

Appeal of Guido J. Gossy, a Professional Employee, from a decision of the Board of School Directors of the Allentown City School District, Lehigh County, Pennsylvania

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

No. 227

OPINION

John C. Pittenger
Secretary of Education

Guido J. Gossy, Appellant herein, has appealed from a decision of the Board of School Directors of the Allentown School District demoting the Appellant from his position as Junior High School Principal to a teaching position.

FINDINGS OF FACT

1. Guido J. Gossy is a professional employe currently employed by the Allentown School District.
2. Prior to September 1, 1972 Mr. Gossy was Principal of the Harrison-Morton Junior High School.
3. By resolution of the Board of School Directors, dated May 25, 1972, Mr. Gossy's status was changed from Principal to Science Teacher, effective September 1, 1972, because the position of Principal was being abolished.
4. At his request, a hearing on the demotion was held, requiring four separate sittings, the last being held on February 1, 1973.
5. A certified letter dated March 30, 1973 was sent to Mr. Gossy's attorney stating that the resolution of the Board dated May 25, 1972 changing Mr. Gossy's status was sustained. This letter was received by the attorney on April 2, 1973.
6. On April 2, 1973, a copy of the letter sent to his attorney was sent to Mr. Gossy.
7. On June 28, 1973, the Secretary of Education received an appeal on behalf of Mr. Gossy, submitted by his attorney, requesting a hearing before the Secretary. That appeal was later perfected by a petition sworn to by Mr. Gossy.

DISCUSSION

Before the Secretary of Education can review the merits of an appeal from a demotion, he must have jurisdiction to hear the appeal. Section 1131 of the Public School Code of 1949 provides in part:

"In case the professional employe concerned considers himself or herself aggrieved by the action of the board of school directors, an appeal by petition, setting forth the grounds for such appeal, may be taken to the Superintendent of Public Instruction at Harrisburg. Such appeal shall be filed within thirty (30) days after receipt by registered mail of the written notice of the decision of the board."

24 P.S. §11-1131 (Emphasis added).

Mr. Gossy's attorney, not Mr. Gossy, was notified by certified mail on April 2, 1973 of the Board's decision. The appeal to the Secretary of Education was not filed until June 28, 1973 - well past the thirty day requirement.

Mr. Gossy argues that service upon his attorney did not satisfy the requirements of the

School Code, and, therefore, he still has a right of appeal to the Secretary.

We are persuaded by the case of *Yeager v. United Natural Gas Company*, 197 Pa. Super. 25, 176 A. 2d 455 (1961), wherein notice of the referee's award in a Workmen's Compensation case was sent to the claimant's counsel. The Workmen's Compensation Board refused to hear the appeal from that award since it was filed after the time for such appeals had elapsed. The Superior Court held that:

"Under these circumstances, there can be no question that notice of the referee's award received by the claimant's counsel constitutes notice to the claimant. Even without the 'lack of proper address' and the 'arrangements . . . with the local Referee's office,' notice of an action by a court, board or commission given to the counsel of a party is considered notice to the party, except under a few rare circumstances not here present." *Ibid* p. 456.

It is a fundamental legal principle that notice to an attorney is notice to the client who employs him, *Pennsylvania Law Encyclopedia*, Vol. 3, Attorneys, Section 45. That practice has been followed by this office when the Secretary of Education renders his decision in an appeal by a professional employe.

The purpose in requiring notice of the Board's decision by registered mail is to fix the date when the statute of limitations for an appeal begins to run. We find that Mr. Gossy, through his attorney, received proper notice of the Board's decision on April 2, 1973. If he wished to appeal the Board's action, he should have done so within thirty days of that date.

We also note that there is no allegation that Mr. Gossy did not receive notice of the Board's decision. Notice was sent to him by regular mail. He argues that the Secretary of Education had jurisdiction because notice was not sent by registered mail. However, we find that notice in the proper manner was sent to Appellant's attorney.

The appeal being filed with the Secretary of Education more than thirty days after receipt of the School Board's decision, contrary to the mandatory provision of Section 1131 of the School Code, accordingly must be dismissed.

For the above reasons, we make the following

ORDER

AND NOW, this 13th day of September, 1973, the above appeal is hereby dismissed.

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Appeal of Marjorie S. Kauffman, a Professional Employe, from a decision of the Board of School Directors of the Tuscarora School District, Franklin County, Pennsylvania

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

No. 228

OPINION

John C. Pittenger
Secretary of Education

Marjorie S. Kauffman, Appellant herein, has appealed from the decision of the Board of School Directors of the Tuscarora School District, assigning her to a teaching position. The Appellant contends the assignment constitutes an improper demotion.