The parties then held the grievance in abeyance for some time. When the grievance was originally filed , Grievant requested a 1996 summer position, but no backpay. She now requests a summer position for 1997.

Footnote: 2

Grievant applied for and received a part-time summer position for the Summer of 1992, which she has continued to fill every summer to date.

Footnote: 3

There was no discussion between the parties as to whether this filing date should be considered timely as counted from May 23 or 24, 1995.