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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**
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THEODORA PLUMLEY

v.

Docket No. DOE 86-282-1

WV DEPARTMENT OF EDUCATION

DECISION

Grievant, Theodora Plumley, is employed by the West Virginia Department of Education as a special education teacher at the Colin Anderson Center in St. Marys. On July 16, 1986, she filed a grievance alleging entitlement to compensation for a B.S. + 15 hours from January through June 1986. A level two hearing was conducted on September 9 and the decision appealed to the Education Employees Grievance Board on October 2, 1986; a level four evidentiary hearing was conducted on March 26, 1987.¹

¹ The transcript of evidence of the level two hearing was admitted into evidence and the grievance was submitted to the hearing examiner on the transcript (T.), the additional testimony of the grievant and the proposed findings of fact and conclusions of law submitted by Mr. Furtado, the WVEA representative, on April 10, 1987.

Since 1980 grievant has been a special education teacher for the severe and profound and holds a bachelors degree plus fifteen hours. She completed the necessary course work to qualify for the fifteen credits beyond the bachelors degree in December 1985 and began filing the necessary paperwork with the Department of Education in January 1986 to effectuate the change in classification (T. 10). More specifically, grievant completed Department of Education forms 1-TD-10 and 1-TD-13 and submitted them on January 31, 1986; she received no response thereto and commenced telephone inquiries leading to several discussions with Ms. Joyce Sigmon of the certification unit (T. 13). Grievant's application was apparently lost and in March 1986 she was instructed to resubmit the complete set of forms, which she did on March 6, 1986 (T. 14). Grievant received no response to the March refiling or any subsequent filing but had been assured by Ms. Sigmon that the matter would be taken care of upon receipt of the resubmitted forms (T. 15; Exhibit 4).²

By letter dated July 25, 1986, grievant was notified that her application for advanced salary classification had been approved,

² Both at level two and at level four grievant testified that she filed four or five applications in addition to the January and March filings and made numerous telephone inquiries to Ms. Sigmon and to Mr. Sturey.

effective December 20, 1985 (T. 16; Exhibit 3). Grievant commenced receiving the additional salary for the advanced classification about July 15, 1986, and seeks compensation for that portion of time the Department of Education failed to promptly and properly process her claim.³

Counsel for the Department of Education could not account for the loss of the paperwork of grievant and, in fact, informed the hearing examiner that the approval of grievant's advanced classification was not effectuated by formal action of the State Board of Education but via the adoption of the budget containing the advanced pay. It is further noted that the situation may have been affected by the adoption of House Bill 146 which dealt with the instant subject.

In addition to the foregoing factual recitation, the following specific findings of fact and conclusions of law are appropriate.

³ Grievant relies on two prior decisions of the Education Employees Grievance Board which are directly on point with the instant grievance, i.e., Jeffrey A. Richard v. WV Department of Education, Docket No. 20-86-158-1 and Clifford Young v. WV Department of Education, Docket No. 26-86-066.

The Richard decision is highly analogous and grievant was awarded compensation for the months directly attributable to the lack of diligence of the Department. However, it was noted in that decision and grievant acknowledged at the level four hearing that any award would have to be pursued in the Court of Claims.

FINDINGS OF FACT

1. Grievant is employed by the WV Department of Education as a special education teacher at the Colin Anderson Center in St. Marys.

2. In December, 1985, grievant completed the necessary course work for fifteen graduate credits beyond her bachelors degree and in January, 1986, applied for a change in classification.

3. Grievant received no response to her application and commenced telephone inquiries with the Department; she was thereafter advised that the forms were lost and a new set of forms should be submitted.

4. Grievant resubmitted the set of forms in March, 1986, and received no response; thereafter she submitted four or five additional sets of forms and had numerous telephone communications with officials in the certification unit of the Department.

5. The evidence is conclusive that the grievant's paperwork was not processed in a diligent manner by the Department of Education resulting in an inordinate delay in the approval of grievant's salary adjustment.

CONCLUSIONS OF LAW

1. Grievant is entitled to a salary adjustment and reclassification within a reasonable time after completion by grievant of all the necessary paperwork but is also subject to the same fiscal process as other employees of the Department of Education. Because of these fiscal restraints on state employees in relation to retroactive pay it is incumbent upon employers to be diligent and to expedite, when possible, the process by which teachers employed by the Department of Education obtain salary adjustment for enhancing their educational credentials. Jeffrey A. Richard v. WV Department of Education, Docket No. 20-86-158-1; Clifford Young v. WV Department of Education, Docket No. 26-86-066.

2. Due to the lack of diligence of the Department of Education grievant is entitled to compensation for advanced certification to the B.S. + 15 level for the period commencing April 1, 1986, until she actually began receiving the increased compensation, July 15, 1986.

Accordingly, the grievance is GRANTED and the Department of Education is Ordered to compensate grievant from April 1, 1986, to July 15, 1986, for the advanced certification. All of the parties are aware that this award will most probably be pursued in the Court of Claims.

Either party may appeal this decision to the Circuit Court of Kanawha County and such appeal must be filed within thirty days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



LEO CATSONIS

Chief Hearing Examiner

Dated: May 29, 1987