

#306-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE TENURE :
HEARING OF MIGUEL VALLADARES, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP : DECISION
OF BELLEVILLE, ESSEX COUNTY. :

SYNOPSIS

Petitioning school district certified six tenure charges against respondent – a tenured custodian – alleging unbecoming conduct, misbehavior, insubordination, and other just cause. These charges stem from the Board’s allegations that: respondent received the proceeds from a vending machine placed in School #5 without authorization of the Board of Education; misappropriated public property by operating and receiving the proceeds from a vending machine placed in School #8 during the period from 2008 through July 2011; neglected his duties as a custodian when he serviced these vending machines in Schools #5 and #8; and made intentionally false statements to the superintendent and his direct supervisors regarding his conduct. Respondent contended that he had the principals’ permission to install and service the machines in question, made periodic cash payments from the proceeds of the machines to each school’s main office, and did not neglect his custodial duties because the machines were serviced on his dinner breaks.

The ALJ found, *inter alia*, that: the District had no clear policy on the operation of vending machines, and testimony made clear that there was a patchwork of vending machines and operators during the relevant time period; there was precedence in the District for individual operators to own and service vending machines in teacher lounges; respondent gave credible testimony that he believed he had permission from the building principals to own and operate a vending machine in both School #5 and School #8, and respondent’s testimony was buttressed by testimony from the former principal of School #5, who in effect recruited the respondent to install a vending machine in the teacher lounge; respondent is not a sophisticated business owner, and did not understand the importance of recordkeeping in regard to his ownership of the machines or his accounting of the proceeds from them, a percentage of which was paid in cash to the main office – often by slipping an envelope under the door; no evidence was presented to show that respondent was servicing the vending machines when he should have been working; respondent did, however, fail to disclose the fact that he had been operating a machine in School #5 when it became obvious that an investigation was ongoing regarding the machine in School #8; respondent has an otherwise unblemished career of service in the District. The ALJ concluded that respondent’s failure to disclose the existence of the second vending machine constituted an act of insubordination, but that the Board failed to meet its burden of proof on the other charges. Accordingly, the ALJ ordered that respondent forfeit 120 days of pay, and be returned to his tenured position as custodian.

Upon careful review and consideration, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

August 3, 2012

OAL DKT. NO. EDU 2455-12
AGENCY DKT NO. 39-2/12

IN THE MATTER OF THE TENURE :
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OF BELLEVILLE, ESSEX COUNTY. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

This case involves tenure charges brought by the Board of Education (Board) against the respondent, Miguel Valladares, a tenured custodian in the Belleville Township School District. The Board charged the respondent with unbecoming conduct, insubordination and other just cause for the misappropriation of public property and receiving funds from the operation of two vending machines. The Administrative Law Judge (“ALJ”) found that the Board proved by a preponderance of the credible evidence that respondent’s failure to disclose the existence of the vending machine located at School #5 after it was identified that he owned a vending machine located at School #8 was an act of insubordination. The ALJ also found that the Board did not sustain its burden of proving the other charges against the respondent. The ALJ recommended the imposition of a 120 day suspension as a result of the respondent’s insubordination.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the hearing dates conducted at the OAL on May 15 and 16, 2012, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* –

concur with the ALJ for the reasons discussed in the Initial Decision that the Board has established that respondent is guilty of insubordination. The Deputy Commissioner is also in accord with the ALJ's determination that the remaining charges against the respondent should be dismissed. The Deputy Commissioner finds no basis in the record to reject either the ALJ's recitations of testimony or her determinations of witness credibility. The ALJ had the opportunity to assess the credibility of the various witnesses who appeared before her and made findings of fact based upon their testimony. In this regard, the clear and unequivocal standard governing the Deputy Commissioner's review is:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. [N.J.S.A. 52:14B-10(c)].

Moreover, the Deputy Commissioner fully concurs with the ALJ's assessment of respondent's conduct in light of applicable law and prior decisional precedent, and agrees that the conduct proven in this proceeding necessitates an appropriate penalty.

Therefore, the Deputy Commissioner finds and concludes that the 120 days salary withheld pursuant to *N.J.S.A.* 18A:6-14, following the certification of tenure charges, is commensurate with the error in judgment displayed by the respondent. Accordingly, the Initial Decision of the OAL is adopted as final decision in this matter.

IT IS SO ORDERED.*

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2012
Date of Mailing: August 6, 2012

* Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.