ROY COLE,

Grievant,

v v.

DOCKET NO. 01-40-045

PUTNAM COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, Roy Cole, filed this grievance against his employer, the Putnam County Board of Education ("Board") on August 10, 2000:

> Violations of WV Code 18A-4-8a with regard to the calculating of grievant's extra-duty rate of pay which shall include an employee's wage or salary earned throughout the entire day (total daily salary).
>
> Relief sought is to be compensated and paid the correct rate of pay for the extended year program assignment.

Grievant's supervisor, Cecil Dolin, Director of Transportation, responded at level one on August 31, 2000, that "Mr. Cole's extra-duty rate of pay has been recalculated, to the best of my knowledge, correctly. Our office will make whatever adjustments are required in Mr. Cole's extra-duty pay rate to insure proper compensation." Grievant appealed that decision to level two, and a level two hearing was held on January 4, 2001. Grievance Evaluator Harold Hatfield denied the grievance by decision dated January 26, 2001. Grievant by-passed level three and appealed to level four on February 2, 2001. The parties agreed the matter could be decided on the record, and this matter became maturefor decision on February 20, 2001, the deadline for the parties' submission of proposed findings of fact and conclusions of law. Grievant was represented by Susan E. Hubbard, WVEA UniServ Consultant, and the Board was represented by John A. Grafton, Grafton Law Office, PLLC.

SUMMARY OF EVIDENCE

Joint Exhibit

Ex. 1 - Grievance statement; level one response.

Grievant's Exhibits

Ex. 1 -

Putnam County Schools Contract of Employment for Extended Year Program Assignment (Service Personnel).

Ex. 2 -

Putnam County Schools Vacancy Bulletin dated May 4, 2000.

Testimony

Grievant testified in his own behalf, and presented the testimony of William Duncan. The Board offered no witnesses.

FINDINGS OF FACT

I find the following facts have been proven by a preponderance of the evidence from a review of the entire record in this grievance.

1. Grievant has been employed by the Board for thirty (30) years as a bus operator.

2. Grievant applied for, and received, a contract of employment for extended year program assignments for the period of time including June 27, 2000 to July 28, 2000.

3. The vacancy bulletin for the extended year program provided that the bus operator was “to deliver all services to identified, disabled students requiring an extendedyear program, including, but not limited to, transportation to and from field trips, therapy sessions, the extended year program, and summer student academy.” G. Ex. 1.

4. The salary range for the employment was to be the daily rate for the 2000- 2001 service employees' salary schedule.

5. Grievant was paid a daily salary rate for the 2000-2001 Service Employee Salary Schedule without adding any amount for supplemental runs.

DISCUSSION

In a non-disciplinary grievance, the employee bears the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Education & State Employees Grievance Board, 156 C.S.R. 1 § 4.21 (2000); Halstead v. Boone County Bd. of Educ., Docket No. 99-03-066 (Apr. 30, 1999); 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 § 18-5-39(f) provides, with respect to summer employment, as follows:

> Notwithstanding any other provision of the code to the contrary, the county board may employ school service personnel to perform any related duties outside the regular school term as defined in . . . § 18A-4-8 . . . of this code. . . . The salary of a summer employee shall be in accordance with the salary schedule of persons regularly employed in the same position in the county where employed and persons employed in those positions are entitled to all rights, privileges and benefits provided in § 18A-4-5b, 18A-4- 8a, 18A-4-10 and 18A-4-14. . . of this code: Provided, That those persons are not entitled to a minimum employment term of two hundred days for their summer position.

Grievant requests that he be compensated for the extended year program, by computing his daily rate of pay per the salary schedule, with an additional amount of $28.80 per day for supplemental runs which Grievant runs during the normal school year.

The Board responds that any supplemental runs Grievant engaged in during the normal school year end at the end of the regular school year, June 30, and that Grievant's salary was calculated correctly for the extended year program assignment.

The evidence presented in this matter shows that Grievant understood, when he signed his summer contract, that any pay for supplemental runs was not included in the extended year program. Further, Grievant was not required to make any supplemental runs during the extended year program.

Grievant has presented no support for his argument that the daily rate of pay he received during the normal school year should extend to his summer service position, inclusive of additional pay he received for supplemental runs. The Grievance Board has found that payment for summer service

personnel positions is considered separate and distinct from regular school term positions. See Waybright v. Webster County Bd. of Educ., Docket No. 00-51-072 (Nov. 22, 2000); McMillin/Colvin v. Hancock County Bd. of Educ., Docket No. 93-15-366/467 (May 20,1994).

CONCLUSIONS OF LAW

1. In a non-disciplinary grievance, the employee bears the burden of proving his grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Education & State Employees Grievance Board, 156 C.S.R. 1 § 4.21 (2000); Halstead v. Boone County Bd. of Educ., Docket No. 99-03-066 (Apr. 30, 1999); Holly v. Logan CountyBd. 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. Payment for summer service personnel positions is considered separate and distinct from regular school term positions. See Waybright v. Webster County Bd. of Educ., Docket No. 00-51-072 (Nov. 22, 2000); McMillin/Colvin v. Hancock County Bd. of Educ., Docket No. 93-15-366/467 (May 20,1994).

3. Grievant has failed to establish any violation of W. Va. Code § 18A-4-8a by the Board.

Accordingly, this grievance is **DENIED**.

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

_____

MARY JO SWARTZ

Administrative Law Judge

Dated: March 5, 2001