271-15

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

Docket 96-4/15

In the Matter of Tenure Charges Against Arnold Anderson, Respondent

Filed By

THE CI TY OF NEW BRUNSWICK SCHOOL DISTRICT, MIDDLESEX COUNTY

For the City of New Brunswick School District, Middlesex County:
Mr. George F. Hendricks, Esq.

For Mr. Arnold Anderson, Respondent:
Mr. Edward Cridge, Esq,

Arbitrator David L. Gregory

The Dorothy Day Professor of Law and
The Executive Director of the Center for Labor and Employment Law
St. John's University School of Law
8000 Utopia Parkway
Jamaica, Queens, New York 11439
gregoryd@stjohns.edu; 718 990 6019

August 19, 2015: Date of Arbitrator's Decision

Arbitrator's Decision

By the May 21, 2015 appointment letter from the Department of Education of the State of New Jersey, I was appointed Arbitrator in the Matter of the Tenure Hearing of Arnold Anderson, School District of the City of New Brunswick, Middlesex County, Agency Docket No. 96-4/15.

Following extensive interlocutory briefing and argument by the parties, I granted Respondent's Motion to dismiss the inefficiency charges. My Decision is incorporated herein by reference.

The balance of this proceeding involves Respondent's chronic tardiness as conduct unbecoming. The Roosevelt School Principal meticulously tracked Respondent's cascades of tardiness, none of which is plausibly explained by Respondent. At most, Respondent uses micro-quibbles of a few unpersuasive explanations, with a macro-default position that even when he is late he nevertheless delivers a superb educational experience to his grateful students. In a recent period of chronic tardiness in the 2013—2014 academic year, Respondent was late "49 times after 8:40 a.m. and 16 late punch-in times of five or more minutes".... "for the 2014---2015 school year 40 times after 8:40 a.m. and six additional late punch in times of 5 or more minutes as of March 20, 2015."
(Tr. At 8, July 8, 2015)

I find that the parties' extreme positions are untenable, going forward. There is no doubt that the District has proven conduct unbecoming chronic tardiness. Assuming arguendo that Respondent is "all business" once he arrives, his self-serving inflated characterization of his substantive abilities misses the essential point. His students are fully entitled to receive Respondent's very best efforts for the entire period, and not merely for that remaining portion of the period following Respondent's chronically late arrivals.

I am intrigued by Respondent's innovative legal argument that Respondent's notorious tardiness record does not somehow warrant a severe sanction. Ultimately, however, abstract theory does not carry the day for Respondent. He offers no credible explanations for his proven tardiness record. Withholding increment increases does not seem to have captured Respondent's attention sufficient to dramatically improve his punctuality. Nevertheless, Respondent is entitled to due process and fundamental fairness. Due process is best understood as that which is due under the circumstances. With a decade and a half of service, progressive discipline and due process sufficiently militate against summary discharge in this case. Once charges are so well proven, I believe that the Employer is usually entitled to the imposition of the penalty sought. This is the established Elkouri principle. This case presents the rare exception to the general rule, and is also in full accord with the Elkouri principle.

DECISION

RESPONDENT SHALL RETURN TO WORK IN FULL PAY STATUS ON THE FIRST DAY OF SCHEDULED CLASSES FOLLOWING JANUARY 1, 2016.

He shall be in a no-pay disciplinary status for the proven conduct unbecoming of chronic tardiness, until he returns to full pay status as set forth above.

So Ordered,

David L. Gregory

I, David L. Gregory, affirm that I have executed this document as my Decision as Arbitrator in this matter on this 19th Day of August, 2015.

David L. Gregory

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

Docket 96-4/15

In the Matter of Tenure Charges Against Arnold Anderson, Respondent

Filed By

THE CI TY OF NEW BRUNSWICK SCHOOL DISTRICT, MIDDLESEX COUNTY

For the City of New Brunswick School District, Middlesex County:
Mr. George F. Hendricks, Esq.

For Mr. Arnold Anderson, Respondent:
Mr. Edward Cridge, Esq,

Arbitrator David L. Gregory

The Dorothy Day Professor of Law and
The Executive Director of the Center for Labor and Employment Law
St. John's University School of Law
8000 Utopia Parkway
Jamaica, Queens, New York 11439
gregoryd@stjohns.edu
718 990 6019

Arbitrator's Decision

By the May 21, 2015 appointment letter from the Department of Education of the State of New Jersey, I was appointed Arbitrator in the Matter of the Tenure Hearing of Arnold Anderson, School District of the City of New Brunswick, Middlesex County, Agency Docket No. 96-4/15.

Respondent's Motion to dismiss the inefficiency charges is granted. He did not receive a formal notice of inefficiency, and he did not have the mandatory 90 day period to endeavor to correct those inefficiencies. I find that the District is foreclosed from both Section 8 and 25. See Respondent's superb, concise synthesis of the authoritative decisions , inter alia, Arbitrator Simmelkjaer), (Respondent's June 12, 2015 letter brief in support of Motion to dismiss the charges of inefficiency.). and, most recently, Arbitrator Gerber (in re Newark and in Leonard Yarborough, June 8, 2015, respectively). (and Pugliese, 2015 N.J. Super Lexis 83 notwithstanding)

New Jersey has dramatically redesigned and rejuvenated its teacher tenure dynamic. TEACHNJ does not operate in a vacuum. Over time, and probably sooner than later, New Jersey should begin to realize impressive cost savings via the TEACHNJ panel of distinguished Arbitrators. The issue in this battery of analogous cases is especially conducive to being determined with precedential effect, guiding at least the institutional parties in any future cases without significant additional costs..

Although the decisions of fellow panel members do not formally have res judicata or collateral estoppel effect, their prior decisions that routinely involve one of the institutional parties, focus on the same particular statutory law, have closely analogous facts and corresponding Arbitral elucidation are, at the very least, appropriately highly influential. "...the precedential value of a prior award between the parties is to be determined by the subsequent arbitrator." Elkouri and Elkouri, How Arbitration Works (6th Edition) at 598.

Respondent has extensively cited a burgeoning litany of very persuasive decisions, finding that "the District erred when it discharged Respondent when it used 2012-13 as one of the two evaluation ...years ." Arbitrator Stephen M. Bluth, Sandra Cheatham and School District of the City of Newark, Agency Dkt Number 226 8/14, at 14, October 16, 2014. Furthermore, having lost in the Section 25 context, the unsuccessful School District cannot then invoke Section 8, as Arbitrator Bluth explains at considerable length in his decision in Cheatham.

Decision and Order

The inefficiency charges are dismissed.

We shall convene hearings forthwith re the conduct unbecoming charges remaining.

So Ordered,

David L. Gregory

I, David L. Gregory, affirm that I have executed this document as my Decision, Award, and Order on this 2ND Day Of July 2015.