

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

SYNOPSIS

Petitioner sought reinstatement of his salary and benefits as a former teacher in the Newark School District, retroactive to the 121st day after he was suspended without pay while tenure arbitration proceedings were ongoing, as required by the plain language of *N.J.S.A. 18A:6-14*. The school district asserted that the Appellate Division’s remand of this matter was not a reversal of the original arbitration decision, and that when tenure charges have been sustained on the original hearing, the suspension may be continued unless and until that determination is reversed. The parties filed cross motions for summary decision. The petitioner herein had been removed from his tenured position subsequent to an arbitrator’s decision in February 2013, which sustained tenure charges of inefficiency. Following appeal proceedings, the Appellate Division issued a decision entitled *Felicia Pugliese v. State-Operated School District of the City of Newark and Edgard Chavez v. State-Operated School District of the City of Newark*, 440 *N.J. Super* 501 (App. Div. May 19, 2015), which remanded the matter to the Commissioner with directions to provide certain guidance to arbitrators in tenure cases. The Commissioner reassigned the petitioner’s case to Arbitrator Timothy Brown, who had issued the original decision sustaining the tenure charges in 2013. In March 2016, Arbitrator Brown issued a second decision, which considered the tenure charges once again, sustained them once again, and removed the petitioner from his tenured position.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; *N.J.S.A. 18A:6-14* provides that if a tenure charge is sustained on the original hearing or on an appeal therefrom, the suspension may be continued unless the determination is reversed; the Appellate Division did not question the arbitrator’s decision to sustain the tenure charge, and never reversed that decision within the meaning of *N.J.S.A. 18A:6-14*; in fact, the same arbitrator revisited the matter on remand and once again sustained the charges of inefficiency; as the Commissioner previously found in a companion case, 120-day cases that preceded the implementation of TEACHNJ are inapposite in that administrative law judge decisions before TEACHNJ were recommendations rather than final decisions – unlike the final and binding decisions of arbitrators pursuant to TEACHNJ. Accordingly, as there has never been a dismissal of the charges before or after the Appellate Division decision regarding the petitioner, he is not entitled to the restoration of his pay under *N.J.S.A. 18A:6-14*. The ALJ concluded that the Board is entitled to summary decision in its favor.

Upon review, the Commissioner concurred with the ALJ’s determination – for the reasons stated in the Initial Decision – that the petitioner is not entitled to restoration of his pay under *N.J.S.A. 18A:6-14*; further, the Commissioner determined that petitioner’s exceptions were without merit, as the arguments advanced therein were considered and fully addressed by the ALJ in the Initial Decision. Accordingly, the Initial Decision of the OAL was adopted as the final decision, and the petition was dismissed.

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.

July 11, 2016

OAL DKT. NO. EDU 14440-15
AGENCY DKT. NO. 206-8/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Edgard Chavez, and the State-Operated School District of the City of Newark’s (District) reply thereto.

This matter involves a request by the petitioner for full salary and benefits retroactive to the 121st day after he was suspended without pay¹ while tenure arbitration proceedings are ongoing. The stipulated facts and the procedural history were thoroughly outlined in the Initial Decision and will not be repeated here; however, a brief summary of the procedural history is required to provide the necessary context for the instant matter. On February 6, 2013, Arbitrator Timothy Brown issued a decision sustaining tenure charges filed against the petitioner and removing the petitioner from his tenured position with the District. The petitioner appealed the February 6, 2013 decision to the New Jersey Superior Court Chancery Division, who confirmed Arbitrator Brown’s award. Thereafter, the petitioner filed an appeal with the Superior Court, Appellate Division. On May 19, 2015, the Appellate Division

¹ The petitioner was provided with back pay from the 121st day of his suspension through the date of Arbitrator Brown’s first decision.

issued a decision remanding the matter to the Commissioner with directions to provide certain guidance to arbitrators in tenure cases. *Felicia Pugliese v. State-Operated School District of the City of Newark and Edgard Chavez v. State-Operated School District of the City of Newark*, 440 N.J. Super 501 (App. Div. May 19, 2015). After receipt of the Appellate Division's decision, the Commissioner reassigned the tenure charges against the petitioner to Arbitrator Brown for further proceedings. On March 17, 2016, Arbitrator Brown issued a decision again sustaining the tenure charges filed against the petitioner and removing the petitioner from his tenured position with the District.

The Administrative Law Judge (ALJ) found that the petitioner is not entitled to the restoration of his pay under N.J.S.A. 18A:6-14 for the period from the 121st day of his suspension until Arbitrator Brown issued his second decision on March 17, 2016. The ALJ further found that the Commissioner's decision in *Felicia Pugliese v. State-Operated School District of the City of Newark, Essex County*, Commissioner Decision No. 144-16, decided April 12, 2016, is dispositive of the issues in this matter and as a result the District is entitled to summary decision.

In his exceptions, the petitioner reiterates the arguments advanced below to contend that the ALJ incorrectly interpreted the decision of the Appellate Division remanding the case to the Commissioner. The petitioner maintains that the February 6, 2013 decision of Arbitrator Brown was reversed by the Appellate Division, thereby rendering it of no force or effect. The petitioner emphasizes that upon remanding the matter, the court directed the Commissioner to "inform the arbitrator what legal standards to utilize, after which the arbitrators must review the facts anew within this legal framework." Therefore – because there was not a determination on the charges by Arbitrator Brown until March 17, 2016 – pursuant to

N.J.S.A. 18A:6-14, the District was without discretion to deny the restoration of the petitioner's salary starting on the 121st day of his suspension through March 17, 2016. As a result, the petitioner submits that the ALJ committed reversible error and the Initial Decision should be rejected.

Upon review, the Commissioner concurs with the ALJ's determination – for the reasons stated in the Initial Decision – that the petitioner is not entitled to the restoration of his pay under *N.J.S.A.* 18A:6-14 for the period from the 121st day of his suspension until Arbitrator Brown issued his second decision on March 17, 2016. The Commissioner is also not persuaded that the exceptions submitted by the petitioner dictate a different result, as the arguments advanced by the petitioner in his exceptions were considered and fully addressed by the ALJ in the Initial Decision.

It is undisputed that under *N.J.S.A.* 18A:6-14, tenured employees are entitled to receive full salary and benefits starting with the 121st day of their suspension until a determination on the tenure charges is made by an arbitrator. *N.J.S.A.* 18A:6-14 also provides that, “[s]hould the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.” In this case, there was a determination by Arbitrator Brown on February 6, 2013 sustaining the charges of inefficiency at the original hearing. Those charges were not dismissed on appeal, and therefore did not trigger the reinstatement of the petitioner with full pay as of the time of her suspension pursuant to *N.J.S.A.* 18A:6-14; rather, the matter was remanded as a part of the petitioner's appeal process. As was stated in *Pugliese, supra*:

A tenured employee who is appealing from sustained charges may not fall back on the 120-day provision during the appeal process;

instead, if the employee is successful in getting charges dismissed the employee is entitled to be reinstated with full pay as of the date of suspension. Moreover, the Appellate Division's reversal and remand of these proceedings did not re-trigger the 120-day rule because there is no mechanism for such contained within *N.J.S.A.* 18A:6-14.

As a result, the petitioner is not entitled to the restoration of his pay under *N.J.S.A.* 18A:6-14 for the period from the 121st day of his suspension until Arbitrator Brown issued his second decision on March 17, 2016. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 11, 2016
Date of Mailing: July 11, 2016

² Pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1), Commissioner decisions are appealable to the Superior Court, Appellate Division.