

IN THE MATTER OF THE TENURE :
HEARING OF RALPH MC CULLOUGH, :
SCHOOL DISTRICT OF THE CITY OF : COMMISSIONER OF EDUCATION
TRENTON, MERCER COUNTY. :
: DECISION
: _____ :
:

SYNOPSIS

The Board certified tenure charges of unbecoming conduct, excessive absenteeism and other just cause against respondent custodian. (In a prior case, the Board alleged respondent was nontenured, but the Commissioner determined that respondent was tenured, thus, the present tenure matter.)

The ALJ found that respondent was not guilty of excessive absences (Charge I). The absences did not create serious problems in the District and the District did not warn respondent of the need for corrective action. As to the other charges involving unbecoming conduct, the ALJ found respondent was guilty in the incident involving Principal Ramsey. The ALJ determined, however, that removal was not warranted. The ALJ imposed a 90-day suspension as the appropriate penalty in this matter.

In light of the record and the credibility assessments of the ALJ, the Commissioner concurred with the ALJ that the Board proved only a single instance of unbecoming conduct on the part of respondent, the incident of defiant conduct against Principal Ramsey. The Commissioner, however, found that this conduct was not “sufficiently flagrant” to warrant respondent’s dismissal or a substantial reduction in salary. (*Redcay*) The Commissioner ordered that respondent forfeit his 120 days of salary already withheld pursuant to *N.J.S.A.* 18A:6-14.

<p>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.</p>

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board’s exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4. Respondent’s exceptions, however, were untimely filed pursuant to *N.J.A.C.* 1:1-18.4(a), in that the Initial Decision was mailed to the parties on July 25, 2002 and his exceptions were filed on August 8, 2002, outside the 13-day period prescribed by regulation. Accordingly, respondent’s exception arguments are not considered in the Commissioner’s determination of this matter.

The Board excepts to the Administrative Law Judge’s (ALJ) dismissal of Charges I and III, together with his dismissal of a portion of Charge V.¹ As to Charge I, although it concedes that “there are insufficient absences to sustain a charge of excessive absenteeism,” (Board’s Exceptions at 2) the Board nevertheless contends that it has properly demonstrated, through the testimony of Mr. Haleta, Principal of the Monument School, and his memorandum to Robert Richardson dated May 7, 1998 (Exhibit P-4), that respondent failed to follow proper procedures when calling in his absences. Similarly, the Board argues that Charge III should be

¹ Notably, the Board does not object to the ALJ’s recommended dismissal of Charges II and IV. Neither does the Board object to the ALJ’s dismissal of the first three of five allegations contained in Charge V. (Statement of Charges)

sustained since there is credible evidence in the record to support the conclusion that respondent left work before the end of his shift on April 21, 1998. Finally, the Board disputes the ALJ's refusal to credit Mr. Haleta's version of the incident that occurred on May 5, 1998, where the Board alleges that respondent lied to a parent by telling that parent that Mr. Haleta sent his son home. The Board asserts that, in reaching a conclusion on this allegation, the ALJ improperly relied upon hearsay testimony in the form of the parent's written statement that was prepared by respondent, although the parent did not testify at the hearing. (*Id.* at 4) For these reasons, and notwithstanding the ALJ's recommended penalty, the Board urges the Commissioner to terminate respondent's tenured employment or, in the alternative, to suspend him for one year without pay. (*Id.* at 6)²

Upon careful and independent review of the record in this matter, and based upon the credibility assessments of the ALJ, *N.J.S.A.* 52:14B-10(c), the Commissioner concurs with the ALJ's conclusion that Charges I, II, III, and IV, together with four allegations in Charge V, are properly dismissed.³ Concurrently, the Commissioner finds that the Board has proven that portion of Charge V charging respondent with unbecoming conduct toward Mr. Charlie Ramsey, Principal of Trenton Central High School.

² With regard to the penalty recommended by the ALJ, the Board questions whether the "90 day suspension" is to be without pay, adding "Since Respondent was suspended without pay for 120 days pursuant to *N.J.S.A.* 18A:6-14, the presumption of the ALJ ruling is that only 90 of these days should remain as a suspension without pay.***" (Board's Exceptions at 1, footnote 1)

³ In so finding, the Commissioner agrees that the Board has failed to demonstrate by a preponderance of credible evidence that respondent did not follow proper call-in procedures, as alleged in Charge I. (Statement of Charges, Charge I, paragraph three) However, even if Mr. Haleta's testimony in this regard had not been discounted by the ALJ as hearsay, that testimony could fairly be determined to be at equipoise with respondent's testimony on this allegation, which the ALJ appears to have credited. Similarly, even if Mr. Haleta's testimony on Charge III were not deemed hearsay, the Commissioner cannot find on this record that the Board has demonstrated that respondent "*habitually* leaves the building during work hours," as clearly alleged in Charge III. (Statement of Tenure Charges, Charge III at paragraph one) (emphasis added)

With respect to the appropriate penalty in this matter, although the Commissioner acknowledges that tenured custodians have been terminated from employment for conduct that included abusive language and hostile behavior toward supervisors and colleagues, *see, In the Matter of the Tenure Hearing of John De Maio, School District of the Borough of Elmwood Park, Bergen County*, decided June 3, 1998, *aff'd* State Board November 4, 1998, and *In the Matter of the Tenure Hearing of Saad Radwan, School District of the Borough of Carteret, Middlesex County*, decided January 14, 1999, *aff'd* State Board May 3, 2000, *aff'd* Appellate Division February 8, 2002, A-5537-99T3, in those instances, respondents were found to have exhibited *a pattern* of extremely belligerent and offensive conduct, including threats of physical harm (*see DeMaio* slip op. at 4, 6) and “explosive” demonstrations (*see, Radwan* slip. op. at 8, 20, 21).

By contrast, notwithstanding the scope of its allegations, this Board has proven only a single instance of unbecoming conduct on the part of respondent, that is,

[o]n October 21, 1998, Charlie Ramsey, Principal of the Trenton Central High School, approached Respondent while he was talking to a Substitute Secretary and asked if he was on break. Respondent was assigned to Trenton Central High School at the Time. Respondent later interrupted Mr. Ramsey in a loud, abusive, and disrespectful manner, exclaiming that “You’re not my Master, I can only serve one Master, and that is Mr. Richardson. I don’t have to listen to anything you say.” (Statement of Tenure Charges, Charge V, paragraph 4)

Clearly, such defiant conduct is both inappropriate and inexcusable. However, the Commissioner finds that this conduct, alone, is not “sufficiently flagrant” to warrant respondent’s dismissal (*Redcay, supra*) or the substantial reduction in salary which the Board requests.

Accordingly, the Commissioner finds that a portion of Charge V, as set forth herein, is sustained and orders that respondent shall forfeit his 120 days of salary already withheld pursuant to *N.J.S.A.* 18A:6-14.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: September 6, 2002

Date of Mailing: September 10, 2002

⁴ This decision, as the Commissioner's final determination, 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.