

LINDA CAMPOLONG,

Grievant,

v.

Docket No. 99-BOT-511

BOARD OF TRUSTEES/WEST VIRGINIA UNIVERSITY,

Respondent.

DECISION

Grievant, Linda Campolong, employed by the Board of Trustees as a Housekeeper at West Virginia University (Respondent), filed a level one grievance on September 13, 1999, in which she asserted, "Grievant was granted a former grievance to have her position review and 'pay and classification' adjusted accordingly. She recieved [sic] and [sic] upgrade without back pay award. Her duties are unchanged." For relief, Grievant simply stated "back pay award". Robert Sine, Manager/Campus Services & Maintenance, lacked authority to grant the relief requested at level one. The grievance was denied at level two following an evidentiary hearing, and the matter advanced to level four on December 8, 1999. Grievant's representative, Diane Parker of Local 814, and Respondent's counsel, Samuel R. Spatafore, agreed to submit the grievance for decision based upon the record, supplemented with proposed findings of fact and conclusions of law. Grievant elected not to file additional proposals, and the matter became mature for decision upon the receipt of Respondent's submission on March 9, 2000.

The essential facts of this matter are undisputed and may be set forth as the following formal findings of fact.

Findings of Fact

1. Grievant, a long term employee of Respondent, accepted an assignment in February 1997, to work three days each week at the President's home, and the remaining two days in the Physical Plant. Her position classification was undesignated for approximately a year and a half, pending review of the Building Service Worker classification.
2. Sometime in April 1998, Grievant learned that she would be classified as a Housekeeper I, at pay grade 6.
3. Grievant filed a level one grievance on April 27, 1998, in which she alleged that she was

incorrectly classified. For relief, she requested, "[m]ake the grievant whole in every respect."

4. In his August 31, 1998, decision, the level two hearing evaluator recommended that the Housekeeper I position be reviewed "to determine whether appropriate positions of comparability have been used, or whether more appropriate positions of comparability for classification and compensation may exist." The issue of back pay was not addressed in this decision.

5. Pursuant to this recommendation, all Housekeeper I and Executive Housekeeper positions (the only two positions within the Housekeeper classification) were reviewed by the Job Evaluation Committee (JEC).

6. In August 1999, the JEC determined that the positions of Housekeeper I and Executive Housekeeper would be collapsed into one position, Housekeeper, at pay grade 9, effective October 1, 1999.

7. Respondent processed Grievant's change of classification and compensation, effective September 1, 1999.

8. Grievant was not awarded back pay.

Discussion

As this grievance does not involve a disciplinary 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.

___Grievant argues that she filed a grievance regarding her classification, she prevailed in that grievance, and she is entitled to back pay. She notes that she did not request the JEC to conduct a statewide review of the position, and she did not file the grievance on behalf of any employee other than herself. Grievant states that it is of no consequence to her claim that the JEC chose to upgrade all Housekeeper I's, and that it does not preclude her request for back pay.

Respondent asserts that Grievant did not request back pay as relief in her April 1998 grievance, and is now precluded from doing so under the time constraints of W. Va. Code §18-29-4(a)(1). In the nature of an alternative argument, Respondent cites Martin v. Randolph County Board of Education, 195 W. Va. 297, 465 S.E.2d 399 (1995), in which the employer raised a timeliness defense, and Grievant's right to back pay was limited to fifteen days preceding the filing of her complaint.

Respondent asserts that Grievant's upgrade, with increased rate of pay, was implemented a full month before the effective date of the change, and thirteen days prior to filing this grievance, therefore, she is not entitled to any back pay. Under ordinary circumstances, employees who benefit from a position upgrade do not receive back pay. For example, in the present matter, other employees previously classified as Housekeeper I will not receive back pay. Grievant holds a unique position; however, due to the fact that she filed a grievance alleging misclassification, and was ultimately reclassified. Grievant did not initiate a claim to have the entire class series reviewed. That was not her intent or request. Nevertheless, in partially granting her grievance at level two, the statewide review transpired. As evidenced by the outcome, the results of the review were convincing enough to support a change in both class titles in the Housekeeper series. This determination resulted in Grievant prevailing in her original claim. She is, therefore, entitled to the relief she originally requested.

Grievant did not specifically request that she be granted back pay as relief in her April 1998 grievance. Instead, she requested to be "made whole", a vague catch all which is frequently used by grievants, apparently to insure that they may recover everything to which they are entitled. In misclassification cases a claimant is generally awarded back pay retroactive fifteen days prior to the date the grievance was filed. Garrison v. Dept. of Health & Human Resources/Div. of Personnel, Docket No. 99-HHR-521 (Feb. 29, 2000); Edmonds v. Lincoln County Bd. of Educ., Docket No. 97-22-120 (May 27, 1998); Lilly v. Harrison County Bd. of Educ., Docket No. 97-17-330 (Apr. 13, 1998). ([See footnote 1](#))

Although this grievance was subject to a procedure, and resulted in an outcome, not typical of most misclassification grievances, the facts remain that she claimed to be misclassified, and her classification and pay grade were changed as a result of that claim. There was no intentional wrongdoing by Respondent regarding the misclassification; however, in cases where two innocent parties suffer harm because of the derelictions of a third party, the least culpable of the two parties should prevail. See Toney v. Lincoln County Bd. of Educ., Docket No. 22-87-047-1 (Apr. 30, 1987). The same principle applies in the present matter. The JEC apparently erred when it originally determined there were two positions within the Housekeeper classification. Thereafter, Respondent placed Grievant in one of the classifications. Although Respondent was acting in compliance with the JEC determination, Grievant was the least culpable of the two parties in this grievance.

In addition to the foregoing findings of fact and discussion, the following formal conclusions of law are appropriate.

Conclusions of Law

1. As this grievance does not involve a disciplinary 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. Relief in misclassification grievances is limited to prospective relief and to back relief from and after fifteen days prior to the filing of the grievance. See Syl. Pt. 5, Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 465 S.E.2d 399 (1995); Lilly v. Harrison County Bd. of Educ., Docket No. 97-17-330 (Apr. 13, 1998). Accordingly, the grievance is **GRANTED**, and Respondent Ordered to provide Grievant back pay effective fifteen days prior to the filing of the initial grievance in April 1998.

Any party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia 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. However, the appealing party is required by W. Va. Code §29A-5-4(b) to serve a copy of the appeal petition upon the Grievance Board. The appealing party must also provide the Board with the civil action number so that the record can be prepared and properly transmitted to the appropriate circuit court.

Date: April 26, 2000 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

[Footnote: 1](#)

State employees are limited to ten days preceding the filing of the grievance consistent with the shorter time period provided by W. Va. Code §29-6A-4 for filing a complaint.