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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

NANCY JAMISON,

Appellant,

v. CIVIL ACTION NO. 08-AA-119

THE BOARD OF EDUCATION OF
THE COUNTY OF MONONGALIA,

Appellee.

FINAL ORDER

The Court has reviewed the PETITION OF APPEAL, the record, the decision and the briefs filed on behalf of the respective parties. The matter is ripe for ruling.

PROCEDURAL HISTORY

The Petitioner requested and was denied mileage compensation for travel between her two part-time positions with the Respondent, Board of Education of the County of Monongalia, for the 2006-2007 and 2007-2008 school years. The Petitioner filed a grievance. A Level I Hearing was held on October 31, 2007, by Dr. Louis Hlad. He denied the grievance. The parties requested a waiver of mediation at Level II. A Level III Hearing was held on March 13, 2008. Although the parties agreed to hold in abeyance any decision with respect to the 2006-207 school year pending a ruling on a prior appeal, the Administrative Law Judge correctly ruled that there was no legal mechanism for holding the decision in abeyance. By decision dated August 27, 2008, the Administrative Law Judge denied the Petitioner's grievance for both school years. That decision is the subject of the appeal pending before this Court.

FACTS

The Petitioner, Nancy Jamison, is currently employed as a secretary by the Respondent, Monongalia County of Board of Education. She works one-half (½) day at Brookhaven Elementary School and one-half (½) day at Cheat Lake Middle School. Prior to being assigned to Brookhaven Elementary School, she worked one-half (½) day at the Central Annex and one-half (½) day at Cheat Lake Middle School. She bid on each of these positions. Due to the termination of a federal grant, the position at the Central Annex ended and she was assigned to Brookhaven Elementary School. The Petitioner has always driven her personal vehicle between her job locations and has never been offered alternative transportation by the Respondent. Prior to the 2005-2006 school year, the Respondent paid the Petitioner mileage compensation for travel between her two job locations. When she was denied mileage compensation for the 2005-2006 school year, she filed a grievance. That case was pending on appeal in the circuit court when the instant appeal was filed. Mileage compensation for that particular school year is not at issue here.

FINDINGS

The Petitioner argues that she is entitled to mileage compensation pursuant to Monongalia County File 7-26 (Employee Travel) and pursuant to West Virginia Code, Chapter 18A, Article 2, Section 14.

The applicable portion of Monongalia County File 7-26 reads as follows:

> Travel within the County
> 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. From time to time, there may be a special instructional program requiring home visits and/or other special travel. The approval of the program will also authorize the approval of reimbursable travel. Generally, reimbursement for meals and/or lodging within the county will not be allowable. The Superintendent may make exception.

The Petitioner drives her personal vehicle between job locations, and although she has never been offered alternative transportation between job locations, she admits that neither position requires her to work at, or travel to, the other location. (Level I Hearing Transcript pp. 14-15). Both positions are half-time. (Level I Hearing Transcript p. 16).

Given the undisputed evidence, the Court finds that Monongalia County File 7-26 is inapplicable to the Petitioner's travel between her two (2) half-time positions. Further, this Court finds that interpreting the policy differently would make the sentence, "It is the employee's responsibility to report to work on his/her own and he/she goes home on his/her own..." meaningless in a situation such as that presented by the facts of this case, and such an interpretation would be against the unambiguous language of the policy.

West Virginia Code, Chapter 18A, Article 2, Section 14, reads as follows:

> 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. The county board shall reimburse at the same rate for all employees in that county. The rate of reimbursement shall be at least the lesser of, and not more than the greater of, the federal standard mileage rate and the rate authorized by the travel management rule of the Department of Administration.

Again, the Court finds that the Petitioner uses her vehicle to go to and from work. By her own admission, neither position requires her to perform duties at the other location. She does not use her vehicle "in the course of employment." This statute is not intended to reimburse employees for the use of their personal vehicle to go to and from work. A different interpretation would entitle every employee who drove their personal vehicle to and from work to mileage reimbursement. That is not consistent with the plain language of the statute. Lastly, the Court finds the Sexton case to be distinguishable from this case. In that case, the Petitioner had one (1) full-time position working at one location. Due to a reduction in force, he was required to work his full-time position in two separate locations. Here, the Petitioner originally bid on two positions in two separate locations. Although the Hearing Examiner erroneously found that the Petitioner had bid on the Brookhaven position, that error has no effect on the application of the policy or the statute in this matter.

OPINION

WHEREFORE, for the reasons stated herein, and the Court finding no error in how the policy and the statute were applied to the facts of this case, the Court ORDERS that the decision of the Administrative Law Judge is AFFIRMED.

The Court preserves an objection and exception for the Petitioner and ORDERS the Clerk of this Court to mail a certified copy of this Order to all counsel of record. Lastly, the Court ORDERS that this matter be dismissed and stricken from the docket of this Court.

ENTERED this 27th day of August, 2009.

Irene C. Berger

IRENE C. BERGER, CIRCUIT JUDGE
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY, AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 28
DAY OF August 2009
Cathy S. Gatson/cc CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA