

ORDER

AND NOW, to wit, this 5th day of March, 1971, the Appeal of Anthony P. Schultz from the discharge decision of the Board of School Directors of the Lower Merion School District is hereby dismissed.

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Appeal of C. Alan Rowe, a Professional
Employee, from a decision of the Board of
School Directors of the Rose Tree Media
School District, Delaware County,
Pennsylvania

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

No. 196

OPINION

David H. Kurtzman
Secretary of Education

C. Alan Rowe, Appellant herein, has appealed from a decision of the Board of School Directors of the Rose Tree Media School District, Delaware County, Pennsylvania, terminating his contract and dismissing him as a professional employee.

FINDINGS OF FACT

1. Appellant has been employed by the Rose Tree Media School District as a professional employe since September of 1961.
2. On June 26, 1969, the School Board approved a sabbatical leave for the Appellant for graduate study and health reasons during the 1969-70 school year.
3. The Appellant failed to return to his teaching assignments beginning with the school year 1970-71.
4. On September 25, 1970, the School Board advised the Appellant of a recommendation for his dismissal on the basis of persistent and wilful violation of the School Laws of the Commonwealth.
5. A hearing on said discharge was originally scheduled for October 8, 1970 and by agreement of the parties was finally held on November 24, 1970.
6. On December 17, 1970, the Board of School Directors of the Rose Tree Media School District voted to dismiss the Appellant.
7. On January 18, 1971, the Appellant filed a Petition of Appeal with the Secretary of Education.

TESTIMONY

At the hearing held on November 24, 1970, before the Board of School Directors, the testimony presented was substantially as follows:

Henry F. Hofmann, Assistant Superintendent for Instruction, testified that he was advised by the Appellant of his request for a four class day or five classes with no duties, pursuant to a letter dated August 26, 1970. On August 28, 1970, by letter of the same date, the request was denied. The teacher failed to appear for his teaching duties when school opened. On September 10, 1970, he advised Mr. Rowe of his suspension for failure to attend his classes and, further, that a recommendation of dismissal, together with a legal action to recover the salary, would be made to the School Board. This letter was never answered by Mr. Rowe.

Louis W. Scott, the Principal, stated that Mr. Rowe had discussed with him the possibility of a reduced teaching load, and Mr. Scott advised him to make the request in writing to the

Superintendent or Assistant Superintendent. Prior to the sabbatical leave of absence, Mr. Rowe had five classes plus some duties, comparable to the assignments for other teachers. This was a normal teaching load.

Charles Alan Rowe, the Appellant, testified substantially that he had been teaching for 17 years; that he had a B.S. in Math, and a M.A. in Math plus 15 additional credits. In 1963, he had aided in preparing a curriculum revision in Math and was responsible for all the material and the academic content of the high school courses; that he had instituted and taught the advanced placement calculus course. His duties involved the cafeteria, study hall, home room, hall duty plus four teaching classes during the last half of the year preceding his sabbatical leave. In the fall of 1969, he had discussed with Mr. Burt, Head of the Math Department, Mr. Scott, the Principal, and Mr. Yutovitch, the Administrative Assistant his plans for advanced study. He tried to see Dr. Lapchick in August 1970, but he was on vacation. He then saw Mr. Luce, the Assistant Principal. He sent a letter to Mr. Scott on August 26, 1970 and on August 28, 1970 Mr. Scott refused his request for the four class teaching load. He did not consider the new teaching load equivalent to his prior status. On the evening of the first day of school, he called Mr. Burt and advised him that he would not return to work until his assigned schedule was changed. He felt that he had been demoted.

Mr. Luce, Assistant Principal of the high school, stated that during the summer of 1969 Mr. Rowe came to his office and examined the class schedule charts, and informed him that his proposed schedule was not in the best interests of the students.

DISCUSSION

This appeal involves a teacher who, upon his return from a sabbatical leave of absence, refused to accept the teaching curriculum assigned to him. As a result thereof, discharge proceedings were instituted by the School Board and, after hearing thereon, a resolution of discharge was adopted by the Board.

The Appellant took the position that he was willing to return to the same teaching assignment he had had prior to his sabbatical, when he had four classes daily plus some extra minor duties. He had developed a course in advanced placement calculus and was teaching this subject. The Princeton Testing Service had recommended that a teacher in this course be given some free time in which to prepare the work in this subject and the school authorities had granted this to him. Prior to the beginning of the new school year 1970-71, he had requested in writing the four hour teaching schedule, and offered to take a reduction in salary. On August 28, 1970, he was advised by the High School Principal that his request was refused and that his assignment would be the regular five class teaching day plus the duties normally assigned to the teaching staff. Instead of contacting the Principal for a further discussion of the matter, he spoke to a Mr. Burt, the head of the Mathematics Department, who subsequently assured him no change was possible. When school opened in September, the Appellant did not attend, and continued to remain absent. Finally, on September 25, 1970, he was notified of the School Board's action on a dismissal and the date of a hearing thereon.

Section 1168 of the Public School Code provides, inter alia, as follows:

"No leave of absence shall be granted unless such person shall agree to return to his or her employment with the school district for a period of not less than one school term immediately following such leave of absence.

"No such leave of absence shall be considered a termination or breach of the contract of employment, and the person on leave of absence shall be returned to the same position in the same school or schools he or she occupied prior thereto."

The Appellant bases his rights on the wording of paragraph 2, "shall be returned to the same position", as the justification for refusing to accept a change in his assignments.

It is to be noted that the Appellant was certificated as a teacher in Mathematics and English. The new schedule submitted by the district provided for a continuation of his teaching Mathematics. There was no change in his employment status and his salary was in conformity with the professional employe contract under which he was employed.

No question arises as to the right of the authorities to assign any employe as a teacher of any classes wherein the subject matter is one in which the employe is certificated. *In re Womer*, 337 Pa. 349

There is no right or privilege vested in the teacher that empowers him to determine what classes and what subject he is willing to teach. His refusal to accept an assignment in the field of his certification subjects him to discharge. *Comm. ex rel Wesenberg vs. Bethlehem School District*, 148 Sup. 250

We interpret the wording of Section 1168, supra, in this case, to mean a "mathematics teacher" and not a four class teacher of an advanced placement calculus course. Accordingly, we find that the Appellant violated the requirements of Section 1168 of the Public School Code, in his refusal to return to his employment, thereby subjecting himself to the proper action of the School Board in its resolution of proposed discharge and its setting of a hearing date.

Unfortunately, the School Board, in its decision making power, failed to comply with the requirements of Section 1129 of the Public School Code. Only five of the directors attended the hearing and heard the evidence. Only four of the directors present at the hearing of November 24, 1970 attended the Board meeting on December 17, 1970 when the resolution for discharge was presented for a vote.

Section 1129 of the Public School Code states as follows:

"After fully hearing the charges or complaints and hearing all witnesses produced by the board and the person against whom the charges are pending, and after full, impartial and unbiased consideration thereof, the board of school directors shall by a two-thirds vote of all the members thereof, to be recorded by roll call, determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges and complaints, and if so determined shall discharge such professional employe. If less than two-thirds of all of the members of the board vote in favor of discharge, the professional employe shall be retained and the complaint shall be dismissed."

Only five of the school directors were present at the hearing on the proposed discharge and heard the testimony, and only four of those in attendance were present at the Board meeting held on December 17, 1970 when the resolution for discharge was presented for a vote of the Board members. As of the date of said meeting, the notes of testimony of the November 24th meeting had not been transcribed, and therefore were not available to the Board members who had not been in attendance at the hearing. We therefore assume it to be a reasonable presumption that any information relative to the testimony presented at the hearing on the discharge was not based on evidence but on hearsay. The minutes of said Board meeting state as follows:

"THEREFORE, BE IT RESOLVED, after full consideration of the Administration's recommendation and after consideration of the evidence presented at the public hearing held on November 24, 1970, the sabbatical leave heretofore granted C. Alan Rowe, for the school year 1969-70, is hereby rescinded and his employment as a professional employe by this District is hereby terminated as of June 30, 1969."

It is to be noted that said resolution makes reference to "consideration of the evidence." In view of the notes of testimony not having been transcribed prior to said meeting date, there could be no "consideration of the evidence" by those directors absent from the hearing. Seven directors voted in favor of the resolution of discharge. The seven voting represented the vote of four members who had attended the hearing and three who had been absent from the hearing and who were unable to read and examine the notes of testimony of the witnesses. The vote of the latter three cannot be deemed to represent a "full, impartial and unbiased consideration" as required by Section 1129 of the School Code. Further there was noncompliance with the provisions of this Section of the Code wherein it states "determine whether such charges or complaints have been sustained and whether the evidence substantiates such charges or complaints." Not having heard or read the evidence, they could not make a determination.

The Courts have held that a school board must follow the Code procedures in discharge cases, and no material deviation is permissible.

Jacobs vs. School District of Wilkes-Barre, 355 Pa. 449
Appeal of Bd. of Sch. Directors of Cass Township, 151 Sup. 543
Appeal re Swink, 132 Sup. 107

Because of the failure of certain Board members to fully understand their responsibilities and the requirement of compliance with the School Code, we are compelled to reverse their decision of discharge in a case where the testimony of both parties fully substantiated the final Board decision.

Accordingly, we make the following

ORDER

AND NOW, to wit, this 24th day of May, 1971, the Appeal of C. Alan Rowe from the discharge by the Board of School Directors of the Rose Tree Media School District is sustained. The validation of this Appeal is not to be construed as a reinstatement of the Appellant to a teaching program other than assigned to him by the Superintendent in a subject matter in which he is certificated as a professional employe.

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Appeal of Virginia Dudas, a Professional
Employe, from a decision of the Board of
School Directors of the Monessen City School
District, Westmoreland County, Pennsylvania

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

No. 197

OPINION

Virginia Dudas, Appellant herein, has appealed from a decision of the Monessen City School Board holding that the said Appellant was not demoted.

FINDINGS OF FACT

1. On June 30, 1965, the Monessen City School Board entered into a contract of employment with the Appellant as a professional employe at a salary of \$5,300.00.
2. Prior to the beginning of the 1965-66 school year, by reason of the resignation of another teacher, the Appellant's salary was increased to \$5,800.00 and extra duty assignments of vocal music and coordinator of the elementary music program were assigned to her with additional payments of \$250.00 for each of the two additional assignments, payable at the end of the school year.