

PETER LACHENAUER, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL : DECISION
DISTRICT OF THE CITY OF :
NEWARK, ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the denial by respondent District of his request for a hearing concerning his removal as a teacher, pursuant to *N.J.A.C.* 6A:32-4.6. The District contended that the petition should be dismissed for untimeliness, pursuant to *N.J.A.C.* 6A:3-1.3(i), and further argued that petitioner was not entitled to a hearing under *N.J.A.C.* 6A:32-4.6 as he received notice of termination pursuant to his employment contract rather than notice of nonrenewal for a subsequent school year. The District filed a motion for summary decision, based on petitioner's failure to timely file his petition.

The ALJ expressed the view that petitioner should have been entitled to a statement of reasons for non-reemployment pursuant to *N.J.S.A.* 18A:27-3.2, citing *Donaldson v. Board of Education of the City of North Wildwood*, 65 *N.J.* 236, 246-47 (1974), but ultimately concluded that the petition must be dismissed for untimeliness, as the petition was filed more than 90 days after any arguably appropriate trigger date.

Upon a full and independent review, the Commissioner concurred with the ALJ's determination that petitioner failed to file his appeal within the time allowed by applicable regulations. The Commissioner did not, however, adopt that portion of the Initial Decision that suggests that the principles set forth in *Donaldson* must necessarily be applied to actions taken pursuant to a mutual contract termination provision. Accordingly, the Commissioner adopted only the portion of the Initial Decision wherein the petition is dismissed.

<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>

March 18, 2009

OAL DKT NO. EDU 11820-08
AGENCY DKT. NO. 271-9/08

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The petitioner, who was discharged pursuant to a contractual provision allowing termination upon 30 days notice, contends that he was improperly denied a statement of reasons for his termination and an informal hearing before the respondent district's State superintendent. The matter was adjudicated in the Office of Administrative Law (OAL) by way of motion for summary disposition.

The Administrative Law Judge (ALJ) concluded that the petition must be dismissed for untimeliness. The ALJ also expressed the view that a teaching staff member whose employment has been ended pursuant to a mutual contractual termination provision should have the same right to a statement of reasons as is bestowed by *N.J.S.A. 18A:27-3.2*, and the same access to an informal appearance before the employing board of education as was encouraged by the Court in the case of *Donaldson v. Board of Education of the City of North Wildwood*, 65 *N.J.* 236, 246-47 (1974).

Petitioner did not except to the dismissal for untimeliness, but did submit an ‘exception’ endorsing the ALJ’s opinion concerning the rights due to an employee who has been fired pursuant to a contractual termination clause. Respondent, understandably, had no objection to the ALJ’s determination about the timeliness of the petition but excepted to the ALJ’s analysis of the rights of an employee fired via the employer’s exercise of a contractual termination provision.

After independent review of the record, motion papers, Initial Decision and the parties’ exceptions, the Commissioner concurs with the ALJ’s determination that petitioner had failed to file his appeal with the Commissioner within the time allowed by the applicable regulations. The Commissioner does not, however, adopt that portion of the Initial Decision that suggests that, in general, the principles set forth in *Donaldson* – pertaining to non-renewals, *i.e.*, employment actions taken outside the four corners of the employment contract – must necessarily be applied to actions taken pursuant to a mutual contract termination provision.

Most importantly, there was no need, in this case, to address those principles. It is axiomatic that, in most cases, issues not essential to the disposition of a controversy should not be adjudicated and do not create precedent. *See, e.g. Emma Wendt v. Bergen Savings Bank, et al.*, 133 *N.J. Eq.* 34, 35-36 (1943), in which the New Jersey Court of Errors and Appeals referred to a portion of the decision of the lower court:

We do not think that a determination of this point was necessary for the disposition of the case, and we pass over that question here, neither approving nor disapproving of any application to the instant case the court below may have intended to make by citing cases on this point.

Accordingly, the Commissioner adopts only the portion of the Initial Decision wherein the petition is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2009

Date of Mailing: March 18, 2009

* This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.