

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges Against
Paul Carratura

**SCHOOL DISTRICT OF THE TOWN OF KEARNEY,
HUDSON COUNTY**

**Docket #:
205 8-18**

Petitioner

Opinion and Award

- and -

PAUL CARRATURA,

Respondent

Before: Deborah M. Gaines, Arbitrator

APPEARANCES:

FOR THE PETITIONER:
Kenneth Lindenfelser, Esq.

FOR THE RESPONDENT:
Oxfeld Cohen, P.C.
By: Jesse Humphries, Esq.

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 and P.L. 2015, c. 109("TEACHNJ"), the tenure charges brought by the Town of Kearney ("the District" or "Petitioner") against Paul Carratura ("Carratura" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and Decision on September 21, 2018. I conducted hearings at the District's Offices in Kearney, New Jersey on December 14, 2018 and January 14, 2019.

At the hearing, the parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The hearings were transcribed. The parties' written statements were received by the undersigned by February 18, 2019, whereupon the record was closed.

THE CHARGES

Respondent is charged with excessive absenteeism, incapacity, insubordination, conduct unbecoming an employee and other just cause for dismissal pursuant to 18A:6-10 as described in 28 paragraphs in the Board's Sworn Tenure Charges. The substance of these charges allege that, from January 1, 2018 until the date Respondent was charged, he missed 73 days of work (54 counted as sick days and 19 taken as compensatory time) and that he called in only 21 times for all his absences; Respondent failed to respond to written notices and failed to report to work to formulate a corrective action plan; that Respondent's actions resulted in work being left undone and endangered the health and safety of the students by preventing the District from being able to fully complete all custodial duties each day.

BACKGROUND

The following summarizes the relevant testimony and facts adduced during the hearing. Respondent began employment with the Kearney School District on May 4, 2000. He was promoted soon thereafter to head custodian of Garfield Elementary School.

The Respondent had no prior disciplinary history. However, for the period beginning January 1, 2018 through July 31, 2018, the Respondent was absent 73 days. Of those days, he called in sick only 21 times. [See Absence Records, District Exhibit E].

The record evidence establishes the District attempted to contact Respondent by phone on numerous occasions. Director of Plant Operations, Mark Bruscano also sent him a letter on May 8, 2018 stating that the letter would serve as "formal written notice and to confirm in writing [his] telephone messages concerning your unacceptable job attendance and absence notifications." [District Exhibit G]. The letter informed Respondent that disciplinary action would follow if he failed to notify the school on a daily basis of his absence and that he needed to provide medical documentation for his absences.

[Id.]. A second letter was sent to him by Mr. Bruscano on May 15, 2018. [District Exhibit H]. The letter provided in pertinent part:

Please provide this office with a doctor's note by Friday, May 18, 2018 for all of the dates you have not been present at your job. If I do not receive a doctor's note by the

above date, it will be determined that you have abandoned your position. [Id.]

Respondent failed to respond to any of the communications. Mr. Bruscano testified that he made numerous phone calls to the Respondent. He testified that from January 1, 2018 to June 18, 2018 the Respondent had no contact with the District. He testified that he sent people to the Respondent's home to try to find out what was wrong. On June 7, 2018 Respondent met with Bruscano and his Union Representative. Bruscano advised Respondent to obtain a doctor's note by Monday. He testified that he never received any notes from Respondent nor did the Respondent call or email the school to advise them he would be out.

Bruscano testified Respondent's absences had a negative impact on the school. He noted he could not hire a new custodian, and, therefore, had to cover the custodial duties with the staff he had and pay others to cover for Respondent. That included overtime and premium pay for the custodian who had to be given a temporary increase in level pay.

The policies introduced into evidence demonstrate that Employees are advised that attendance is essential for the efficient operation of the schools and that it is part of their performance expectations. Policy 4212 also requires employees to provide prompt notice of absence and to verify their absences

if excessive. The school also requires medical documentation after three consecutive days of absence for illness.

Respondent acknowledged the absences charged and his failure to properly notify the school. He testified that he was incapacitated by depression beginning in January 2018. He testified three of his friends had recently died and he also found a lump of some kind, and feared he had cancer. He testified that he had never experienced anything similar and did not understand what was happening to him. He could not leave the house and was unable to cope. Eventually he went to therapy and testified he now understands what was wrong and believes such an incident will not reoccur. He testified he does not take any medication for depression, but is continuing in therapy and ,therefore, would be able to recognize the signs in the future. He submitted a note from his social worker from whom he currently sees for counseling. [Respondent Exhibit 1]

Positions of the Parties

Position of the District

The District argues it has proven the charges against Respondent and met the standard for sustaining termination for absenteeism under the applicable statutory framework. It notes Respondents absences are extreme. It argues Respondent missed 73 days of work during the applicable time period and no reasons

or medical documentation was provided until well after the charges were served.

The District argues the credible record evidence shows it was required to pay overtime to people to cover Respondent's assignments. In addition, there were times his duties went undone.

The District maintains Respondent was provided notice of discipline and ample opportunity to supply documentation and receive any accommodation he may need.

Position of the Respondent

Respondent acknowledges the absences and his failure to provide timely notification and medical documentation. However, Respondent maintains the absenteeism he experienced was a singular event that has been resolved and is unlikely to occur again. Respondent maintains the mental trauma he experienced has been resolved and, if something similar were to occur in the future, his regular therapy sessions will be able to assist him. Respondent cites the Matter of Leslie Ramos to support his position. Respondent argues the hearing officer in that case provided the teacher who had a longer history of excessive absence another chance after determining that her serious health issues had been resolved. Respondent maintains his mental health issues should be viewed in the same light.

Moreover, Respondent maintains progressive discipline should be applied in this case because Respondent lacks any prior disciplinary record, has a positive employment history, and in fact, had never used any major amount of sick time previously as demonstrated by the fact he accumulated 220 sick days. Respondent argues a suspension would be the appropriate penalty in this case, citing other case law.

Decision

After carefully considering the entire record before me, including my assessment of witness credibility and the probative value of evidence, I find the Board has met its burden under the statute to sustain the charges. My reasons follow.

There is no dispute Respondent was absent from work for 73 days between January 1, 2018 to July 1, 2018 or that he failed to call in or provide any medical documentation in a timely manner. In fact, Respondent acknowledges he violated the District's policies regarding attendance.

Regular and predicable attendance is required for all employees in the District and, certainly, is a critical component of the employment relationship. Respondent's absences were excessive by any measure.

While attendance issues normally require progressive discipline to escalate to termination, in this case, Respondent's absences were so numerous, and his failure to even

contact the school, even after he met in person with his supervisor on June 7, 2018, demonstrate the ineffectiveness of any corrective measures.

The record evidence demonstrates the school made every effort to retain Respondent. They called, they wrote, and sent people to his home. He failed to communicate with the District, even after they met with him on June 7, 2018. In fact, no one heard from him until the first day of hearing in December.

While Respondent has now, during the instant proceeding, offered a note from the social worker with whom he now receives counseling, it is insufficient to explain why Respondent could not even call in to work. It merely states that it "appears" he could not come work. This practitioner was not involved in his care during the relevant time period.

While I credit Respondent's testimony that he went through a period of depression that he found debilitating beginning in January, it does explain why he could not make a phone call. Moreover, the school provided him the opportunity to resolve the situation and he still failed to obtain medical information to excuse his absence and to call in to inform the school he would be absent. Respondent's situation is distinct from the situation in Ramos. I do not find that case persuasive.

Under these circumstances, I find no reason to disturb the District's judgment regarding penalty in this matter. As a result, I make the following

AWARD

The charges of excessive absenteeism, incapacity, insubordination, conduct unbecoming an employee. The District has demonstrated just cause for termination.

Deborah Gaines

Dated: March 21, 2019 _____

Deborah Gaines, Arbitrator

Affirmation

State of New York }
County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: March 21, 2019

Deborah Gaines
