DOUGLAS SKEENS, et al.,

Grievants,

v.

DOCKET NO. 98-22-026

LINCOLN COUNTY BOARD OF EDUCATION,

Respondents.

D E C I S I O N

Grievants, Douglas Skeens, Rex Toney, and Shirley Ramey, filed the following grievance against their employer, the Lincoln County Board of Education ("Board"):

> Violation of [C]ode [§] 18[A]-4-8b pertaining to the procedure in assigning extra-duty assignments/bus runs.
>
> Relief sought: Extra duty runs be assigned as per rotation and back pay for days missed in rotation.

The grievance was denied at level one. A level two hearing was held on December 28, 1997, and a decision denying the grievance was rendered by Grievance Evaluator Charles S. McCann on January 21, 1998. Grievants by-passed level three and appealed to level four on January 27, 1998. Hearing was held in the Grievance Board's Charleston, West Virginia office on March 12, 1998, and this matter became mature for decision on April 13, 1998, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievants were represented by Anita Mitter, West Virginia Education Association, and the Board was represented by Charles H. Damron, Esq.

SUMMARY OF EVIDENCE

Grievants' Exhibits

Ex. 1 -

Rotation list for bus operators.

Ex. 2 -

Trip Mileage Report dated December 18, 1997.

Ex. 3 -

Extracurricular Bus Trips assignment sheets.

Ex. 4 -

Extracurricular Mileage Invoice dated December 18, 1997.

Ex. 5 -

Temporary Contract of Employment for Rex Toney, dated January 12, 1998.

Ex. 6 -

Extracurricular Mileage Invoice dated September 19, 1997.

Testimony

Grievants testified in their own behalf. The Board presented no witnesses.

FINDINGS OF FACT

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

1. Grievants are employed as bus operators for the Board. Mr. Skeens has 7 years seniority, Mr. Toney has 20 years seniority, and while the record is unclear as to Ms. Ramey's exact seniority, it is greater than Mr. Toney's. G. Ex. 1.

2. The Board assigns extra-duty runs to its regular bus operators based on seniority, and in rotation.

3. In the Fall of 1997, Mr. Toney was the most senior driver on a rotation list to fill in on an extracurricular vocational run for another bus operator, John Thompson, who was on leave of absence, in accordance with Board practice. Mr. Toney did not enter into a written contract with the Board for that vocational run at that time.

4. Mr. Toney was next in line to be called on the rotation list for extra-duty runs on the following dates: September 19, 1997 (Atenville to Charleston); November 10, 1997 (Harts to Barboursville); December 10, 1997 (Atenville to Harts); and December 18, 1997 (Harts to Barboursville). 5. Because he was driving the extracurricular bus run on those days, the receptionist responsible for calling out operators from the rotation list for extra-duty runs did not call Mr. Toney, even though he was next in line on the rotation list for those runs.

6. Mr. Skeens was called for an extra-duty bus run on December 18, 1997 (Harts to Barboursville), which was scheduled to leave at 7:30 a.m. He arrived at 8:00 a.m. and the bus run had been assigned to another bus operator, Jerry Adkins, and the bus left at 7:30 a.m.

7. Ms. Ramey was passed over on the rotation list on November 10, 1997 (Harts to Barboursville) and December 18, 1997 (Harts to Barboursville).

DISCUSSION

Grievants allege the Board disregarded the rotational seniority list requirements for assigning extra duty bus runs. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving each element of their 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.

W. Va. Code § 18A-4-8b provides, in pertinent part:

> Notwithstanding any other provisions of this chapter to the contrary, decisions affecting service personnel with respect to extra-duty assignments shall be made in the following manner: An employee with the greatest length of service time in a particular category of employment shall be given priority in accepting extra duty assignments, followed by other fellow employees on a rotating basis according to the length of their service time until all such employees have had an opportunity to perform similar assignments . . . For the purpose of this section, “extra-duty assignments” are defined as irregularjobs that occur periodically or occasionally such as, but not limited to, field trips, athletic events, proms, banquets and band festival trips.

Grievant Skeens was the next in line on the rotation list for an extra-duty assignment on December 18, 1997. He was called for the run, but when he arrived the morning of that day, he discovered the extra-duty assignment had been given to another bus operator, Jerry Adkins, out of

rotation. Mr. Skeens testified that even though the run was scheduled to begin at 7:30 a.m., he had talked to the secretary to see if he could start the run at 8:00 a.m. because he had a conflict, and she told him that would be alright. When he arrived at 8:00 a.m., the run had been assigned to Jerry Adkins.

While the Board did not present any testimony to rebut Mr. Skeen's testimony in this regard, it is clear he had a conflict which prevented him from starting the extra-duty run at 7:30 a.m., as scheduled. Grievant did not establish that the secretary he talked to had the authority to change the starting time of the extra-duty run to 8:00 a.m., and it seems evident that she did not, since the run ultimately began at 7:30, with Jerry Adkins being assigned to take it. Thus, Grievant Skeens has not proven by a preponderance of the evidence that he was passed over or is entitled to any relief for the December 18, 1997 extra-duty run assigned to Jerry Adkins.

Grievant Ramey alleged she was passed over for an extra-duty assignment on November 10, 1997, but could not say for sure whether she was available that day. She also was passed over on the rotation list on December 18, 1997, for the same assignment originally scheduled for Mr. Skeens. Ms. Ramey has not proven she is entitled to any relief for the November 10, 1997 run, since she could not attest to the fact that she would have been available for it had it been offered to her. With regard to the December 18, 1997 run, the rotation list (G. Ex. 1) shows that Ms. Ramey should have been called for the run prior to Mr. Adkins, and thus, she has proven she is entitled to relief for that missed run.

During the latter part of 1997, Grievant Toney was asked if he would take a vocational run for John Thompson, who was off on workers' compensation. Mr. Toney did not enter into a contract with the Board for this vocational run until January 12, 1998. When Mr. Toney's name came up on the rotation list for extra-duty assignments for which he would have been available prior to January 12, 1998, he was told by his supervisor that he had to make the vocational run instead. On September 19, 1997, Grievant Toney was passed over on the rotation list for an extra-duty assignment that was given to Jerry Adkins. On November 10, 1997, December 10, 1997, December 17, 1997, and December 18, 1997, he was again passed over for extra-duty assignments because of the vocational run.

Grievant Toney alleges he should have been able to take the extra-duty runs, and a substitute should have been called in for the vocational run. I agree with Mr. Toney. There was no written

contract between Mr. Toney and the Board for the vocational run prior to January 12, 1998. Further, while there is evidence that Mr. Toney agreed to “step- up” into the vocational run as provided by W. Va. Code § 18A-4-15 ¶ 8, the evidence also shows that he still should have been called for extra-duty runs, in accordance with Board practice.

Thus, Mr. Toney has demonstrated he was erroneously passed over for extra-duty assignments on September 19, 1997, November 10, 1997, December 10, 1997, December 17, 1997 and December 18, 1997.

CONCLUSIONS OF LAW

1. Grievant Skeens failed to prove by a preponderance of the evidence that he was entitled to the December 18, 1997 extra-duty run in accordance with W. Va. Code § 18A-4-8b .

2. Grievant Ramey failed to prove by a preponderance of the evidence that she was entitled to the November 10, 1997 extra-duty run in accordance with W. Va. Code § 18A-4-8b.

3. Grievant Ramey proved by a preponderance of the evidence that she should have been called for the December 18, 1997 extra-duty run before Jerry Adkins.

4. Grievant Toney proved by a preponderance of the evidence that he was entitled to be called for the September 19, 1997, November 10, 1997, December 10, 1997, December 17, 1997, and December 18, 1997 extra-duty runs in accordance with W. Va. Code § 18A-4-8b, but was passed over for those runs.

Accordingly, this grievance is **GRANTED IN PART and DENIED IN PART.** The Board is hereby **ORDERED** to compensate Mr. Toney the difference, if any, in the amount he would have made for the extra-duty runs on September 19, 1997, November 10, 1997, December 10,1997, December 17, 1997, and December 18, 1997, and any other benefits to which he is entitled, and the amount he earned performing the vocational run for Mr. Thompson on those days. The Board is also **ORDERED** to compensate Ms. Ramey the amount she would have made for the extra-duty run on December 18, 1997, and any other benefits to which she is entitled.

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: June 2, 1998