JAMES HOWELL,

Grievant,

v. **Docket No. 02-41-387**

RALEIGH COUNTY BOARD OF EDUCATION,

Respondent.

D E C I S I O N

Grievant, James Howell, filed this grievance against his employer, the Raleigh County Board of Education ("RBOE"), on October 1, 2002, asserting a violation of W. Va. Code § 18A-4-10, with regard to the failure of RBOE to pay him for his extracurricular run when he takes personal leave. He requested as relief to be paid for his extracurricular run when he takes personal leave. (See footnote 1)

The following Findings of Fact are made from the evidence presented at Levels II and IV.

FINDINGS OF FACT

1. Grievant has been employed by RBOE as a bus operator for 25 years. Grievant has a regular morning and afternoon run, and an extracurricular assignment.

2. Grievant's extracurricular assignment requires him to depart from Independence High School at 11:15 a.m. and transport the students who have boarded the bus to the vocational school, arriving there at 11:45 a.m. He then takes the bus to his home, and arrives there at 12:30 p.m. He receives $23.00 per day for the extracurricular run.

3. During the 2000-2001 school year, a group of RBOE employees, including Grievant, met and helped to develop Raleigh County Policy GBRIA-R. That Policy addresses how transportation employees will be compensated for mid-day extracurricular assignments. The Policy was adopted by RBOE on June 11, 2001.

4. Pursuant to Policy GBRIA-R, bus operators receive compensation for their extracurricular

runs on holidays and snow days, even though they have not made the runs on these days. They do not receive compensation for their extracurricular runs on days they take sick leave.

5. Grievant was off work from August 26 through September 22, 2002, on sick leave. He was not compensated by RBOE for his extracurricular run during the period he was on sick leave, but he did receive compensation for his regular bus run.

DISCUSSION

Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996). The statutory provision at issue is W. Va. Code § 18A-4-10. That provision provides, in pertinent part, as follows:

> A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his regular budgetedsalary appropriation during the period which such employee is absent, but not to exceed the total amount of leave to which such employee is entitled . . ..

Grievant argued that when W. Va. Code § 18A-4-10 states that an employee shall be paid his full salary, that includes compensation for extracurricular assignments. Grievant pointed out that the statute does not exclude from the employee's full budgeted salary any amount paid for extracurricular assignments. Grievant argued that had the Legislature intended this result it would have used the same terminology used in W. Va. Code § 18A-4-8a. Grievant further concluded that, to the extent Policy GBRIA-R provides otherwise, the statute controls.

RBOE argued that an employee's “regular” salary is for the performance of his “regular” duties, and Grievant's extracurricular run is not part of his regular duties.

This Grievance Board has already determined that W. Va. Code § 18A-4-10 does not require a board of education to pay an employee for his supplemental run on days he takes personal leave and does not perform the run. Skeens, et al., v. Lincoln County Bd. of Educ., Docket No. 94-22-544 (Dec. 29, 1994). The undersigned sees no reason why an extracurricular run should be treated differently.

> This Grievance Board adheres to the doctrine of stare decisis (See footnote 2) in adjudicating grievances that come before it. Chafin v. W. Va. Dep't of Health & Human Resources, Docket No. 92-HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence is founded upon a

> determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH-341 (Apr. 27, 1995).

Shaffer v. Kanawha County Bd. of Educ., Docket No. 00-20-085 (June 12, 2000). Grievant has not demonstrated that Skeens, supra, was clearly in error, or that extracurricular runs should be treated differently from supplemental runs in applying this statutory provision.

The following Conclusions of Law support the Decision reached.

CONCLUSIONS OF LAW

1. Grievant bears the burden of proving each element of his grievance by a preponderance of the evidence. Conner v. Mingo County Bd. of Educ., Docket No. 95-29- 476 (Mar. 28, 1996).

2. W. Va. Code § 18A-4-10 does not require a board of education to pay an employee for his supplemental run on days he takes personal leave and does not perform the run. Skeens, et al., v. Lincoln County Bd. of Educ., Docket No. 94-22-544 (Dec. 29, 1994).

3.

> This Grievance Board adheres to the doctrine of stare decisis in adjudicating grievances that come before it. Chafin v. W. Va. Dep't of Health & Human Resources, Docket No. 92- HHR-132 (July 24, 1992), citing Dailey v. Bechtel Corp., 157 W. Va. 1023, 207 S.E.2d 169 (1974). This adherence is founded upon a determination that the employees and employers whose relationships are regulated by this agency are best guided in their actions by a system that provides for predictability, while retaining the discretion necessary to effectuate the purposes of the statutes applied. Consistent with this approach, this Grievance Board follows precedents established by the Supreme Court of Appeals of West Virginia as the law of this jurisdiction. Likewise, prior decisions of this Grievance Board are followed unless a reasoned determination is made that the prior decision was clearly in error. Belcher v. W. Va. Dep't of Transp., Docket No. 94-DOH- 341 (Apr. 27, 1995).

Shaffer v. Kanawha County Bd. of Educ., Docket No. 00-20-085 (June 12, 2000).

4. Grievant has not demonstrated that the Grievance Board's decision in Skeens, supra, was clearly in error, or that extracurricular runs should be treated differently from supplemental runs in applying this statutory provision. 5. W. Va. Code § 18A-4-10 does not require a board of education to pay an employee for his extracurricular run on days he takes personal leave and does not perform the run. Skeens, supra.

Accordingly, this grievance is **DENIED**.

Any party may appeal this Decision to the Circuit Court of Kanawha County or the Circuit Court of Raleigh 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 Grievance Board with the civil action number so that the record can be prepared and transmitted to the circuit court.

BRENDA L. GOULD

Administrative Law Judge

Dated: March 28, 2003

Footnote: 1

Grievant received an unfavorable response at Level I on October 3, 2002, and appealed to Level II on October 7, 2002. A Level II hearing was held on October 21, 2002. A Level II decision denying the grievance was issued on November 19, 2002. Grievant bypassed Level III, appealing to Level IV on November 22, 2002. A Level IV hearing was held by telephone on January 24, 2003. Grievant was represented by John Everett Roush, Esquire, and Respondent was represented by Erwin L. Conrad, Esquire. This grievance became mature for decision on February 24, 2003, upon receipt of the last of the parties' written arguments.

Footnote: 2

Literally, "to stand by things decided." This is the doctrine that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where the facts are substantially the same. Black's Law Dictionary 1414 (7th ed. 1999). See W. Va. Dep't of Admin. v. W. Va. Dep't of Health & Human Resources, 192 W. Va. 202, 451 S.E.2d 768, 771 (1994).