

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 1994 Term

NO. 21379

B. F. GILMORE,
Plaintiff Below, Appellant

V.

WEST VIRGINIA STATE DEPARTMENT OF EDUCATION
AND HENRY R. MAROCKIE, STATE SUPERINTENDENT
OF SCHOOLS,
Defendants Below, Appellees

Appeal from the Circuit Court of Kanawha County
Honorable John Hey, Judge
Civil Action No. 91-AA-133

APPEAL DISMISSED

Submitted: January 25, 1994
Filed: February 18, 1994

John Everett Roush
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Attorney for Appellant

John S. Dalporto
Assistant Attorney General
Charleston, West Virginia
Attorney for Appellees

The Opinion of the Court was delivered PER CURIAM.

SYLLABUS BY THE COURT

"The general rule, subject to certain exceptions, is that appeals will be dismissed where there is no actual controversy existing between the parties at the time of the hearing." Syllabus Point 1, West Virginia Bd. of Dental Examiners v. Storch, 146 W. Va. 662, 122 S.E.2d 295 (1961).

Per Curiam:

The matters in this appeal, which was accepted on November 9, 1992, but was not argued until January 25, 1994, involve a claim of age discrimination by B. F. Gilmore, a school bus driver employed by the Wood County Board of Education. The claimed discriminatory rule as adopted by the West Virginia State Department of Education states that a candidate for a school bus driver shall not be certified or recertified after his or her seventieth birthday. After pursuing his administrative remedies, Mr. Gilmore appealed the matter to the circuit court. By an order dated January 31, 1992, the circuit court denied Mr. Gilmore any relief.

A similar challenge of age discrimination was made by another school bus driver, Lavern L. Rank, before the United States Equal Employment Opportunity Commission under the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, et seq. This action culminated in an agreed Conciliation Agreement with the State Department of Education dated June 14, 1993. By its terms, the agreement applies to any school bus driver previously decertified in 1992 and 1993. The Department of Education, during the course of oral argument, admitted the applicability of the Conciliation Agreement to this case. Consequently, we apply the rule stated in

Syllabus Point 1 of West Virginia Board of Dental Examiners v. Storch,
146 W. Va. 662, 122 S.E.2d 295 (1961):

"The general rule, subject to certain exceptions, is that appeals will be dismissed where there is no actual controversy existing between the parties at the time of the hearing."

See also Orwasky v. Chuma, 148 W. Va. 349, 135 S.E.2d 248 (1964).

For the foregoing reason, we conclude that the matters before this Court are no longer in controversy and this appeal is dismissed.

Appeal

dismissed.