

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.

* * * *

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

James T. Black, Appellant herein, has appealed from the decision of the Board of School Directors of the Wyalusing Area School District abolishing his position as elementary principal and assigning him to the position of fifth grade teacher in the elementary school, which action he contends is an improper demotion in status and salary.

FINDINGS OF FACT

1. The Appellant is a professional employee. He began his employment as an elementary principal in the Wyalusing Area School District in August, 1968, as a 12 month employee earning an annual salary of \$12,000.
2. At its June 30, 1975 meeting, the Board of School Directors of the Wyalusing Area School District decided to abolish the position of elementary principal and create the new position of assistant superintendent for elementary education.
3. By letter dated July 2, 1975 from Mr. Lewis Rinehart, Jr., President of the Board of School Directors, the Appellant was notified that his position of elementary principal of the Wyalusing Area School District had been eliminated. The Appellant was not to report for work after July 3, 1975, however, his salary would continue until August 31, 1975. He was informed that he would be considered for another position in the district if an opening occurred for which he is qualified.
4. By letter dated July 9, 1975, the Appellant notified the School Board that its action was a demotion which violated his rights as a tenured employee. The demotion was without his consent, accordingly, he requested a statement of reasons for the Board's action and a hearing before the Board in accordance with Section 1151 of the School Code, 24 P.S. Section 11-1151.
5. A hearing before the Board of School Directors was held on August 6, 1975. The School Board's solicitor, however, refused to permit the hearing to proceed unless the Appellant stipulated that the hearing would be governed by the Local Agency Law. The Appellant refused to so stipulate, accordingly, the hearing was adjourned without any evidence being offered.
6. By letter dated August 5, 1975, Mr. Rinehart informed the Appellant that the School Board was offering him the position of teacher in the New Albany Elementary School; salary to be determined according to the teachers' salary schedule.
7. By letter dated August 19, 1975, Dr. Clair A. Goodman, Superintendent of Schools, notified the Appellant's attorney, Thomas Walrath, that the Appellant had been appointed to the position of fifth grade teacher in the Camptown Elementary School at a salary of \$13,170.
8. By letter dated September 2, 1975, Mr. Walrath informed Dr. Goodman that the Appellant was accepting the teaching assignment without prejudice to his rights to pursue his appeal to the Secretary of Education.
9. As elementary school principal, the Appellant was in charge of four elementary schools. His salary as elementary principal for the 1974-75 school year was \$15,935. At present, each of these elementary schools is supervised by a head teacher who reports to the new assistant superintendent for elementary education.
10. On August 18, 1975, a petition of appeal on behalf of the Appellant was filed in the Office of the Secretary of Education. A hearing on the appeal was scheduled for September 19, 1975, but at request of counsel was continued and held on September 24, 1975.
11. On September 4, 1975, a motion to quash the appeal was filed in the Office of the Secretary of Education on behalf of the Wyalusing Area School District. The school district contends that this is a case of original jurisdiction because a hearing has not been held before the School Board and that the Secretary of Education only has appellate jurisdiction. The school district contends that the Appellant's proper course of action is to file an action in mandamus in the Common Pleas Court of Bradford County seeking a hearing before the School Board.

DISCUSSION

The Appellant served as elementary principal in the Wyalusing Area School District for seven years. In that capacity he supervised four elementary schools. In June, 1975, the Wyalusing School Board decided to replace the elementary principal with an assistant superintendent for elementary education. As far as the Appellant knew, the School Board's action meant he was unemployed. The Appellant made timely objection to the School Board's action and requested a hearing before the Board on the basis that he was either demoted or dismissed without his consent. Subsequently, the Appellant was offered a position in the district as a fifth grade teacher at a salary of \$13,170 - a reduction from his principal's salary of \$15,935.

The School Board offered the Appellant a hearing, but only if he would stipulate that the hearing was under the provisions of the Local Agency Law, 53 P.S. Section 11301, et seq. When he refused to so stipulate, the hearing was adjourned. The Appellant appealed to this Office, contending he was improperly demoted. We agree, and accordingly must order his reinstatement.

The demotion of a professional employee is governed by Section 1151 of the School Code, which provides in part:

"...but there shall be no demotion of any professional employe either in salary or in type of position, except as otherwise provided in this act, without the consent of the employe, or, if such consent is not received, then such demotion shall be subject to the right to a hearing before the board of school directors and an appeal in the same manner as hereinbefore provided in the case of the dismissal of a professional employe." 24 P.S. Section 11-1151.

In *Smith v. Darby School District*, 130 A.2d 661, 388 Pa. 301 (1957), the State Supreme Court held that a professional employee who claims he has been demoted has the right to a hearing under Section 1151 even though the school board does not believe its action is a demotion.

The Wyalusing Area School Board ignores the plain meaning of *Smith v. Darby School District*. The School Board contends the Appellant has no recourse to the provisions of the School Code because the Board does not believe it has demoted the Appellant. What the School Board believes has no bearing on the Appellant's right to a hearing under Section 1151; as the *Smith* case clearly pointed out, it is the professional employee's belief that he has been demoted without his consent that governs.

The School Board's argument that the hearing is under the Local Agency Law is without merit. Section 1151 and related provisions of the School Code, as read in light of *Smith v. Darby School District*, specifies the procedure to be followed with respect to the demotion or alleged demotion of a professional employee.

Equally without merit is the School Board's argument that this Office lacks jurisdiction to review the appeal because a hearing before the Board has not been held. The School Board fails to understand the significance of its failure to provide a proper hearing. Once a professional employee establishes his right to a hearing under the School Code, any action by the School Board denying him that hearing is reviewable by this Office. Our Courts have held that a school board must follow the proper procedures when dismissing or demoting a professional employee or else its action will be reversed, *In re Swink*, 200 A. 200, 132 Pa. Super 107 (1938), *Abington School District v. Pittenger*, 305, A.2d 382, 9 Pa. Cmwlth. 62 (1973). The hearing before the school board is an essential procedural requirement; the failure to provide the hearing, in and of itself, can be grounds for rendering the school board's action null and void.

We cannot accept the Wyalusing School Board's argument that the Appellant must file a mandamus action to compel the School Board to give a hearing. It is not the Appellant's responsibility to see that the School Board provides him a proper hearing, that is the School Board's responsibility. Professional employees facing dismissal or demotion should not have to incur any expense to compel a school board to do that which it is required by law to do, especially when the board's failure to follow the law is grounds for reversal.

In the instant case, the Appellant satisfied the prerequisites for his right to a hearing; he notified the Board in a timely manner that he did not consent to its action and that he wanted a hearing. The School Board, in offering a hearing, improperly attempted to compel the Appellant to waive his rights to appeal to this Office. When he refused to do so, the hearing was abruptly adjourned. Based on the above facts, it is clear that the Wyalusing School Board has not observed the Appellant's rights to a hearing under the School Code.

If we had any doubts about whether or not the Appellant had been demoted, we would remand this case back to the school district and order it to provide a proper hearing. However, the undisputed facts before us clearly show that the Appellant has been demoted in both position and salary. Accordingly, because a nonconsensual demotion cannot become effective until after a hearing, and because the Wyalusing School Board failed to provide a proper hearing, we must order the Appellant's reinstatement without loss of pay.

There can be no question that the assignment from a principal's position to a teaching position, with a reduction in salary, is a demotion in type of position and in salary. The School Board cites *Ritzie's Appeal*, 372 Pa. 588, 94 A.2d 729 (1953), as authority to the contrary. A careful reading of that decision shows that it was a special case of limited applicability. We prefer to follow the board and basic guidelines set forth by the State Supreme Court in *Smith v. Darby School District*, supra.

"A demotion of a professional employee is a removal from one position and an appointment to a lower position; it is a reduction in type of position as compared with other professional employees having the same status."

* * *

"To demote is to reduce to a lower rank or class and there may be a demotion in type of position even though the salary remains the same." *Smith v. Darby*, supra, 130 A.2d at 664.

In *Smith* the Court noted that an assignment to a position with diminished supervisory authority was a demotion in status. Here, the Appellant has been removed from a position where he supervised four schools and assigned to a position where he supervises none. The School Board's argument that the Appellant's status is unchanged is without merit; principals supervise teachers, teachers do not supervise principals. That the Appellant has been demoted in salary is unquestionable, also; one has only to look at his salary before and after the assignment to see that there has been a substantial reduction.

The School Board relies heavily on *Smith v. Darby School District* as authority supporting its actions in this matter. The Court in *Smith* did affirm a school board's right to reorganize and to create and abolish positions. But, in exercising this right, the Court pointed out the school board must recognize the rights of the professional employees affected by the board's actions.

When a professional employee is demoted, the school board has the burden to justify its action at a hearing or the employee will be reinstated, *Tassone v. School District of Redstone Township*, 183 A.2d 536, 408 Pa. 290 (1962). Further, a nonconsensual demotion cannot become effect until after the hearing, *Smith v. Darby School District*, supra, 130 A.2d at 666. The Appellant has been demoted prior to a hearing. The Wyalusing Area School Board has yet to justify its action.

Accordingly, we make the following:

ORDER

AND NOW, this 14th day of November, 1975, it is hereby Ordered and Decreed that the Appeal of James T. Black is sustained. The Board of School Directors of the Wyalusing Area School District is hereby Ordered to reinstate him as elementary principal without loss of pay.