

IN THE MATTER OF THE TENURE :
HEARING OF FARID ASIM, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE : DECISION
CITY OF TRENTON, MERCER COUNTY. :

SYNOPSIS

The petitioning Board certified charges of conduct unbecoming and other just cause against respondent – a tenured Administrative II Secretary – for, *inter alia*, allegedly: removing money orders and student documents from Trenton Central High School (TCHS) and taking them to the Daylight/Twilight High School (DTHS) – the work location to which Asim had been reassigned – without the approval or knowledge of school administration; failing to submit time sensitive payments; failing to fulfill assigned duties; improperly handling school documents; and improperly handling school funds. The Board sought respondent’s removal from his tenured position. Respondent contended that his conduct was not intentional in that he had no nefarious motive, but rather he was simply overwhelmed with his work duties; respondent asserted that the loss of tenure is too harsh a penalty under the circumstances.

The ALJ found, *inter alia*, that: unbecoming conduct has been broadly defined, and may be based solely upon a violation of the implicit standard of good behavior expected from those individuals who are in the public eye or employed in the public sector; while employed at TCHS, respondent was responsible for processing transcript requests – and turning over the money orders submitted as payment for transcripts – in a timely fashion; upon his reassignment to DTHS, a backlog of transcript requests, student records, and money orders – which had been sent to TCHS up to four years prior – was discovered under respondent’s desk at his new work location; respondent removed school documents from TCHS without permission, purportedly because he had not been able to complete the work while he was still employed in TCHS’s guidance office; respondent failed to provide timely responses to requests filed with the school for transcripts and other school records; respondent failed to properly submit money orders received from persons requesting documents, thereby mishandling funds entrusted to him; and respondent did not take advantage of the accommodations made by the district to deal with the work stress he encountered, and failed to comprehend the district’s needs with regard to his job function despite assistance offered by the administration at TCHS. The ALJ concluded that: the respondent failed to fulfill the requirements of his position; respondent’s behavior constituted misconduct; and the appropriate penalty is removal of tenure.

Upon independent review and consideration, the Commissioner concurred with the ALJ’s findings and determination. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the respondent was dismissed from his tenured position.

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.

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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 District's reply thereto – filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in making his determination herein.

This matter involves tenure charges of unbecoming conduct and other just cause brought by the District against respondent, Farid Asim, a tenured Administrative II Secretary. The District charges that respondent: removed money orders that were made payable to Trenton Central High School (TCHS) from that building and took them to the Daylight/Twilight High School (D/THS) without proper notification and/or approval; removed personal and/or sensitive student documents from TCHS and took them to D/THS without proper notification and/or approval; failed to submit time sensitive payments; failed to fulfill assigned duties; improperly handled school documents; and improperly handled school funds.

The Administrative Law Judge (ALJ) found that the District had proven its charges against respondent by the preponderance of the credible evidence and recommended respondent's removal from his tenured position.

Respondent's exceptions essentially argue that he should not be removed from his position as the charges against him are more properly categorized as inefficiency or failure to adequately perform his duties rather than unbecoming conduct as charged by the District. Citing to three Civil Service cases, respondent maintains that the penalty imposed on him should be more in line with that given to employees, such as those in the cases cited, charged with incompetency or failure to perform duties rather than unbecoming conduct. Moreover, he asserts, his conduct was not intentional in that he had no nefarious motive. Rather, he was just overwhelmed with work and ill-equipped to resolve his problems. Loss of his tenured position, under these circumstances – respondent argues – is too harsh a penalty.

In reply, the District points out that failure to adequately perform his duties is not a tenure charge contemplated by the statute. However, even assuming, *arguendo*, that respondent failed to perform his duties adequately, such failure – depending on the facts – could most certainly constitute unbecoming conduct. The District advances that the ALJ's Initial Decision is in concurrence with this proposition. Furthermore, the District argues:

The [District] would also note that any asserted inefficiency in the performance of Mr. Asim's duties is overshadowed by the fact that he removed confidential student records over which he had no authority to an unauthorized location. Any individual assigned to follow-up on the transcript requests that were not processed by Mr. Asim would have been unable to complete the requests because much of the information had been transported from TCHS to D/THS and secreted under his desk. While Mr. Asim asserts that he had no "nefarious motive" in transporting the records to D/THS, the [District] would assert that the motive was to avoid discovery of work that was unprocessed when he was unexpectedly transferred from TCHS to D/THS. Obviously, Mr. Asim felt that his job was in jeopardy if the entire volume of unfinished work were to be discovered and therefore determined to take the work with him to avoid discovery and protect his job. When Mr. Asim's rejection of the offered assistance is added to the formula, what emerges is a picture of an employee who was determined to perform his duties in his own way, regardless of the impact on others, who was unable to complete his assigned duties because of the way in which he unilaterally determined to perform them, who repeatedly rejected recommendations to improve his work flow and reduce the workload, and who now claims that

because the [District] offered accommodations instead of probation, he is entitled to return to the position that he failed to perform effectively, despite his rejection of the offered assistance. Clearly, the [District] has taken appropriate steps in this matter and Mr. Asim's conduct does not constitute inefficient conduct. Rather it constitutes conduct unbecoming an employee of the Trenton School District. Accordingly, Mr. Asim's tenure status should be removed and he should be terminated from his position. (District's Reply Exceptions at 10-11)

Upon a comprehensive review of the record in this matter, which included transcripts of the hearing conducted at the OAL on October 26, November 26 and December 4, 2012, the Commissioner concurs with the ALJ that the District has established that respondent is guilty of: failing to fulfill the requirements of his position; removing school documents from TCHS without approval; failure to provide timely responses to requests filed with the school for transcripts and other school records; and failure to submit to the proper school personnel money orders received from individuals requesting documents, thereby mishandling funds entrusted to him by both the payor and the district. (Initial Decision at 22) The Commissioner finds the ALJ's conclusions as to the truth of the District's allegations, and his detailed characterization of respondent's behavior on these charges as unbecoming conduct, to be fully supported by the record and consistent with applicable law.

Moreover, the ALJ had the opportunity to assess the credibility of the witnesses that appeared before him and made findings of fact based upon their testimony. It is well-established that the Commissioner must defer to the credibility findings of the ALJ unless these prove to be arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record. *N.J.S.A. 52:14B-10(c)*. The Commissioner finds no basis in the record to reject either the ALJ's recitations of testimony or his determinations of witness credibility.

Turning to the appropriate penalty to be imposed in this matter, notwithstanding that there is no indication in the record that respondent was the subject of any prior discipline, the Commissioner is compelled to agree with the ALJ's determination in this regard:

Mr. Asim has been proven guilty of engaging in misconduct by a preponderance of the credible evidence. His repeated failure to perform his job and the concomitant misconduct involved in that failure occurred over a considerable period of time and is not limited to a single or even just a few instances. He seems not to have taken advantage of the accommodations made to deal with the stress he encountered. He also seems not to have understood the needs of the District in regard to the work he was tasked to perform, despite attempts by responsible personnel to inform him of the needs and to assist him to conform. In such an event, the only appropriate penalty is the removal of his tenure. (Initial Decision at 22)

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Farid Asim is hereby dismissed from his tenured position with the School District of the City of Trenton.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: May 28, 2013

Date of Mailing: May 29, 2013

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)