

VIOLA C. ROSSO, Appellant

vs.

The Board of School Directors of the Owen
J. Roberts School District

Teacher Tenure Appeal No. 236

OPINION

John C. Pittenger
Secretary of Education

Viola C. Rosso, Appellant herein, has appealed from the decision of the board of school directors of the Owen J. Roberts School District dismissing her as a professional employe on the grounds of incompetency.

FINDINGS OF FACT

1. Viola Rosso, Appellant, is a professional employe. In 1930 she began her teaching career in Pennsylvania in the East Washington Senior High School, Washington, Pennsylvania. She taught French in that school for eleven and a half years until she left because of illness in 1942. She returned to teaching in 1958 at the Sugartown School in the Tredyffrin-Easttown School District, where she taught French in the elementary grades for four and a half years. From 1962 until October, 1973, she was employed by the Owen J. Roberts School District as a teacher of French and Spanish in grades 6 through 9.
2. In March 1968 the board of school directors of the Owen J. Roberts School District dismissed Mrs. Rosso as a professional employe because of persistent lateness. She appealed her dismissal to the Secretary of Education, then Superintendent of Public Instruction, (Teacher Tenure Appeal No. 175). Her appeal was sustained and the school board was directed to reinstate her without loss of pay.
3. Beginning with the 1971-72 school year, the Owen J. Roberts School District introduced a new method for teaching French; namely the A-L M French Course which emphasizes a strong audio-lingual approach. This program represented a major departure from the previous manner in which French had been taught; it emphasized the initial development of listening and speaking skills by the students as opposed to the old practice which emphasized the development of reading and writing skills first.
4. In her first nine years with the Owen J. Roberts School District, when she taught French according to the traditional methods, Mrs. Rosso's overall ratings were satisfactory, although some aspects of her performance had been rated unsatisfactory.
5. It became apparent toward the end of the 1971-72 school year that Mrs. Rosso was having difficulty with the new A-L M French program. She continued to teach her students according to the old methods, emphasizing rote memorization. Active student participation in dialogues and verbal drills, a fundamental aspect of the A-L M program, played a minor part in Mrs. Rosso's method of instruction. Little progress was being made through the student textbook. The learning atmosphere in the classroom was poor; students were bored and would not pay attention.
6. In March, 1972, Mrs. Rosso's principal, Charles Duttonhofer, recommended to the superintendent of schools, Dr. Roy C. Claypool, that Mrs. Rosso be rated unsatisfactory. Mr. Duttonhofer's recommendation was based on his own observations of Mrs. Rosso's performance and on the observations of his assistant principal, Mr. Stanley Landis, Jr., who had been a French teacher and held a masters degree in French.
7. In response to Mr. Duttonhofer's request, Dr. Claypool and Mr. Richard Flickinger, assistant to the superintendent for personnel services, each observed and evaluated Mrs. Rosso.

8. Dr. Claypool observed and evaluated Mrs. Rosso on April 20, 1972, and also on April 21, 1972. The method he used in evaluating her performance was to observe and record what was occurring in the classroom at five minute intervals. Dr. Claypool rated Mrs. Rosso unsatisfactory, noting that the class has been extremely dull and that there was no spark of interest for learning.
9. On April 25, 1972, Dr. Claypool met with Mrs. Rosso and discussed the evaluations of her performance. He notified her she had been rated unsatisfactory and that he would recommend to the board of education that it initiate procedures for her dismissal.
10. At its meeting on June 5, 1972, the school board decided, upon the advice of counsel, that it would not proceed with dismissal proceedings at that time. The school board accepted counsel's recommendation that further ratings be done for the purpose of assisting Mrs. Rosso in correcting the learning environment in her classroom.
11. Dr. Claypool instituted a plan to improve Mrs. Rosso's teaching abilities. Mr. Landis was one of those assigned to work with her. He suggested the use of multi-media materials such as film strips, films, posters, slides, and suggested that she visit other classrooms to observe the teaching methods of other teachers. In order to help her in this direction, on October 20, 1972, Mr. Landis taught Mrs. Rosso's class to enable her to observe another teacher. Mr. Duttonhofer was also assigned to work with Mrs. Rosso. In October, 1972, he gave her a plan for improvement which emphasized conferences with the chairman principal or assistant principal concerning better organization of daily lesson plans through development of lesson objectives, the use of hardware and software, the improvement of student to student and student to teacher interaction, observation of other foreign language teachers, and the scheduling of follow-up conferences to discuss her progress.
12. Although Mr. Duttonhofer believed Mrs. Rosso had made some progress during the 1972-73 school year, he felt her overall performance was still unsatisfactory. Accordingly, on April 12, 1973, he submitted to Dr. Claypool a recommendation for an unsatisfactory rating for Mrs. Rosso and requested that someone from the central staff make an evaluation of her teaching.
13. Mrs. Rosso was rated in April, 1973, by Dr. Claypool, by Paul H. Cunningham, assistant superintendent for curriculum and instruction, by Mr. Flickinger and by Mr. Duttonhofer. Dr. Claypool rated her on April 27 and April 30, 1973. All of the ratings for Mrs. Rosso were unsatisfactory. It was noted in the ratings that the problems of the previous year still persisted.
14. By letter dated May 8, 1973, the board of school directors notified Mrs. Rosso that charges had been brought against her for her proposed dismissal on the grounds of incompetency. A hearing on the charges was scheduled for May 22, 1973; however, because Mrs. Rosso became ill, the hearing had to be postponed until a later date.
15. In June, 1973, Mrs. Rosso, along with a group of other teachers, filed suit against the school district for back pay, based upon their claim that the school district had failed to give them salary increments which were mandated by the Act of June 12, 1968, P.L. 192, No. 96, found in 24 P.S. section 11-1142, by which the General Assembly revised the state mandated minimum salary schedule of the School Code. Mrs. Rosso's claim as of the end of the 1972-73 school year was for \$20,046.20, by far the largest claim of the group. Notice of these claims had been given to the school district in early 1971.
16. The school board held hearings on September 18, 1973 and on October 2, 1973. At the conclusion of the second hearing, after a brief period of deliberation, the school board voted 7-0, 1 member abstaining, to dismiss Mrs. Rosso on the charge of incompetency.
17. On November 2, 1973 Mrs. Rosso's petition of appeal was filed in the office of the Secretary of Education. On December 3, 1973, the school board filed its answer to the appeal. A hearing was held in the office of the Secretary of Education on December 21, 1973, at which time testimony was presented on behalf of the Appellant with respect to her claim for back pay. Counsel requested the opportunity to submit briefs. All briefs were received as of October 17, 1974.

DISCUSSION

In taking this appeal, Mrs. Rosso contends the following: That the evidence presented at the hearings was not legally sufficient to substantiate the charge of incompetency; that the 1971-72 unsatisfactory rating is invalid because it was not accompanied by an anecdotal record; that three unsatisfactory ratings are needed in order to dismiss the professional employe for incompetency, and that her dismissal was in retaliation for the law suite she brought against the school district to obtain back salary and because of the Secretary of Education's order reversing the previous attempt the school board had made to dismiss her. We find these contentions to be without merit. Accordingly, we must sustain the decision of the school board dismissing her as a professional employe for incompetency.

Mrs. Rosso relies upon the decision of the Supreme Court of Pennsylvania in **Thall Appeal**, 410 Pa. 222, 189 A.2d 249 (1963), contending that the school district failed to satisfy the requirements for dismissing a professional employe on the grounds of incompetency. The Supreme Court held in that case as follows:

"...the Superintendent (of Public Instruction) has ruled that a final unsatisfactory rating is required in order to dismiss for incompetency; that two preliminary unsatisfactory ratings are necessary before such final rating can be made, the first one serving as a warning that improvement in performance is essential;⁹ that notice of an unsatisfactory rating, together with substantiating anecdotal reports, be sent to the professional employe as quickly as possible. The purpose of this rating scheme is not only to establish more concrete standards to judge competency, but it is also designed to stimulate improvement in the general level of teaching by drawing attention to existing deficiencies."

Footnote #9 provided as follows:

"⁹This ruling is inferred from the Superintendent's definition of "unsatisfactory" as "improvement is essential to justify continuation in service." "Ibid, 410 Pa. 222, 227.

In our opinion, the school district has complied with both the letter and the spirit of the **Thall Appeal**. Mrs. Rosso contends she was not given an anecdotal record with the unsatisfactory rating she received for the 1971-72 school year. The record on this point is unclear; Dr. Claypool is convinced that he gave Mrs. Rosso the anecdotal record when he gave her her unsatisfactory rating. In any event, it is clear from the record that Dr. Claypool discussed the reasons for the unsatisfactory rating with her at that time. It is also clear that Mr. Duffenhofer, the principal, and Mr. Landis, the assistant principal, discussed her deficiencies with her shortly after each of their evaluations of her performance. She was shown their evaluation reports and was asked to sign them; however, she refused to do so. There is no doubt in our mind that Mrs. Rosso had timely notice of the reasons for her unsatisfactory rating for the 1971-72 school year. She might not have accepted the validity of those ratings; but, she certainly cannot contend she was not informed of what the school district considered to be her deficiencies.

Mrs. Rosso's argument that three unsatisfactory ratings are required in order to dismiss a professional employe for incompetency is not supported by the **Thall Appeal**, either. Only two unsatisfactory ratings are necessary, the first serving as a warning that improvement in performance is essential if employment is to be continued. It is our understanding that where the Supreme Court spoke in terms of two preliminary ratings, it meant ratings conducted by one acting on behalf of the superintendent. If the second of those two ratings established that the employe had failed to improve sufficiently since the first, the report of that failure to the superintendent justified his issuing a final rating of unsatisfactory. The essential requirement of the **Thall** decision

is that the employe be given an opportunity to correct unsatisfactory performance. Such an opportunity is afforded with two ratings. In any event, the record shows that Mrs. Rosso received many unsatisfactory preliminary ratings. Further, she was kept informed of her deficiencies. The school administration made a concerted effort to help her improve and correct those deficiencies during the 1972-73 school year.

Equally without merit is Mrs. Rosso's contention that the school district dismissed her in retaliation for her previously successful appeal of this office and for her suit for back salary. Her dismissal obviously has no effect on her merits of her claim for back salary. In order to convince us that she was dismissed in retaliation, Mrs. Rosso would have to establish that the entire administrative staff was engaged in a conspiracy against her since they all rated her unsatisfactory. This she has failed to do. None of these people had any interest in her suit for back salary. The evaluator most experienced in the subject matter which Mrs. Rosso taught, that is, Mr. Landis, was no longer employed by the school district when the dismissal hearing was held; Mr. Landis had taken a position in another school district as a principal. Although he could be neither rewarded nor pressured by the school administration of the Owen J. Roberts School District, Mr. Landis staunchly defended his opinion that Mrs. Rosso was incompetent.

In our opinion, the conduct of the school administration in this case is above reproach. The school district's evaluation procedures are a model of how a professional employe should be rated. The evaluations occurred at two levels. At the first level is the principal; if he rates a professional employe unsatisfactory, the matter is referred to the second level, the superintendent, for further evaluation. While a teacher might object to being rated so often in a short period of time by different persons, such a procedure is clearly in the employe's best interest since it brings into the evaluation different viewpoints, thereby lessening the influence personal bias and prejudice with respect to teaching methods can have. We are particularly impressed with the ratings made by Dr. Claypool in April, 1972, in which he recorded what was going on in the classroom at five minute intervals. This method of evaluation has given us the best picture of the learning atmosphere in a classroom that we have seen to date in an anecdotal record.

In our opinion, there is more than substantial evidence on the record to support the charge of incompetency. We feel, however, that "*incompetency*" is too harsh a term to apply to a person who has satisfactorily served the Commonwealth for 23 of her 25 years as a teacher. Better and more appropriate terms might be "*failure to adapt to new methods and new ideas*" or "*loss of effectiveness.*" It is sad that the introduction of new methods of instruction can result in the termination of teachers unable to adapt. However, it is the school board's right and duty to try to provide the most effective education possible for its students. A long and satisfactory career does not give a teacher the right to stand in the way of progressive education. As a professional, it is the teacher's duty to keep abreast of and to adapt to new methods of instruction. Failure to do so can render a teacher incompetent. It is clear from the record that Mrs. Rosso failed to adapt to the A-L M French program. Mrs. Rosso's traditional method of instructing students in French was not compatible with the new program. As a result, her classes were poorly organized and she was unable to provide effective instruction in French.

Accordingly, we make the following:

ORDER

AND NOW, this 3rd day of August, 1976, it is hereby ordered and decreed that the appeal of Viola C. Rosso be dismissed and that the decision of the Board of School Directors of the Owen J. Robert School District dismissing her as a professional employe be sustained.