REX TONEY,

Grievant,

v.

DOCKET NO. 98-22-183

LINCOLN COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Rex Toney, filed this grievance against his employer, the Lincoln County Board of Education ("Board") on or about April 6, 1998:

> Violation of WV Code 18A-4-8a(7) and 18A-4-8b. Grievant has a vocational contract for Harts Area only. Grievant is transporting students on a vocational run from Ferrellsburg, Atenville, Ranger and Branchland.
>
> Relief sought: Grievant seeks compensation for additional runs, and have run posted.

This matter was waived at level one, and a level two hearing was conducted on May 13, 1998. The grievance was denied by grievance evaluator Charles McCann on May 28, 1998, and Grievant appealed to level four on June 5, 1998. A level four hearing was held in this Board's Charleston, West Virginia office on August 5, 1998, and this matter became mature for decision on August 21, 1998, the deadline for the parties' proposed findings of fact and conclusions of law. Grievant was represented by Anita Mitter, West Virginia Education Association, and the Board was represented by Erwin L. Conrad, Esq., Conrad Law Offices.

SUMMARY OF EVIDENCE

Level Four

G. Ex. 1. -

Lincoln County Schools Temporary Contract of Employment.

G. Ex. 2 -

Chart comparing Grievant's normal run with run including gifted students.

R. Ex. 1 -

Grievant's Personnel Records. (See footnote 1)

Testimony

Grievant testified in his own behalf. The Board presented the testimony of Donna Martin.

FINDINGS OF FACT

I find, by a preponderance of the evidence, the following facts.

1. Grievant is currently employed as a bus operator for the Board.

2. Grievant performed a vocational bus run in the middle of the day transporting high school students from Harts High School to the Career Center in Hamlin and back, from August through December 1997. That run had not been posted, and Grievant did not have a written contract for that vocational run.

3. Grievant started at Harts High School at 7:30 a.m., picking up approximately 10 high school students. Grievant arrived at Hamlin at 8:15 a.m. The round trip from Harts to Hamlin was 58 miles and took 1 hour and 30 minutes.

4. On December 12, 1997, Gay Toppings, secretary to Johnnie Adkins, Transportation Supervisor, asked Grievant to make additional stops along his vocational run to deliver gifted and talented elementary students to the Career Center in Hamlin, for activities which would take place approximately 14 different times during the school year. Those stops were at Ferrellsburg Elementary, Branchland Elementary, and Atenville Elementary.

5. Grievant complied with Ms. Toppings' request, but asked Mr. Adkins and Mr. McCann, Director of Transportation, that he be compensated for the additional stops and time associated with

picking up the gifted students. His request was denied.

6. Grievant picked up approximately 12 extra students, and the stops added 30 minutes to his one-way trip, or 1 hour round trip. The additional stops Grievant made were within the Harts area.

7. The vocational run which Grievant made in the middle of the day, from Harts High School to the Career Center and back, was posted on January 12, 1998.

8. Grievant was awarded the vocational run. The contract specifies the extracurricular assignment is a vocational bus operator in the Harts Area. The contract also specifies that Grievant's pay shall be reduced for days the supplemental duties are not performed. G. Ex. 1.

9. Grievant transported the additional elementary school children to and from the Career Center in Hamlin on 7 of the scheduled 14 days: December 12, January 12, February 2, February 16, March 9, March 23, and April 6. R. Ex. 1. On three of the scheduled 14 days, March 30, 31 and April 1, Grievant did not make his regular vocational run, because those were Senior Vocational Days. Grievant missed four of the scheduled 14 days because of illness.

10. Grievant was compensated on the days he made the vocational run, and was not compensated for the days he did not, in accordance with the terms of the contract.

DISCUSSION

Grievant alleges the Board has violated W. Va. Code §§ 18A-4-8a(7) and 18A-4-8b by requiring him to transport elementary school children to and from the Career Center along with his regular vocational run, and wishes to receive extra compensation for those stops. The Board argues the stops to pick up elementary children are included within Grievant's contract for the vocational run in the Harts area.

W. Va. Code § 18A-4-8a(7) provides, in pertinent part: (See footnote 2)

> No service employee may have his or her daily work schedule changed during the school year without the employee's written consent, and the employee's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

Grievant has failed to prove by a preponderance of the evidence that his daily work schedule has been changed, or that his daily work hours have been changed. Grievant admits that his regular morning and afternoon runs have remained the same, despite the alleged changes in his vocational

run.

With regard to his vocational run, Grievant has not established any violation on the part of the Board in requiring him to pick up the gifted and talented elementary school students within the Harts area, and transporting them to the vocational school.

While it is clear Grievant believes his vocational contract is limited to transporting high school students to the vocational school, it is equally clear that the contract does not limit itself in that way. Grievant had been asked and agreed prior to the issuance of his vocational contract to transport the elementary students, and was given a schedule of dayson which he was to make that run. Once Grievant received bid on that run, and received his contract, he consented to making the additional stops and the additional one hour of work. There is no evidence that the contract Grievant received was only for high school students. Thus, while there may have been some confusion or communication problem, Grievant's contract speaks for itself: Grievant is to make a vocational run in the Harts area. That is what he does.

CONCLUSION OF LAW

Grievant has failed to prove by a preponderance of the evidence a violation of W. Va. Code §§ 18A-4-8a(7) or 18A-4-8b.

Accordingly, this grievance is **DENIED**.

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.

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MARY JO SWARTZ

Administrative Law Judge

Dated: September 15, 1998

Footnote: 1

R. Ex. 1 was submitted by agreement of the parties following the close of the level four hearing.

Footnote: 2

It is unclear what provision of W. Va. Code § 18A-4-8b Grievant is claiming has been violated.