

544-03

IN THE MATTER OF THE TENURE :
HEARING OF FREDDIE WILLIAMS, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY. :
_____ :

SYNOPSIS

Board of Education brought charges of excessive absenteeism and unbecoming conduct against tenured custodian.

ALJ found that the Board failed to prove charge of excessive absenteeism, finding, among other deficiencies, that the Board did not consider the reasons for and nature of respondent's absences and that it offered no proof of any adverse impact as a result of the absences. ALJ found the Board proved unbecoming conduct based on one instance of respondent's unauthorized absence from the worksite (not two, as charged) and several instances of respondent's failure to clock out at the end of his shift.

Commissioner adopted Initial Decision with modification. Commissioner concurred with ALJ's findings and conclusions as to tenure charges, but disagreed that a 30-day suspension was sufficient penalty for the charges proven. The Commissioner instead directed that respondent forfeit the salary already withheld from him pursuant to *N.J.S.A.* 18A:6-14.

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.

September 15, 2003

OAL DKT. NO. EDU 4579-02
AGENCY DKT. NO. 191-6/02

IN THE MATTER OF THE TENURE :
HEARING OF FREDDIE WILLIAMS, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Pursuant to *N.J.A.C.* 1:1-18.4, exceptions to the Initial Decision were filed by the Board of Education (Board), as were reply and cross-exceptions by respondent.¹

In its exceptions, the Board urges the Commissioner to reject the Initial Decision and find instead that respondent's absences as set forth by the Administrative Law Judge (ALJ) do, in fact, constitute excessive absenteeism, since respondent has exhibited a continuing pattern of absenteeism despite being placed on notice about his attendance. The Board further urges that dismissal from tenured employment is the appropriate penalty for the instances of unbecoming conduct found by the ALJ, or at the very least, a 120-day loss of salary as was imposed in *In the Matter of the Tenure Hearing of Ralph McCullough, School District of the City of Trenton, Mercer County*, decided by the Commissioner on September 6, 2002 and affirmed by the State Board of

¹ See note 2 below.

Education on April 2, 2003. In reply, respondent urges adoption of the Initial Decision with respect to the charge of excessive absenteeism, but contends that the ALJ erred in finding respondent guilty of unbecoming conduct and imposing a 30-day suspension as a result.²

Initially, the Commissioner concurs with the ALJ, for the reasons carefully enumerated in the Initial Decision, that under all the circumstances of this matter, the Board has not met its burden of proving its charge of excessive absenteeism. Additionally, finding no basis to disagree with the credibility determinations of the ALJ or with his analysis of respondent's actions, the Commissioner further concurs that respondent is guilty of unbecoming conduct for one instance of unauthorized absence from the worksite (not two, as charged) and several instances of failure to clock out at the end of his work shift.

The Commissioner does not agree, however, that the appropriate penalty for respondent's unbecoming conduct as proven on the present record is a 30-day suspension. While there is no question that the charges proven in this matter do not rise to the level of warranting respondent's dismissal from tenured employment, they *do* warrant a penalty sufficiently severe to discourage the cavalier attitude evident in respondent's testimony with respect to basic employee responsibilities of remaining on premises when on duty and appropriately signing or clocking out at the end of a work shift. The Commissioner finds a 30-day suspension insufficient for this purpose, and he

² The Commissioner here notes that respondent's submission, filed within the time period for reply exceptions as extended at respondent's request, is substantially in the nature of primary exceptions, not reply or cross-exceptions as purported. However, to the extent that respondent's submission does not constitute a reply to the Board's exceptions, the arguments raised therein substantially reiterate those of respondent's post-hearing brief, which both the ALJ and the Commissioner have fully considered.

directs instead that respondent forfeit the salary already withheld from him pursuant to *N.J.S.A.* 18A:6-14.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 15, 2003

Date of Mailing: September 16, 2003

³ This decision 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.*