

ROY S. DIXON,

Grievant,

v.

Docket No. 99-DOH-476D

WEST VIRGINIA DIVISION OF HIGHWAYS,

Respondent.

ORDER DENYING RESPONDENT'S MOTION FOR CONTINUANCE

AND GRANTING MOTION FOR DEFAULT

By letter dated February 2, 2000, and received by the undersigned Administrative Law Judge on February 4, 2000, a Friday, Respondent West Virginia Division of Highways, through its counsel Timbera C. Wilcox, Esq., moved that the Level IV hearing, scheduled for February 7, 2000, a Monday, be continued for cause shown. By letter dated February 3, 2000, and received by the undersigned Administrative Law Judge on February 4, 2000, Grievant, through his representative Steve Rutledge, opposed Respondent's Motion.

____The undersigned reviewed the materials submitted by the parties in support of their respective positions and, on the afternoon of February 4, 2000, informed the parties by telephone that Respondent's Motion was denied.

____The materials submitted by Grievant, as well as the administrative communications contained in the Grievance Board's file on this grievance, clearly establish that Respondent had ample notice of the Level IV hearing scheduled for February 7, 2000. By letter dated December 23, 1999, Mr. Rutledge proposed three dates for the Level IV hearing in this grievance to Ms. Wilcox and referred to an earlier telephone conversation with her regarding this grievance. By letter dated January 20, 2000, which was copied to Ms. Wilcox, Mr. Rutledge requested documents from the Department of Transportation's Human Resources

Division. On January 21, 2000, the undersigned issued a Notice of Hearing for the February 7, 2000 hearing. This Notice was sent First Class Mail to Ms. Wilcox, Acting Commissioner Samuel Beverage, and Acting Director of Personnel Joe E. Smith. By letter dated January 25, 2000, which was copied to Ms. Wilcox, Mr. Rutledge requested subpoenas for several of Respondent's employees to appear at the February 7, 2000 hearing. On January 25, 2000, the undersigned issued those subpoenas.

Procedural Rule of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.7 (1996) provides that requests for a continuance of a hearing will be granted upon a showing of good cause. Procedural Rule of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.6.3 (1996) provides that motions not timely made in the determination of the administrative law judge may be denied on that basis alone. Procedural Rule of the W. Va. Educ. & State Employees Grievance Bd., 156 C.S.R. 1 § 4.6.2 (1996) provides that if a situation necessitating a motion arises immediately before a hearing, the movant is to be prepared to proceed with the hearing if the motion is denied and the granting of the motion would have operated to delay the hearing.

Respondent failed to demonstrate good cause to continue the February 7, 2000 hearing. Respondent argued that no attorney of Respondent was aware that a hearing had been scheduled for that day. Given the several communications recited above, as well as Mr. Rutledge's statement that he has spoken with Ms. Wilcox on the telephone about this grievance, and left numerous telephone messages for her regarding it, that argument is rejected.

Respondent argued that the above-mentioned Notice of Hearing provided only 11 days of notice of the February 7, 2000 hearing, although it actually provided 17 days notice. Respondent argued that no attorney other than Ms. Wilcox handles grievance matters for it, although the undersigned takes administrative notice that at least one other attorney is currently appearing before him representing Respondent in a grievance, and that parties to grievances are not required to be represented by attorneys. Respondent argued that this grievance has been pending at Level III for some 15 months, although such egregious delay by Respondent can hardly bolster its Motion for additional delay. These arguments of Respondent are also rejected.

Grievant's argument, that Respondent's Motion is not timely, in that subpoenas have been served and absences from work scheduled, is well taken. For all of the reasons set forth above, Respondent's Motion for Continuance is DENIED. ([See footnote 1](#))

At the February 7, 2000, hearing, Grievant moved that a Default be declared in this grievance, pursuant to W. Va. Code § 29-6A-3(a)(2). On December 8, 1999, Respondent, through counsel Krista L. Duncan, issued a Concession of Default, conceding that a Default had occurred. Therefore, and it otherwise appearing just and proper, Respondent is declared to be in Default with regard to this grievance, and Grievant's Motion is GRANTED. A Level IV hearing will be conducted to determine whether the relief sought by Grievant is contrary to law or clearly wrong. The parties are hereby ORDERED to confer and agree, within the next thirty days, upon a date for this hearing .

ANDREW MAIER

ADMINISTRATIVE LAW JUDGE

DATE: February 10, 2000

[Footnote: 1](#)

It is also noted that ending a telephone conversation with an adjudicator by abruptly hanging up is not in the best tradition of legal professionalism.