

IN THE MATTER OF THE TENURE :
HEARING OF CHARLOTTE WHITFIELD, : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, PASSAIC :
COUNTY. :
_____:

SYNOPSIS

Petitioning District certified tenure charges of neglect of duty, excessive tardiness and insubordination against respondent administrative secretary. Respondent contended charges constituted inefficiency and, as such, were to be dismissed for failure to comply with *N.J.S.A. 18A:6-11*.

ALJ concluded that the District accurately characterized respondent's practice of willfully engaging in personal activity during the work day despite warnings from her supervisor as neglect of duty rather than inefficiency. Such charge of neglect of duty was sustained as was the charge of excessive tardiness. ALJ dismissed the charge of insubordination as respondent did not engage in outright defiance of her supervisors. ALJ determined that respondent's tardiness and neglect of duty demonstrated a pattern which spanned an entire school year and interfered with the proper functioning of the office. Thus, the ALJ concluded dismissal was warranted. Respondent was ordered removed from her position of administrative secretary as of the date of her suspension.

Commissioner concurred with the ALJ's conclusions regarding the tenure charges, sustaining the charges of neglect of duty and excessive tardiness and dismissing the charge of insubordination. Commissioner also agreed with the ALJ's analysis concerning the appropriate characterization of the charges as neglect of duty not inefficiency. Moreover, the Commissioner concurred with the ALJ that the penalty of dismissal was warranted given the circumstances herein. Commissioner, however, ordered respondent's termination effective as of the date of his decision, rather than the date the District initially suspended her.

AUGUST 19, 1997

OAL DKT. NO. EDU 9325-96
AGENCY DKT. NO. 308-7/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions were timely filed in accordance with *N.J.A.C. 1:1-18.4*.

Respondent's exceptions essentially recast and reiterate the arguments advanced before the Administrative Law Judge (ALJ) in her post-hearing brief. She again asserts that notwithstanding the District's use of terminology such as neglect of duty and insubordination in titling the within charges, they are more appropriately categorized as inefficiency. As such, she urges that because the District has failed to comply with the procedural requirements of *N.J.S.A. 18A:6-11*, the charges must be dismissed. Respondent also renews her post-hearing brief discussion contending that the District has failed to establish its charges. Finally, respondent proffers that although the ALJ recommends termination as the appropriate penalty in this matter, he "fails to set forth [a] real analysis or reason justifying this penalty." (Respondent's Exceptions at p. 12) Respondent urges that the allegations against her do not rise to the level of severity

justifying dismissal, particularly in light of her over seven years of satisfactory service in the District.

Upon careful and independent review, the Commissioner concurs with the ALJ that the charges of neglect of duty and excessive tardiness against respondent have been established by the District. He, likewise, agrees that the charge of insubordination was not sustained and, therefore, must be dismissed. With respect to respondent's contentions concerning the appropriate characterization of the within tenure charges, the Commissioner finds such assertions without merit, rather he agrees with the ALJ's cogent analysis

Considering the totality of respondent's actions, it becomes apparent that her difficulties stem largely from a refusal to put aside personal matters during the work day. ***Respondent's practice of willfully engaging in personal activity during the work day despite warnings from her supervisor, while her assignments, priority or otherwise, remained incomplete is more accurately characterized as neglect of duty than inefficiency.

(Initial Decision at p. 26)

Finally, the Commissioner determines that respondent's protestation that her behavior does not warrant her termination and that the ALJ reached his determination in this regard without considering her prior record or advancing a reasoned analysis of why such penalty was appropriate given the circumstances herein, is unpersuasive. Rather, he concludes that the derelictions of duties outlined by the ALJ on pages 24-26 of the initial decision, along with the fact that, although respondent received written warnings from her employer about her various shortcomings and the disruptive effect they were having on office operations (see Exhibits P-2, P-7), she remained unwilling or unable to modify her behavior to an acceptable level, amply establish that termination from her position is the appropriate penalty in this matter. It is observed, however, that contrary to the conclusion of the ALJ, respondent's termination from her

position as a consequence of the within determination, is effective as of the date of this decision, rather than the date the District initially suspended her.

Accordingly, the initial decision of the OAL, as modified herein, is adopted as the final decision in this matter for the reasons expressed therein. Respondent is hereby terminated from her tenured position in the State-operated School District of the City of Paterson.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 19, 1997