CHRISTINE ZIRKLE,
Grievant,

v. **Docket No. 98-15-083**

HANCOCK COUNTY BOARD OF EDUCATION,
Respondent.

D E C I S I O N

Grievant, Christine Zirkle, employed by the Hancock County Board of Education (HCBE or Respondent) as a bus operator, began these proceedings on or about October 28, 1997, alleging violations of W. Va. Code §18A-4-8 and §18A-4-8(a), when she was required to work fifteen (15) minutes longer than the time provided by her contract. Grievant requested compensation for the additional time from August 28, 1997, until January 4, 1998. The matter was not resolved at levels one or two, and Grievant elected to by-pass consideration at level three as is permitted by W. Va. Code §18-29-4(d). Appeal was made to level four on March 23, 1998. The parties agreed that a decision could be made based upon the lower-level record, supplemented with proposed findings of fact and conclusions of law which were submitted by Grievant on May 18, 1998. HCBE elected not to file any additional submissions.[1]

Upon review of the level two transcript and exhibits, the level two decision, and Grievant's proposals, the following findings of fact are derived from the record in its entirety.

Findings of Fact

1. Grievant has been employed by HCBE for more than nineteen (19) years, and was classified as a bus operator at all times pertinent to this decision.

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[1]Grievant was represented by WVEA consultant Owens Brown; HCBE was represented by Hancock County Assistant Prosecuting Attorney William Fahey.

2. As a regular, full-time bus operator, Grievant holds what is referred to by HCBE as a 5 ¾ hour contract.

3. In September and November 1997, Grievant prepared schedules for the Transportation Director which indicated that pre- and post-trip inspections, together with actual driving time, consumed 5½ hours per day.

4. Effective the 1997-98 school year, Grievant requested that she be paid overtime for an additional fifteen (15) minutes per day, which she claimed was necessary to complete her duties.[2]

5. Grievant filed overtime forms for the time period in question asserting that she worked in excess of 5 ¾ hours every day. Notations regarding fueling and repairs indicate they were the basis for the additional time. Grievant also testified that due to road construction she was required to take a detour which lengthened the time of her run.

6. At level two, Grievant stated that she was required to wash the bus and complete reports on her own time.

7. Grievant's requests for overtime were formally denied on October 28, 1997, and she initiated grievance proceedings at that time.

8. Grievant transferred to another run, apparently effective January 4, 1998.

9. The bus operator presently assigned to Bus Number 42 has not indicated that he cannot complete his duties within the allotted 5 ¾ hours.

Discussion

As this grievance does not involve a disciplinary matter, Grievant has the burden of

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[2]Grievant had initially included a ½ hour lunch break in her hours worked, but withdrew that claim prior to level four.

proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6. A preponderance of the evidence is defined as "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary (6th ed. 1991).

The only evidence offered by Grievant in support of her claim for overtime, was a listing which she had kept, recording the additional time she worked every day. The listing did not include an explanation of what duties she performed on any certain day, and was contrary to her own Exhibit 1, a schedule which she had prepared showing that her pre-trip, driving time, and post-trip activities were completed within 5 ½ hours. This schedule would allow her fifteen minutes under her contract to perform any additional duties, such as washing the bus and completing reports. Of course, this is the identical amount of time for which she requests overtime compensation.

Grievant's claim that the road construction and detour required more time to complete her run is also not substantiated by the evidence. Although her notes on the overtime request forms indicate a fluctuation in the time her afternoon runs were completed, the documents do not indicate the reason was construction. Further, Grievant's morning runs were consistently on schedule, which may be an indicator that the detour was not a cause for delay. It is also important to note that there is no indication in the record that Grievant did not complete her runs on time. This evidence is insufficient to establish

that it was more likely than not that Grievant was unable to complete her duties within her regularly scheduled work day.

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

Conclusions of Law

1. An a nondisciplinary matter, Grievant has the burden of proving each element of her grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.19 (1996); Holly v. Logan County Bd. of Educ., Docket No. 96-23-174 (Apr. 30, 1997); Hanshaw v. McDowell County Bd. of Educ. Docket No. 33-88-130 (Aug. 19, 1988). See W. Va. Code §18-29-6.

2. Grievant has failed to prove that she is entitled to overtime compensation for the period of time from August 28, 1997, through January 4, 1998.

Accordingly, the grievance is **DENIED**.

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

Date: July 2, 1998

SUE KELLER
SENIOR ADMINISTRATIVE LAW JUDGE