

**STATE OF NEW JERSEY DEPARTMENT
OF EDUCATION**

In the Matter of the Tenure Hearing of:

ERIC HALL

and

**NORTH HUNTERDON-VOORHEES REGIONAL
SCHOOL DISTRICT, HUNTERDON COUNTY**

Agency Docket No. 190-9/20

Walt De Treux, Esq., Arbitrator

Hearing Date: 10/30/20

Decision Date: 1/4/21

Appearances: For the Respondent – Edward A. Cridge, Esq., *MELLK O’NEILL*
For the School District – Teresa L. Moore, Esq., *RIKER DANZIG*

Introduction and Statement of Relevant Facts

Respondent Eric Hall served as the Voorhees High School boys’ wrestling team coach during the 2019-20 season. Hall is also a special education teacher in the North HunterdonVoorhees Regional School District. For the 2019-20 school year, he was assigned to teach in a Bethlehem Township (NJ) school.

On January 23, 2020, the wrestling team had a match against Bridgewater-Raritan Regional High School. The next morning, North Hunterdon-Voorhees Athletic Director Brian Baumann learned from Bridgewater-Raritan Athletic Director John Maggio that a Bridgewater-Raritan parent complained that a Voorhees coach had aggressively grabbed one of the Voorhees wrestlers. Baumann reported the conversation to Voorhees Regional High School Principal Ron Peterson. On Peterson’s instruction, Baumann asked AD Maggio for any video

footage of the incident and for a statement from the parent. Pending Baumann's request, Peterson received a copy of the footage from a Bridgewater-Raritan Assistant Principal.

Peterson and Baumann reviewed the footage, which did not have audio. It showed two Voorhees wrestlers running on to the mat in celebration after a Voorhees victory. Their presence on the mat is against the rules. Coach Hall can be seen grabbing both students and pulling them off the mat. One of the wrestlers walks away from Hall and moves near some chairs. Hall walks around several team members to get near the wrestler. He grabs the wrestler near his neck before pushing him with enough force that he stumbled backwards and landed in a seated position in one of the chairs.

After seeing the video, Baumann and an Assistant Principal met with the wrestler who was pushed and asked him why Hall had "put his hands on your neck." The wrestler confirmed that the incident occurred after he ran onto the mat.

Baumann immediately suspended Hall from his coaching position. Later that day, Hall was suspended from his teaching position.

On February 21, 2020, North Hunterdon-Voorhees Regional School District Superintendent Jeffrey Bender issued a notice of tenure charges against Hall seeking his dismissal for unbecoming conduct "[b]y attacking two student athletes" at the wrestling match. For reasons not explained at hearing, the Board did not certify the charges to the New Jersey Commissioner of Education until August 31, 2020. On September 22, 2020, the Commissioner "deemed the charges to be sufficient, if true, to warrant dismissal or reduction in salary." The matter was referred to an arbitrator for adjudication.

On October 30, 2020, a hearing was held, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine

witnesses, and offer argument in support of their respective positions. The District completed its case-in-chief on October 30. Prior to the next scheduled hearing day, Respondent notified the Arbitrator and the District that he rested his case without calling any witnesses. At the same time, he filed a “Motion for Judgment,” which I considered to be his closing brief. The District filed its brief soon thereafter; and on my leave, Respondent filed a reply brief. The matter is now before me for a decision.

Issue

Has the North Hunterdon-Voorhees Regional High School District Board of Education established the allegations of unbecoming conduct against Respondent Eric Hall as set forth in the tenure charges? If so, do those charges warrant dismissal? To what remedies are the parties entitled?

Analysis and Decision

At hearing, Respondent raised evidentiary objections related to the testimony of Assistant Wrestling Coach Ricky Kurtz and the admissibility of the security video footage of the incident. I allowed Kurtz to testify, but withheld my ruling on Respondent’s objection pending receipt of the parties’ written argument included as part of their closing briefs. I admitted the video footage, but indicated to Respondent that he could raise any argument as to its sufficiency or competency as part of his closing argument. In his closing brief,¹ Respondent argues that the video was not properly authenticated, and therefore, was admitted only as hearsay evidence. He posits that the District’s reliance on the video does not satisfy its

¹ Respondent referred to his closing brief as a “Motion for Judgment.”

obligation to present competent, non-hearsay evidence under New Jersey's "residuum rule."

Each issue is discussed separately below.

Testimony of Ricky Kurtz

The TEACHNJ statute instructs the parties on the exchange of evidence prior to hearing.

It reads in relevant part,

"Upon referral of the case to arbitration, the employing board of education shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses. N.J.S.A. 18A:6-17.1(b)(3)

The Commissioner of Education notified the parties that the case had been referred to an arbitrator by letter dated September 22, 2020. Two days later, the District served on Respondent its witness list and summary of testimony. Ricky Kurtz was not included as a witness on that list. Respondent served his witness list and evidence to the District on October 20, 2020, 10 days prior to the first scheduled day of hearing. Ricky Kurtz was listed on Respondent's list of witnesses. Two days later, the District supplemented its witness list with two additional names, including Ricky Kurtz.

Respondent objected at hearing when the District called Kurtz as a witness in its case-in-chief based on the District's failure to list Kurtz on its initial witness list. As noted, I allowed Kurtz to testify while reserving a ruling on Respondent's objection.

As the parties recognized, the employer's obligation to provide all evidence "[u]pon referral of the case to arbitration" has generated substantial litigation over the meaning of

“[u]pon referral.” Although some arbitrators have found that evidence must be turned over “precisely when the matter was referred to arbitration,”² the prevailing interpretation, and the one accepted by this Arbitrator, applies some degree of reasonableness to account for the logistics of providing such information. Respondent presumably agrees, as he did not object to the District’s initial witness list submitted two days after the date of the referral letter. The District’s supplemental listing of Kurtz as a witness one month after the referral to arbitration and eight days prior to hearing clearly does not comply with even a liberal reading of the statute. The District correctly notes that Kurtz was not a surprise witness, as Respondent had included him on its own witness list. Respondent was not prejudiced in any way by the late inclusion of Kurtz. Nonetheless, I am compelled to follow the statutory timelines for the exchange of evidence. The District offered no reason for its failure to list Kurtz on its initial witness list. It was well aware of his limited role in the incident the day following the wrestling match. The statute instructs that the employer “shall be precluded from presenting any additional evidence at hearing” beyond that which was included in their exchange of evidence “[u]pon referral to arbitration.” Accordingly, I sustain Respondent’s objection to Kurtz’ testimony and order it stricken from the record. This Award neither cites to or relies in any way on his testimony.

² *In the Matter of the Tenure Hearing of Marie Ebert*, Agency Dkt No. 267-9/14 (Deneberg, 2015)

Video Footage

The day after the wrestling match, AD Baumann heard from AD Maggio that a parent had complained that Respondent aggressively grabbed a wrestler. Neither ADs had witnessed the incident. Principal Peterson asked Baumann to see if video footage existed. In the meantime, an Assistant Principal from Bridgewater-Raritan forwarded Peterson the footage.

Peterson and Baumann relied primarily on that video footage to suspend Respondent from coaching, and the District relied primarily on that video footage in filing tenure charges to dismiss Respondent from his teaching and coaching duties. Baumann saw an email from the complaining parent, but did not attempt to interview that parent. Baumann met with the wrestler, but he did not ask him to describe the incident. Rather, he simply asked him why Respondent grabbed him by the neck. Both Baumann and Peterson admitted at hearing that they acted against Respondent based on the conduct they viewed on the video.

Respondent argues that the video footage is hearsay evidence because it has not been authenticated, and therefore, is insufficient to serve as competent evidence upon which the tenure charges can be sustained.³

The District stipulated that the video was not authenticated in the sense that it did not confirm with Bridgewater-Raritan how the video was created or inquire how it was secured and transmitted to the District. Respondent asserts that, at the least, the District was obligated to call an eyewitness to the incident to confirm that the video accurately portrayed the incident.

³ Respondent cites to the “residuum rule” articulated by the Court in *Wilson v. State*, 60 N.J. 36 (1972), which stated in relevant part, “But in the final analysis for a court to sustain an administrative decision, which affects the substantial rights of a party, there must be a residuum of legal and competent evidence in the record to support it. At 51-52, citations omitted.

Although the District did not ask Bridgewater-Raritan for “authentication,” in *State v. Wilson*, 135 N.J. 4, 637 A.2d. 1237 (N.J. 1994), the Court, citing *Evidence Rule 901*, explained that “the authentication requirement is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims.” At 17. The Court noted, “...any person with the requisite knowledge of the facts represented in the photograph or videotape may authenticate it. (citation omitted) An authenticator need not even have been present at the time the photograph was taken, so long as the witness can verify that the photograph accurately represents its subjects.” (citation omitted) At 14-15.

Peterson and Baumann learned of a possible incident at the wrestling match on January 23, 2020. They asked Bridgewater-Raritan for security footage of the match. A BridgewaterRaritan official forwarded footage of a wrestling match dated January 23, 2020 that clearly showed Respondent and wrestlers, including the one that was pushed. Baumann was able to clearly identify the subjects in the video based on his familiarity with them.

There is no valid concern that the video is not what it purports to be. As the *Wilson* Court recognized, “the authentication requirement is satisfied by evidence sufficient to support a finding that the matter is what its proponent claims.” Peterson’s testimony that he received the video from a Bridgetown-Raritan Assistant Principal and Baumann’s testimony identifying the date of the match and the subjects in the video are sufficient to support a finding that the footage is of the incident at the January 23, 2020 wrestling match.

For those reasons, I found at hearing that the video was admissible, and I now find that it is competent, non-hearsay evidence supporting the tenure charges.

Unbecoming Conduct

The video depicts Respondent forcefully pulling two wrestlers off the mat after they went on to celebrate a teammate's victory. Once off the mat, one wrestler moves away from the mat and his teammates. Respondent walks around those teammates, approaches the wrestler, grabs him near the neck, and pushes him backward. The wrestler stumbles back and lands seated in a chair.

Respondent's actions are clearly unbecoming conduct for a high school coach. If it is not readily apparent that a coach cannot assault one of his athletes, the coaches are well trained in the standards they must meet. The NJSIAA and NJSCA Coaches Handbook and AD Baumann's "Directives for the Season" make clear a coach cannot use physical force against an athlete. Principal Peterson testified that he had no previous issues with Respondent as a coach, but Respondent "crossed a line that he can't come back from."

Peterson and Baumann's decision to suspend Respondent from coaching, and the District's tenure charges seeking to dismiss him from his coaching position, is well supported by the video evidence. Respondent unnecessarily and aggressively manhandled an athlete, an action sufficiently egregious to justify his dismissal from coaching.

Accordingly, I find that the District established the allegations of unbecoming conduct against Respondent in his position as a coach.

The District, however, failed to present sufficient evidence to establish that Respondent's misconduct as a coach impacts his ability to serve in his position as a special education teacher.

Respondent forcefully grabbed and pulled two wrestlers off the mat. Both Peterson and Baumann characterized that action as inappropriate but were more understanding because it happened in the moment and in the immediate excitement of the competition. They found his subsequent physical interaction with the one wrestler unacceptable because he had at least a few moments to deliberate and distance himself from the wrestlers' possible infraction at the end of the match. I agree with their evaluation of the incident and Respondent's level of culpability, but the District has not adequately explained how misconduct in the context of athletic competition is a reliable predictor of Grievant's future behavior in a classroom setting. Peterson explained at hearing that he could not put Respondent in front of students again "knowing this is how he reacted." But the District offered no prior evidence that Respondent had ever physically confronted a student in the classroom, a setting far removed from an athletic competition. Respondent's summative evaluations for his teaching role for the 2011-12 through the 2018-19 school years consistently rate him as effective. He had two disciplinary actions (a reprimand in the 2019-20 school year and a salary increment withholding in the 2018-19 school year) on his record, neither of which related to interactions with students. In its brief, the District cited to numerous arbitration cases that sustained dismissals of teachers who had engaged in physical aggression toward a student. All those cases involved teachers engaged in misconduct while performing their duties as a teacher.

Respondent was hired for the coaching position separate and apart from his hiring as a teacher. He coached for Voorhees High School. He was a teacher at North Hunterdon High School, assigned to a Bethlehem Township school at the time of the incident. The District failed to adequately explain why Respondent's misconduct as coach at Voorhees impacted his ability to teach at North Hunterdon or the Bethlehem Township school. Voorhees High School

Principal Peterson persuasively testified to the reasons Respondent was no longer fit to coach for the high school. But he admitted that he did not supervise Respondent in his teaching capacity, which diminishes the effectiveness of his testimony as to why Respondent is no longer fit to be a teacher. No administration official from North Hunterdon testified on the impact of the incident on Respondent's teaching position. The evidence simply does not establish that Respondent's inappropriate physical aggression during an athletic competition translates to Respondent's fitness to maintain his composure and act appropriately and professionally in the classroom.

For these reasons, I find that the District's evidence did not establish allegations of unbecoming conduct against Respondent in his position as a special education teacher.

Award and Remedy

The District established the charge of unbecoming conduct against Respondent Eric Hall in his position as a Voorhees High School coach. Accordingly, the tenure charges related to the coaching positions are sustained, and dismissal from Respondent's coaching positions is warranted.

The District did not establish the charge of unbecoming conduct against Respondent Eric Hall in his position as special education teacher. Accordingly, the tenure charges related to the teaching position are dismissed.

As remedy, the District is ordered to remove the dismissal from the teaching position from Respondent's record. It is further ordered to reinstate Respondent to his former teaching position without loss of seniority as soon as practicable after the date of this Award. It is

further ordered to make Respondent whole for any losses, if any, incurred as a result of his dismissal from the teaching position.

The Arbitrator shall retain jurisdiction of the case for the sole purpose of resolving any dispute over the implementation of the remedy.

Walt De Treux

WALT De TREUX

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Affirmation

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

Walt De Treux

WALT De TREUX

1/4/21