

Disobedience of reasonable orders of the School Board is an act of negligence and such conduct may also be classed as persistent and wilful violation of the School Laws.

Ambridge Borough School District vs. Snyder, 346 Pa.103

Ganaposki's Appeal, 332 Pa. 550

The issuance of two unsatisfactory ratings complies with the requirement of establishing incompetence as a basis of discharge.

Thall Appeal, 410 Pa. 22

We are bound by the School Board's conclusions unless we find them to be manifestly erroneous, arbitrary or capricious.

Com. ex rel. Harvey vs. Eastridge, 374 Pa. 172

Wilbert vs. Pittsburgh Con. Coal Co., 385 Pa. 149

When the actions of a school board are challenged, the burden of showing to the contrary rests on the Appellant, and it is a heavy burden, and we can only interfere when it is made apparent that this discretion has been abused.

Hibbs vs. Arensberg, 276 Pa. 24

This burden has not been met by the Appellant.

Our analysis of the testimony leads us to sustain the Board's decision of discharge.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 28th day of December, 1971, it is ordered and decreed that the Appeal of Eva Gregart from the decision of the Board of School Directors of the Center Area School District be and is hereby dismissed, and the action of the Board dismissing her as a professional employe on the charge of incompetence is sustained.

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Appeal of Ervin E. Johnson, a Professional
Employe, from a decision of the Board of
Education of the Philadelphia City School
District, Philadelphia County, Pennsylvania

In the Office of the Secretary of Education,
Commonwealth of Pennsylvania, at
Harrisburg, Pennsylvania

No. 205

OPINION

John C. Pittenger
Secretary of Education

Ervin E. Johnson, Appellant herein, has appealed from a decision of discharge by the Board of Education of the School District of Philadelphia.

FINDINGS OF FACT

1. The Appellant has been a professional employe of the Philadelphia Board of Education since November 25, 1968.
2. The Appellant continued in said employment in said School District as a teacher of common learning, until his suspension from Overbrook High School on September 4, 1970.
3. On September 21, 1970, notice by certified mail, return receipt requested, was mailed by the Philadelphia Board of Education to the Appellant, setting a date of October 5, 1970 for a hearing on the recommendation of dismissal as a professional employe on the charges of incompetency, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.
4. Pursuant to notice, hearing on said charges began on October 5, 1970, and then continued until November 16, 1970.

5. Testimony on behalf of the School Board was presented at the hearing on November 16, 1970.
6. At this hearing, the Appellant, not represented by counsel, made some occasional remarks, but offered no specific testimony or defense in his behalf.
7. Subsequent to the above hearing Appellant filed a suit in United States District Court challenging the proceedings of the Board of Education. The Board declined to take further action pending the outcome of this Court case. Eventually Appellant's Federal claim was dismissed, and on November 8, 1971, the Board voted unanimously to dismiss the Appellant. Notice thereof was mailed on November 24, 1971 and received by the Appellant on November 29, 1971.
8. On December 29, 1971, the Appellant's appeal was filed with the Secretary of Education.
9. A hearing on said appeal was held, pursuant to notice, on January 18, 1972.

TESTIMONY

The hearing held on October 5, 1970 was continued to November 16, 1970 in order to give the Appellant an opportunity to reconsider the advisability of legal representation. At the hearing on November 16, 1970 the Appellant advised the Board that he did not desire to engage counsel. The hearing then proceeded with the taking of testimony.

Leroy S. Layton, Principal of the Overbrook High School, testified substantially as follows:

The Appellant was a teacher in the common learnings program, designed specifically for slow learners. From September 1969 to June 1970, Mr. Johnson was absent 102 days. He had submitted a medical certificate indicating an illness of "nervous exhaustion." The school regulations required teachers to report their absences, but the Appellant had been lax in compliance with this requirement. As a result, his absences caused a lack of continuity in his classes. Based on his observations on various occasions, in the classroom, he noticed that the students didn't carry textbooks; that Mr. Johnson was not observant of the class action; that when he spoke to the class there was no participation. On one occasion, a student was reading a comic book.

When the Appellant was rated, he had conferences with him relative to the anecdotal records in an effort to improve his work, but Mr. Johnson did not respond to supervisory assistance. He actually resisted it.

Mr. Aaron Sklar, Department Head, Social Studies, at Overbrook High School, stated that he was the supervisor of Mr. Johnson. He corroborated Mr. Layton's testimony and further, that the Appellant was careless toward his responsibilities. He had requested seating charts and weekly plans pursuant to regulations, but Mr. Johnson ignored these requirements. As a result, substitutes were unable to perform properly in his classes. He had observed the class on seven occasions.

Walter Scott, Principal of West Philadelphia High School, testified that the Appellant taught in his school from September 1967 to June 1969. In 1967-68 he was absent 73 days and in 1968-69, 119 absences. His medical certificate indicated "nervous exhaustion", but an examination by Dr. Frey dated February 6, 1969 indicated "In the opinion of this office he is physically able to perform his duties."

Mr. Johnson, the Appellant, in answer to questions from the Board, made some remarks about unsatisfactory working conditions, but said nothing in the nature of a defense to the Board's charges and evidence.

DISCUSSION

This appeal is from a decision of discharge of a professional employe by the Philadelphia Board of Education on charges of incompetency, negligence, and wilful violation of the School Laws of the Commonwealth.

At no stage of the proceedings was the Appellant represented by counsel. The first hearing before the School Board was continued, in order to give the Appellant an opportunity to secure counsel and, at the next hearing, Mr. Johnson advised the Board he did not intend to have legal representation. Although given every opportunity to offer a proper defense to the charges, he refused and based his refusal on his statement that he had sent a full statement of his defense to the President of the School Board, and even though the hearing Board had not seen it, or

been advised thereof by the President, he refused to give them a duplicate thereof.

At the hearing on the appeal, he appeared again without counsel, despite the notice of the hearing also stating that representation of counsel was advisable. At this appeal hearing, he again made reference to the statement of defense which he had mailed to the School Board President, and when asked whether it had been mailed "return receipt requested", he replied in the affirmative. He was then requested to submit a copy of said written defense statement to the Secretary of Education, together with a copy of the receipt. This he promised to do, but it has never been received to date. Accordingly, we are bound by the actual record in existence at this date.

The testimony presented at the School Board hearing disclosed prolonged absences from class, failure to submit lesson plans and to maintain seating charts, and improper instruction in the classroom, all to the detriment of the educational program of the District.

In his various communications, he has alleged racial discrimination. This is a serious charge. There is absolutely nothing in the record of this case to substantiate or indicate a basis for such an allegation. It can only be a figment of the Appellant's imagination, and has no relevance to the matter at issue.

On the charge of incompetency, the Appellant's unsatisfactory ratings were entered in evidence. One in 1969 and two in 1970. Anecdotal records were introduced in evidence in substantiation of the unsatisfactory ratings. Leroy S. Layton, the Principal of Overbrook High School wherein the Appellant taught, testified that he had observed Mr. Johnson in class and had conferences with him relative to the anecdotal records in an effort to overcome the unsatisfactory teaching, but the Appellant did not respond to supervisory assistance. He actually resisted it. This was corroborated by Aaron Sklar, the Department Head of Social Studies at Overbrook High School.

On the basis of the record, we find ample substantiation of the charge of incompetency against the Appellant, and we so find. *Thall Appeal*, 410 Pa. 222

The Appellant is further charged with persistent negligence and wilful violation of the School Laws.

These charges are corroborated by the testimony of Leroy S. Layton, Principal, and Aaron Sklar, Department Head of Social Studies at Overbrook High School and the direct supervisor of Mr. Johnson. There is a record of continued absences (102 in 1969-70) in evidence. His absences and failure to report same created a lack of continuity in his classes. The regulation to report absences was not strictly followed. Although seating charts and weekly lesson plans were required, the Appellant failed to supply the same, despite requests from his supervisor. This noncompliance made it exceedingly difficult for substitute replacements to follow the educational program for the students.

In *Edward's Appeal*, 57 Luzerne 105 (1967), Judge Schiffman, at page 116, stated:

"A teacher exerts considerable influence in molding the social and moral outlook of his students by his own precept, deportment and example. With respect to such moral formation, the role of teacher may not be minimized. He is the chief creator of the student's educational environment and main source of his inspiration."

We can appreciate the relevancy of this statement in the present case when we realize that the Appellant was a teacher of common learnings, a program designed principally for slow learners.

The charges can best be summed up by the question asked by Mr. Ross of the School Board, of the Appellant, at the hearing on November 16, 1970.

Q. "What you are saying, I think, is that you were not able to cope with the assignments that you were given. Is that right?"

A. "That is exactly right."

In *Kiebler's Appeal*, 30 D. & C. 620, the Court held that the opinion of a school principal has the status of expert testimony and therefore has probative value if based on their personal observation.

In the instant case, Mr. Layton, the high school principal, has occupied that position for the past 12 years, and has been in the school system since 1942. He personally observed the Appellant in class on various occasions. Accordingly, we attach considerable probative value to his testimony.

In view of the foregoing, we find that the record substantiates and establishes the charges of persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.

In accordance therewith, we make the following

ORDER

AND NOW, to wit, this 3rd day of May, 1972, the Petition of Appeal of Ervin E. Johnson from the action of the Philadelphia Board of Education is hereby dismissed, and we affirm the discharge of Ervin E. Johnson by the Philadelphia Board of Education on the charges of incompetency, persistent negligence and persistent and wilful violation of the School Laws of the Commonwealth.

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Appeal of Erwin F. Albrecht, Jr., a Professional Employee, from a decision of the Board of School Directors of the Abington School District, Montgomery County, Pennsylvania

In the Office of the Secretary of Education, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania

No. 206

OPINION

John C. Pittenger
Secretary of Education

Erwin F. Albrecht, Jr., Appellant herein, has appealed from a decision of demotion by the Board of School Directors of the Abington School District, Montgomery County, Pennsylvania.

FINDINGS OF FACT

1. In September, 1967, the Appellant executed a professional employe contract and was assigned to teach social studies at the North Campus of the Abington High School.
2. On January 9, 1970, a new contract was executed between the parties on a ten month term, and the Appellant was then assigned as an assistant principal at the same school.
3. Pursuant to a letter dated July 7, 1971, approved by Doctor Hoffman, District Superintendent, the Appellant's position as assistant principal was terminated July 9, 1971 and, as of September 2, 1971, he was to begin employment as a social studies teacher.
4. On or about July 14, 1971, the Appellant requested a hearing on the demotion.
5. Pursuant to notice, a hearing on the demotion was held before the School Board on October 11, 1971, and further hearings were held on October 15, 1971, October 22, 1971, October 29, 1971, November 15, 1971, November 17, 1971 and November 18, 1971.
6. On December 2, 1971, the Board of School Directors voted to sustain the demotion, and notice of said decision was given to the Appellant.
7. On January 3, 1972, the Appellant filed a Petition of Appeal with the Secretary of Education
8. A hearing on the appeal, pursuant to notice, was held on April 11, 1972.