GEORGE CHESNEY, et al.,

Grievants,

v. **Docket No. 00-30-287**

MONONGALIA COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievants, George Chesney, John Snyder, Randy Yost, Richard Saunders, Wayne White, and Duane Prickett, employed by the Monongalia County Board of Education (MCBOE) as Bus Operators/Mechanics (Mr. Prickett holds the position of Assistant Supervisor of Transportation), filed a level one grievance on May 31, 2000, in which they alleged violations of W. Va. Code §§18A-4-8b and 18A-4-16, and requested "lost wages, benefits and assignments for extra-duty trips and extra-curricular assignments requested in grievance awarded 2-14-2000 by level IV hearing judge."

The Transportation Supervisor lacked authority to resolve the matter at level one. Following an evidentiary hearing, the grievance was denied at level two. Grievants elected to bypass consideration at level three, as is permitted by W. Va. Code §18-29-4(c), and appeal was made to level four on September 1, 2000. A level four hearing was conducted on January 8, 2001, at which time Grievants represented themselves, and MCBOE was represented by Kelly J. Kimble, Esq. The matter became mature for decision with the submission of proposed findings of fact and conclusions of law by MCBOE on February 8, 2001. Grievants elected not to file post hearing proposals.

The following facts are derived from the record in its entirety.

Findings of Fact

1. Grievants are all employed by MCBOE and assigned to the Transportation Department, holding the multiclassification of Bus Operator/Mechanic.

2. On February 1, 1999, Grievants filed a level one grievance in which they complained they had been deleted from the extra-duty roster (Chesney I). For relief, Grievants requested "[reinstatement to rotation list with compensation for each trip entitled to according to trips remaining at proper time to pick."

3. Following the level two hearing in Chesney I, Grievants requested to amend the grievance to

include claims of lost wages for extra-duty assignments which they were entitled to for previous years, and for extra-curricular assignments which they were also denied.

4. The grievance eventually progressed to level four where it was consolidated with two related matters. Following an evidentiary hearing, the grievance was granted to the extent that Grievants were to be reinstated to the extra-duty roster. (See footnote 1)

5. Grievants did not present any evidence during the level four hearing in Chesney I regarding lost wages for either extra-duty or extra-curricular assignments, and no such relief was awarded in the decision issued on February 14, 2000.

6. On May 31, 2000, Grievants filed the present claim at level one, seeking back pay and benefits for the period of time they were off the extra-duty and extra-curricular rosters.

Discussion

As this grievance does not involve a disciplinary matter, Grievants have the burden of proving the grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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.

As a preliminary matter, MCBOE moved for dismissal of the grievance, arguing that it was barred by the doctrine of res judicata, and/or that it was untimely filed. Grievants concede that the relief sought in the present matter is the same as that requested in the previous grievance, and do not dispute the claim that they failed to present any evidence in support of the relief at the first level four hearing.

The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate "matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v. W. Va. Human Rights Comm'n, 180 W. Va. 433, 376 S.E.2d 639, 646 (1988); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995). Four conditions must be met in order to apply the doctrine of res judicata:

(1) identity in the thing sued for;

(2) identity of the cause of action;

(3) identity of persons, and of parties to the action; and

(4) identity of the quality in the persons for or against whom the claim is made.

Woodall v. W. Va. Dep't of Transp., Docket No. 93-DOH-393 (Feb. 2, 1994), citing Wolfe v. Forbes, 159 W. Va. 34, 217 S.E.2d 899 (1975). "The identicality of issues litigated is thekey component to the application of administrative res judicata." Liller, supra. This Grievance Board has applied this doctrine sparingly, "as the grievance process is intended to be a fair, expeditious, and simple procedure, and not a 'procedural quagmire.'" Harmon v. Fayette County Bd. of Educ., Docket No. 98-10-111 (July 9, 1998), citing Spahr v. Preston County Bd. of Educ., 182 W. Va. 726, 393 S.E.2d 739 (1990), and Duruttya v. Bd. of Educ., 181 W. Va. 203, 382 S.E.2d 40 (1989).

The present grievance undeniably addresses the same issue, i.e., back pay, that was part of the first grievance. While it also true that this particular issue was not addressed during the prior level four grievance hearing, Grievants were given the opportunity to present evidence, and their failure to do so does not permit them to relitigate the very same issue a second time. Further, Grievants did not exercise their right to appeal the prior decision for review by a circuit court if they believed it was erroneous.

Even if it should be determined that this grievance is not barred by res judicata, it was not pursued in a timely manner. Grievants were aware they were not granted back pay upon receipt of the prior level four decision issued on February 14, 2000, yet did not initiate the current grievance until May 31, 2000, some three and one-half months later. W. Va. Code §18-29-4(a)(1) requires that an informal conference be held with the employees' immediate supervisor within fifteen days on which the grievable event became known to the employee. The supervisor then has ten days to respond to the grievance, and the employees must then file a level one grievance within ten days of receipt of the informal response. Grievants did not meet these statutory time lines.

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

Conclusions of Law

1. As this grievance does not involve a disciplinary matter, Grievants have the burden of proving the grievance by a preponderance of the evidence. Procedural Rules of the W. Va. Educ. & State Employees Grievance Bd. 156 C.S.R. 1 §4.21 (2000); 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. The doctrine of res judicata may result in the dismissal of a grievance when a party seeks to relitigate "matters about which the parties have already had a full and fair opportunity to litigate and which were in fact litigated." Liller v. W. Va. Human Rights Comm'n, 180 W. Va. 433, 376 S.E.2d 639, 646 (1988); Peters v. Raleigh County Bd. of Educ., Docket No. 95-41-035 (Mar. 15, 1995).

3. Four conditions must be met in order to apply the doctrine of res judicata:

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5. The present grievance was not filed in compliance with the time lines set forth in W. Va. Code §18-29-4.

Accordingly, the grievance is **DENIED**.

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

Date: March 5, 2001 _____

SUE KELLER

SENIOR ADMINISTRATIVE LAW JUDGE

Footnote: 1

That decision was styled McElroy, et al. v. Monongalia County Board of Education, Docket No. 99-30-214 (Feb. 14, 2000).