ELIZABETH WILSON,

Grievant,

v. DOCKET NO. 97-27-209

MERCER COUNTY BOARD OF EDUCATION,

Respondent.

DECISION

Elizabeth Wilson, Grievant, is employed by the Mercer County Board of Education (Respondent) as a bus operator. Grievant alleges that she "was improperly docked for one half-day wages for December 6, 1996 in violation of West Virginia Code §18A-4-10." As relief, "Grievant seeks compensation for one-half day wages lost and interest on all monetary sums."

Grievant was denied relief at Levels I and II on February 21, 1997, and April 21, 1997, respectively. Pursuant to W. Va. Code §18-29-4(c), Grievant appealed the Level II decision directly to Level IV on May 2, 1997. At Level IV, the parties decided to submit this grievance on the record developed at the lower levels of the grievance procedure. The case became mature for decision on October 8, 1997, and was transferred to the undersigned on October 28, 1997, for administrative reasons.

The following findings of fact are derived from the record.

FINDINGS OF FACT

1. Grievant has been employed as a bus operator for Respondent since 1977. 2. Friday, December 6, 1996, was a regular school day, and bus operators were required to transport students as usual.

3. On December 6, 1996, Grievant was sick, and requested sick leave for the entire day.

4. Respondent obtained a substitute bus operator for the entire day.

5. Around 10:30 a.m., on December 6, 1996, Grievant began to feel better, and she called the bus garage at approximately 11:00 a.m. and informed Respondent that she was available to work.

6. Sue Shinn, secretary, said she did not have time to call the substitute bus operator, so Grievant volunteered to contact the substitute bus operator. Ms. Shinn told Grievant that the substitute performing her bus run was Kitty Williams, and gave her Ms. Williams' telephone number.

7. Grievant called Ms. Williams, and left a message on her answering machine at approximately 11:40 a.m.

8. Grievant, who parks her bus at her house, waited for her bus to be returned to her house so that she could perform the afternoon run.

9. On Monday, December 9, 1996, Grievant found out that Ms. Williams was not the substitute who had performed her morning and

afternoon bus runs. Ms. Williams had substituted on December 6, 1996, for another bus operator.

10. Ms. Nina Farmer was the substitute bus operator who had actually substituted for Grievant on December 6, 1996. 11. Mr. William E. Hopkins, Transportation Coordinator for Respondent, did not learn of Grievant's situation until the week after December 6, 1996. He gave Grievant the option of claiming all day as sick leave, or turning in a half a day sick leave and being docked for the other half of the day.

12. Grievant turned in a leave slip requesting a half day of sick leave.

13. Normally, Grievant would begin “prechecking” her bus to leave for her afternoon run around 2:00 p.m.

DISCUSSION

Grievant was given a choice of taking the afternoon of December 6, 1996, as sick leave, or being docked because she did not work that afternoon. Although she did not want to be docked a half day's pay, Grievant turned in a request for sick leave for the morning only. Grievant was informed that her resolution (of paying her for the afternoon of December 6, 1996, because she had notified Respondent that she was available to work) would not be adopted. Therefore, Respondent did not violate W. Va. Code §18A-4-10 when it docked Grievant for the portion of the day she did not work.

Grievant is seeking to have the undersigned place a requirement or a burden on Respondent which is not authorized or required by the West Virginia Code. Grievant asked to take a full day of sick leave, and her request was granted. Therefore, Respondent secured a substitute bus operator for the entire day.

Respondent was required under W. Va. Code §18A-4-10 to pay Grievant for only that amount of time she was on sick leave, andRespondent did that. Although Grievant correctly notified Respondent that she was feeling better, and could return to work, (See footnote 1) Grievant had no right to return to her position once sick leave had been granted, and a replacement had been obtained.

In addition to the foregoing Findings of Fact and narration, it is appropriate to make the following formal Conclusions of Law.

CONCLUSIONS OF LAW

1. In a nondisciplinary action, Grievant has the burden of proving her case by a preponderance of the evidence. Gwilliam v. Preston County Bd. of Educ., Docket No. 95-39-255 (Dec. 22, 1995).

2. Grievant failed to show a violation, misapplication or misinterpretation of any statute, policy, rule, regulation, or written agreement.

Accordingly, the grievance is **DENIED**.

Any party may appeal this **DECISION** to the Circuit of Kanawha County or to the Circuit Court of Mercer 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. Anyappealing 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.

DATED: February 25, 1998. _____

JEFFREY N. WEATHERHOLT

ADMINISTRATIVE LAW JUDGE

Footnote: 1

It is possible for a grievant who is seen "out and about" after requesting sick leave to be disciplined. Therefore, it was wise that Grievant informed Respondent that she felt better, and was available to work.