

IN THE MATTER OF THE TENURE :
HEARING OF SAAD RADWAN, :
SCHOOL DISTRICT OF THE : COMMISSIONER OF EDUCATION
BOROUGH OF CARTERET, : DECISION
MIDDLESEX COUNTY. :
_____ :

SYNOPSIS

Board certified tenure charges of unbecoming conduct, insubordination and other just cause against respondent custodian. Respondent contended tenure charges were a subterfuge for discrimination based on religion and national origin.

Following a lengthy hearing, wherein numerous witnesses testified, and review of the record, the ALJ concluded that the Board established by a preponderance of credible evidence that respondent was guilty of unbecoming conduct, insubordination and failure to properly perform his duties. As to respondent's claim of discrimination, the ALJ found that respondent was carefully watched because of his belligerent behavior toward supervisors and coworkers. ALJ ordered respondent removed from his position as a custodian.

Commissioner found no reason to disturb the credibility determinations and factual findings of the ALJ, due regard being given to the person who heard the live testimony and assessed the witnesses' behavior. Thus, the Commissioner concurred with the ALJ and adopted the findings and determination in initial decision as his own. Respondent was ordered dismissed from his position as a tenured custodian as of the date of this decision.

JANUARY 14, 1999

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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 and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner finds no cause to disturb the credibility determinations and factual findings rendered by the Administrative Law Judge (ALJ).¹ To the extent respondent objects to the findings rendered by the ALJ based on the testimony of the witnesses and the credence he ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts of the hearing conducted at the OAL in this matter. Challenges to the factual findings predicated upon credibility determinations made by an administrative law judge require the party

¹ To the extent respondent objects to the ALJ's reliance on Exhibit P-105, the affidavit of Ms. Karen Lopez (initial decision at p. 23), on the grounds that Ms. Lopez did not appear as a witness and her statement is, according to respondent, contradicted by the record, the Commissioner notes that, even if Exhibit P-105, and the conclusions derived therefrom, were stricken from the record, the Board has nevertheless proven by a preponderance of evidence that respondent is guilty of unbecoming conduct.

to supply the agency head with the relevant and necessary portion of the transcript. See *In re Morrison*, 216 *N.J. Super.* 143, 158 (App. Div. 1987). In the absence of transcripts from the hearing, due regard should be given to the person who heard the live testimony and assessed the witnesses' behavior at the hearing. *Close v. Kordulak Bros.*, 44 *N.J.* 589, 599 (1965).

Thus, the Commissioner concurs that the Board has demonstrated by a preponderance of credible evidence that respondent is guilty of conduct unbecoming a tenured custodian by virtue of respondent's hostile and inappropriate behavior toward his coworkers, his supervisors and other staff in the District, as well as his repeated insubordination. (See also *In the Matter of the Tenure Hearing of John DeMaio, School District of the Borough of Elmwood Park, Bergen County*, decided June 3, 1998, aff'd State Board November 4, 1998, where the Commissioner dismissed a tenured custodian who exhibited a pattern of inappropriate language and conduct toward his supervisor.)

Accordingly, the initial decision in this matter is adopted for the reasons expressed therein. Respondent is deemed dismissed from his position as a tenured custodian as of the date of this decision.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JANUARY 14, 1999

² This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.