

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

AT CHARLESTON

NANCY JAMISON,

Appellant,

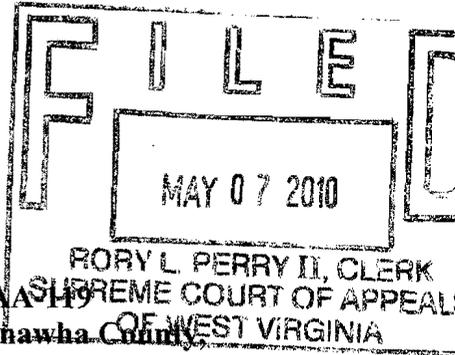
v.

Appeal No. 35498

Civil Action No. 08-AA-119

(Circuit Court of Kanawha County,

West Virginia)



THE BOARD OF EDUCATION OF
THE COUNTY OF MONONGALIA,

Appellee.

BRIEF FILED ON BEHALF OF APPELLEE
THE BOARD OF EDUCATION OF THE COUNTY OF MONONGALIA

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I. TABLE OF AUTHORITIES

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II. PROCEDURAL HISTORY AND NATURE OF RULING
IN THE LOWER TRIBUNAL

Nancy Jamison, a secretary holding two half time positions with the Monongalia County Board of Education, initiated a grievance before the West Virginia Public Employees Grievance Board ("Grievance Board") on September 4, 2007, alleging entitlement to a mileage reimbursement for travel between her two half time positions. The relief she seeks is reimbursement for the mileage expenses incurred for traveling from one job to the other during the 2006-07 and 2007-08 school years. The grievance was denied at Level I by a Decision dated November 20, 2007 following an October 31, 2007 hearing. The parties, by agreement, waived Level II mediation and a Level III hearing was conducted on March 13, 2008 before Administrative Law Judge Denise M. Spatafore, who denied the Grievance by Decision dated August 27, 2008.

The Appellant subsequently appealed the Decision of the Grievance Board to the Circuit Court of Kanawha County, West Virginia ("Circuit Court") on September 29, 2008. The Circuit Court properly found that the Appellant is not entitled to a mileage reimbursement for travel between two half time positions and affirmed the decision of the Grievance Board.

III. STATEMENT OF FACTS

Nancy Jamison, Appellant herein, is employed in the job classification as Secretary III. She holds two half time positions: one at Brookhaven Elementary School where she works from 7:45 a.m. until 11:15 a.m. and the other at Cheat Lake Middle School where she works from 11:30 a.m. until 3:00 p.m. Initially, Appellant worked at her two half time positions at the Central Annex for a federal program and Cheat Lake Middle School, both were positions that were posted as half time positions and Appellant bid on and ultimately received them. Upon the non-renewal of the federal position, Appellant was transferred to Brookhaven Elementary

School. She remained at the Cheat Lake Middle School position. Despite the transfer, Appellant was still employed in two half time positions.

Both of Appellant's positions are independent of the other and neither requires travel to the other as part of the duties entailed. Moreover neither position is contingent upon Appellant working in the other position.

IV. ISSUE PRESENTED BY THE APPELLANT

Appellant raises three issues on appeal:

1. Whether the administrative law judge and the circuit court erred in holding that the Appellant was not a full-time employee and that she had a voluntary bid upon the two half time positions that made up her work schedule.

2. Whether the administrative law judge and the circuit court erred in holding that the Appellant is not entitled to mileage expenses for travel between her two work locations pursuant to the Appellee's policy on "Employee Travel" as promulgated in Monongalia County File 2-27.

3. Whether the administrative law judge and the circuit court erred in holding that the Appellant is not entitled to reimbursement of expenses incurred as a result of travel between the Appellant's two work locations pursuant to West Virginia Code § 18A-2-14.

V. STANDARD OF REVIEW

This Court, "in reviewing an ALJ's decision that was affirmed by the circuit court, . . . affords deference to the findings of fact made below. This Court reviews decisions of the circuit court under the same standard as that by which the circuit court reviews the decision of the ALJ." Martin v. Randolph County Bd. of Educ., 195 W. Va. 297, 304, 465 S.E.2d 399, 406 (1995). Thus, "[a] final order of the hearing examiner for the West Virginia Educational

Employees Grievance Board, . . . should not be reversed unless clearly wrong.” Syl. Pt. 1, Randolph County Bd. of Educ. v. Scalia, 182 W. Va. 289, 387 S.E.2d 524 (1989). This Court reviews *de novo* the conclusions of law and application of the law to the facts. Holmes v. Berkley County Bd. of Educ., 206 W. Va. 534, 526 S.E.2d 310 (1999).

The findings of fact of the Administrative Law Judge (“ALJ”) in this case are not clearly wrong and are fully supported by the evidence. Moreover, the conclusions of law are well reasoned, are not contrary to law and are not otherwise subject to being reversed by this Court.

VI. ARGUMENT

A. THE APPELLANT DOES NOT HOLD A FULL TIME POSITION, BUT RATHER SHE IS AN EMPLOYEE WHO HOLDS TWO SEPARATE HALF TIME POSITIONS.

Appellant tries to confuse the issue of her two half time positions by introducing West Virginia Code §§ 18A-4-8a(1) and 18A-4-8(j), which address the issues of compensation and benefits for service personnel. Neither topic addressed in the aforementioned Code sections relate to the issue of whether Appellant is employed in one full time position or two half time positions. Unquestionably, the legislature contemplated the precise working arrangement that Appellant now holds: two half time positions. West Virginia Code § 18A-4-8h permits the establishment of two half time positions for school personnel.

The two employment positions that are held by Appellant are completely independent of one another. The original positions were posted as half time positions and the fact that Appellant originally bid on two positions does not lead to the conclusion that her travel to the separate work stations is in the course of her employment. Appellant could resign from one position and that resignation would have no bearing on the other position. Whereas, a full time employee who resigns from the full time position no longer holds the full time position.

Appellant further attempts to distract the Court from the facts by emphasizing that she was transferred to her position at Brookhaven and did not bid on the position. Appellant did in fact apply for the original two half time positions, those being the Central Office position and the Cheat Lake position. It is undisputed that both positions were posted as half time positions on separate postings. When the program ended that supported the Central Office position, Appellant was properly transferred to the Brookhaven position. Regardless, Appellant still held two half time positions at different locations. This point of error is a non-issue and need not be considered by this Court in deciding whether the Grievance Board and Circuit Court erred.

Appellant relies heavily on Sexton v. Boone County Bd of Educ., Docket No. 94-03-044 (June 22, 1994) in support of the assertion that although she is at two separate work stations she is a full time employee. The facts of Sexton differ from those in the instant case. In Sexton, the employee was hired as a full time employee with a single workstation. However, due to a reduction in force, one-half of the employee's position was eliminated and he was subsequently assigned to another work station for half of his day. In other words, the employee originally bid on one full time position and for the employer to maintain his full time status, he was transferred to another work station for the portion of his work day that was subsequently eliminated. Here, Appellant from the beginning was assigned to two separate positions and whether she was later transferred from one of them is irrelevant. If the position was originally full time and only one-half of the position was eliminated, which resulted in a change of work location as in Sexton, then the result here would be different.

The facts of this case are more closely related to those in Wheeler v. Lincoln County Bd. of Educ., Docket No. 96-22-535 (July 15, 1997). There the grievant held two half time positions,

just as Appellant does in this case and the Grievance Board held an employee is not entitled to compensation for travel between two separate half time positions.

B. THE APPELLANT IS NOT ENTITLED TO MILEAGE REIMBURSEMENT PURSUANT TO COUNTY POLICY BECAUSE HER TRAVEL IS NOT BETWEEN WORKSTATIONS, BUT RATHER BETWEEN TWO SEPARATE JOBS.

The relevant portion of Monongalia County Board of Education's "Employee Travel" policy (7-26) states

Certain Board of Education employees are authorized an allowance for travel in their own private vehicles, when traveling from workstation to workstation on official duty. It is the employee's responsibility to report to work on his/her own and he/she goes home on his/her own, but official travel during the between workstations is made on a reimbursable basis.

Appellant's travel from one position to another is not on official duty because she holds two separate positions, neither of which requires that she be present at the other. She is not traveling from one place to another in furtherance of interest for either position. As the policy clearly states, it is the employee's responsibility to report to work on her own and go home on her own. Because she chooses to hold two separate positions does not entitle Appellant to a mileage reimbursement for merely reporting to work.

Appellant argues that the Monongalia County Board of Education interpreted its policy to require payment of mileage expenses for a period of six years and then "changed its mind." There has never been a formal interpretation by the Monongalia County Board of Education with regard to its Employee Travel Policy as it relates to this issue. Rather simply, Appellant submitted mileage reimbursement requests in the past and they were paid in error. Nevertheless, a county board of education is not bound by an employee's mistake. Dillon v. Mingo County Bd. of Educ., Docket No. 05-29-413 (Apr. 28, 2006) citing Samples v. Raleigh County Bd. of Educ., Docket No. 98-41-391 (Jan. 13, 1999). "Further, while Appellee mistakenly reimbursed

[Appellant] . . . for travel when it should not have, those mistakes did not create an entitlement to future incorrect reimbursement.” Id. citing Stover v. Div. of Corr., Docket No. 04-CORR-259 (Sept. 24, 2004)

C. THE APPELLANT IS NOT ENTITLED TO MILEAGE REIMBURSEMENT PURSUANT TO WEST VIRGINIA CODE BECAUSE HER TRAVEL IS NOT REQUIRED IN THE COURSE OF HER EMPLOYMENT.

Pursuant to the relevant section of, W. Va. Code § 18A-2-14, “[a] county board shall reimburse any school personnel for each mile traveled when the employee is required to use a personal motor vehicle in the course of employment.” (Emphasis added). Appellant testified at the Level One hearing that neither of her positions require that she travel to the other location. She is merely reporting to two separate work places for two separate part-time positions. Nothing in the record supports the conclusion that Appellant’s mid day travel is in the course of her employment. Therefore, she is simply not entitled to mileage reimbursement.

VII. CONCLUSION

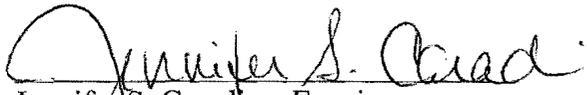
The Order issued by the Circuit Court of Kanawha County, was well reasoned, legally sound and supported by the evidence on the record.

WHEREFORE, the Board of Education of the County of Monongalia respectfully requests that the this Court deny the relief sought by Appellant and affirm the August 27, 2009 Final Order of the Circuit Court of Kanawha County.

Respectfully submitted,

**THE BOARD OF EDUCATION
OF THE COUNTY OF
MONONGALIA**

By Counsel



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CERTIFICATE OF SERVICE

I, Jennifer S. Caradine, do hereby certify that I served the foregoing **Brief Filed on Behalf of Appellee, The Board of Education of the County of Monongalia** on the Appellant's counsel by placing a true copy thereof, in the United States Mail, First Class pre-paid, this 4th day of May, 2010, in an envelope addressed as follows:

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