

Appeal of Benjamin Lucciola, a Professional Employee, from a decision of the Board of School Directors of the Delaware Valley School District, Pike County, Pennsylvania

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

No. 268

### OPINION

John C. Pittenger  
*Secretary of Education*

Benjamin Lucciola, Appellant herein, has appealed from the decision of the Board of School Directors of the Delaware Valley School District, dismissing him as a professional employee on the grounds of persistent and willful violation of the school laws.

### FINDINGS OF FACT

1. The Appellant is a professional employee. He was issued a professional employee's contract in the Delaware Valley School District in September, 1969. He has taught continuously in the elementary grades of the school district from September, 1969 through the 1974-75 school year.
2. On Monday, February 17, 1975, the Appellant submitted to District Superintendent William Ricker a request for personal business leave for the following week. The request was submitted on a standard form entitled "Request for Personal Business Days", on which the Appellant stated that he wished to have February 26, 27 and 28 off for the purpose of: "Sale of ailing father's house in the city, requiring my presence at the bank, other personal matters to be cleaned up also." The Appellant signed this request form and it was approved by the superintendent on the same day, February 17, 1975.
3. On Monday, February 24, 1975, a person identifying herself as the Appellant's sister called the school district and stated that the Appellant would not be in to work that Monday and Tuesday because he was ill. The Appellant was absent the entire week of February 24-28; Monday and Tuesday were spent on sick leave and Wednesday, Thursday and Friday were spent on personal leave. During this period he was in New Hampshire on a skiing vacation. The school district had to employ a substitute to replace him.
4. On Friday, February 21, 1975, Mrs. John Herring submitted a written request to the school district asking that her son, John, be excused on Monday, Tuesday and Wednesday of the following week, February 24-26, for the purpose of taking a trip to Vermont which she considered of being of educational value. John was an eighth grade student in the middle school. He was absent all five days of the following week, February 24-28, 1975. During this period he was in New Hampshire with the Appellant on the skiing trip.
5. The Appellant left for the skiing trip in New Hampshire with John Herring on Sunday, February 23, 1975. At the hearing before the School Board, the Appellant claimed that he had injured his hip before the trip on Friday, February 21, 1975, and, because of the injury, had asked his sister-in-law to report to the school district that he would be unable to work on Monday and Tuesday. On Friday and Saturday of the week he was absent, he skied. Subsequently, he learned that he had a hairline fracture in his hip.
6. In reviewing John Herring's absence, the school administration learned that the Appellant was in New England on a skiing trip. Nothing was said about this to the Appellant when he returned to work in March. The Appellant, when he returned, did not inform the school district that he had used his personal leave for a purpose other than what was stated in his request for the leave. It was not until June, 1975 that the Appellant knew the school administration was aware of and was questioning his activities during the last week of February, 1975.
7. By letter dated July 8, 1975, signed by Eugene Garvey, President of the Delaware Valley School Board, attested to by the Board's secretary, the Appellant was informed that charges were being brought against him for his dismissal and that a hearing on those charges would be held on July 22, 1975. The charges state only the following:

"On February 24 and 25, 1975, you were absent from the school district for allegedly being ill; and on February 26, 27 and 28, 1975, you had requested personal business days to handle the sale of your ailing father's property in the city. Other information indicates that you were, in fact, in Vermont during the period Feb. 24-28, 1975."

8. The hearing before the School Board on the charges was held on July 22, 1975. Six members of the Board were present for the hearing. By letter dated August 1, 1975, from the solicitor for the school district, the Appellant was informed that the School Board had voted by a two-thirds majority to discharge him for persistent and willful violation of the school laws of the Commonwealth.

9. On August 18, 1975, the Appellant's petition of appeal was received in the Office of the Secretary of Education. A hearing on the appeal was scheduled for September 18, 1975, but at the request of counsel was continued and was held on October 6, 1975.

### DISCUSSION

The Appellant contends that the statement of charges for a dismissal, required by Section 1127 of the School Code, must specifically cite one or more of the causes for the dismissal of a professional employee listed in Section 1122 of the School Code. The Appellant was dismissed for "persistent and willful violation of the school laws", one of the causes listed under Section 1122; however, that cause for dismissal is not mentioned in the statement of charges. The charges merely state the facts upon which the proposed dismissal is based. The Appellant contends the school board failed to follow the procedure mandated by the School Code and, therefore, that he is entitled to reinstatement.

Section 1127 of the School Code requires the school board to supply a professional employee facing dismissal a detailed statement of the charges upon which the dismissal is being based. Nowhere in the School Code is it stated that the charges must cite one of the causes for dismissal listed in Section 1122. In *West Mahanoy Township School District v. Kelly*, 41 A.2d 244, 156 Pa. Super. 601 (1945), it was held that the charge of "neglect to teach" was sufficient to constitute a charge of persistent negligence. The same result was reached in *Appeal of Deane*, 26 Northumberland L. J. 17 (1956). In the *Appeal of Batrus*, 26 A.2d 121, 148 Pa. Super. 587 (1942), it was held that "immorality" as a basis of discharge of a teacher was sufficiently averred if the written statement of charges served upon the teacher described such conduct as offended the morals of the community and was inconsistent with moral rectitude.

It is not necessary for the statement of charges to specifically cite one of the causes for dismissal listed under Section 1122 if the charges are sufficiently detailed to set forth a valid reason for the dismissal of a professional employee. In the instant case, we find that the charges delivered to the Appellant describe conduct which clearly comes within the general category of persistent and willful violation of the school laws; the deliberate misuse of sick and personal leave is an obvious violation.

The Appellant contends the school board failed to establish persistency. The Appellant argues that this is a single, isolated incident. The Appellant also argues that the element of willfulness has not been established because he intended when he requested the personal leave to use it for the purpose stated in the request and because he was, in fact, injured on the days he used sick leave.

We disagree; we find that the school board has established the elements of the charge of persistent and willful violation of the school laws. A single incident would not prevent dismissal under this charge. In the case of *Johnson v. United School District Joint School Board*, 191 A.2d 897, 201 Pa. Super. 375 (1963), a teacher was dismissed for persistent and willful violation of the school laws because he refused to attend an open house. In the instant case, we find more than one violation of the school laws. The Appellant deliberately abused his sick leave

privileges. He deliberately abused his personal leave benefits. He failed to inform the school officials that he did not use his personal leave as intended. He was absent, without legitimate excuse, from his teaching responsibilities for five days.

The element of willfulness cannot be disputed; the Appellant deliberately abused his sick and personal leave privileges. By Friday, February 21, the Appellant had made arrangements with the student, John Herring, to go to New England the following week on a ski trip. During the evening of that day, but after the student had submitted his request to be excused the following week, the Appellant claimed he suffered the injury which made it impossible for him to go to school on Monday and Tuesday -- days on which he was absent on sick leave. While we do not discount the possibility the Appellant suffered an injury that Friday, it is apparent the Appellant intended before he was injured to be absent on Monday, Tuesday and Wednesday to go on a ski trip. The fact that the Appellant planned to be skiing on Monday and Tuesday convinces us that his request for sick leave for those days was not made in good faith. The Appellant's actions convince us that as of Friday, February 21, 1975, he intended to misuse his personal leave days, also. The last day requested by the student, John Herring, for his educational trip to Vermont was Wednesday, February 26, 1975, which was the first day the Appellant requested for personal leave. The conclusion is inescapable, the Appellant intended to use the first day of his personal leave to go skiing. The record is clear that the Appellant spent the three personal leave days in New Hampshire with the student on the skiing vacation, and not for the purpose for which the personal leave was granted, namely, to assist his ailing father in the sale of the father's house.

The Appellant contends that his failure to use his personal leave days for the purpose for which they were granted does not violate the school laws. The Appellant contends that no evidence was presented by the school board showing that he was required to notify the board of his change in plans for the use of the personal leave days. The Appellant's argument on this point is completely without merit. The Appellant was required to request and obtain the superintendent's permission in order to take personal leave. If he can request the leave for an approved purpose and then use it for an unauthorized purpose with impunity, this requirement becomes a meaningless exercise. It is obvious the personal leave was granted for only one specific purpose. The Appellant's failure to use any part of his leave for that purpose is a violation of the school laws, and, in our opinion, is evidence he lied when requesting the leave.

Accordingly, we make the following:

#### ORDER

AND NOW, this 24th day of November, 1975, it is hereby Ordered and Decreed that the Appeal of Benjamin A. Lucciola is hereby dismissed, and that the decision of the Board of School Directors of the Delaware Valley School District, dismissing Mr. Lucciola on the grounds of persistent and willful violation of the school laws, is sustained.

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Appeal of James T. Black, a Professional Employee, from a decision of the Board of School Directors of the Wyalusing Area School District, Bradford County, Pennsylvania

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

No. 269

#### OPINION

John C. Pittenger  
*Secretary of Education*