

Appeal of James Justice, a Professional Employee, from a decision of the Board of School Directors of the Fairfield Area School District, Adams County, Pennsylvania

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

No. 199

OPINION

John C. Pittenger
Secretary of Education

James Justice, Appellant herein, has appealed from a decision of the Board of School Directors of the Fairfield Area School District, Adams County, Pennsylvania, terminating his contract and dismissing him as a professional employe.

FINDINGS OF FACT

1. Appellant has been employed by the School District as a fourth grade teacher since October, 1965, under a standard limited certificate.
2. On April 19, 1971, the Appellant was notified of charges preferred against him by the said School District.
3. Pursuant to due notice, a hearing was held on May 4, 1971 on the charges of incompetency, cruelty and wilful violation of the School Laws of the Commonwealth.
4. Following the said hearing, the Board of School Directors of the Fairfield Area School District voted to sustain the charges and dismiss the Appellant as a professional employe of the said School District.
5. On June 7, 1971, the Appellant filed his appeal with the Secretary of Education.
6. Pursuant to notice, a hearing on said appeal was held on July 7, 1971.

TESTIMONY

The hearing in this matter was held before the School Board on May 4, 1971, at which time testimony was taken.

An examination of said notes of testimony indicates the following:

Robert Reindollar, elementary school principal, testified that Mr. Justice was a teacher of the fourth grade; that teachers were required to be in their rooms at 8:15 a.m. and leave at 3:40 p.m. Teachers on hall duty were required to be present at 8:00 a.m. He began keeping a check on Mr. Justice in September, 1967. He cited 20 instances of lateness between September 18, 1967 and February 9, 1971. Throughout the 1967-68 school year and thereafter, he received phone calls from parents whose children had been paddled, because of inability to complete their homework. On January 25, 1968, he saw two blood red marks (six to eight inches long) on the Smith child caused by a stick or rod type instrument that the teacher had used on the child. On one occasion a pupil had been pulled out of his seat and in three other instances a child's glasses were knocked off. The children were scared by his threats. In October 1969, he beat a student over the head with a book and slapped him in the face in front of the class, because he couldn't do his arithmetic. Although there were no specific regulations on punishment, in view of the numerous parental complaints and the visible bruises and contusions that he saw, he had warned the Appellant against such continued actions.

Edgar E. Richards, Supervising Principal, testified that on February 1, 1971 he rated the Appellant as unsatisfactory. He discussed the numerous lateness incidents with Mr. Justice on, at least, four occasions. He also saw the red marks on the Smith child. There were 13 confrontations; between January 28, 1968 and February 4, 1971, between the parents of children and the Appellant by reason of his disciplinary teaching methods. In many of these cases, the children were referred to the school psychologist, and he recalled four meetings between himself,

the psychologist and Mr. Justice. The witness, who has been in administration for 15 years, first expressed his concern to Mr. Justice in 1968 and thereafter from time to time, but it was ineffectual. In his opinion, Mr. Justice was insubordinate. He doesn't recognize his position as a professional educator in the classroom or in his responsibility to the parents, administrators or the children. He refuses to take advice or accept suggestions that would help him prevent a repetition of his actions.

Testimony was also given by Mrs. Leroy Smith, Mr. and Mrs. James Shaffer, Mr. Donald Gilbert, Mrs. William Priest and Mrs. Robert Mickley, parents of some of the children, wherein they described the suffering of their children as a result of the Appellant's action.

Mr. James Justice, the Appellant, testified that he is in his eighth year of teaching, starting with an emergency certificate for two years, and now has a standard limited certificate. He admitted coming in late on some occasions, blaming it on the distance he had to travel to and from school. He also admitted striking some children, using both a pointer and a paddle. He admitted that his punishment was excessive, and primarily for failure to do the assigned work, and he believed that he had not abused his prerogative to inflict punishment. Regarding his latenesses, he did not see the need to be in his classroom before class actually started.

DISCUSSION

The petition of appeal in this matter avers that the School Board failed to state, in the notice of their hearing, the specific charges against the Appellant. Our reading thereof indicates that the dismissal action was based on the charges of incompetency, cruelty and persistent and wilful violation of the school laws. Although the notice does not state the charges in these exact words, the specifications, as mentioned, are reasonably interpreted as the above stated charges for dismissal.

The testimony clearly indicates many instances of corporal punishment of the pupils in Appellant's class, and that such action was taken by the teacher on occasions when the student failed to do his homework. When asked on cross-examination whether he used the paddle or threatened its use, it was to make the children do their assigned work, the Appellant answered that "It has been used as a tool throughout periods that I've been teaching here, I would suppose, in making their work mandatory."

This method of teaching was criticized by both the principal and the Supervising Principal on various occasions, especially when complaints from parents were received. However, the Appellant persisted in his mode of teaching.

There can be no question about a teacher's right to maintain order and to subdue a recalcitrant student, but any punishment inflicted must be reasonable and moderate and is to be used only when the occasion warrants it. *Harris vs. Galilley*, 125 Pa. Sup. 505. The maintenance of discipline in a classroom is important and reasonable punishment may occasionally be necessary, but the use of such punishment as a teaching aid is not the modern concept of proper instruction. If there were one or two isolated instances, it might be excusable, but the number of occasions on which punishment was inflicted cannot be explained away or justified. The Principal and Supervising Principal had testified that from time to time they had conferred with the Appellant relative to the use of punishment in a teaching program and expressed their concern about such procedure, but the Appellant ignored same and continued the use of punishment. Apparently, there was a philosophical conflict between the teacher and the administrators.

The only reasonable and logical conclusion is that the Appellant's persistent use of punishment as a teaching aid constituted cruelty.

The Appellant was also charged with persistent lateness and failure to be present in his classroom at the required time and failure to submit lesson plans as required. Mr. Reindollar, the elementary school principal, had been instructed to record the time and dates of the Appellant's late arrivals in school, beginning on September 11, 1967. He recorded 20 instances of lateness beginning in September 1967 and continuing until February 1971. Despite written notice given by the principal under administrative order on September 13, 1967 and a second notice given

on October 20, 1967, reiterating the requirements of prompt attendance, the Appellant continued to disregard this requirement. On February 1, 1971, Mr. Richards, the Supervising Principal, rated Mr. Justice as unsatisfactory. He had a number of conferences with the Appellant relative to his lateness record, but to no avail. In his opinion, the teacher was insubordinate. An example of this was illustrated when he said on September 31, 1967 that "I don't feel it necessary to be there before I begin to teach." The Appellant persistently failed to comply with the administrative requirements, despite the warnings given him. We attach probative value to the testimony and opinions expressed by the principal and the supervising principal. Kiebler's Appeal, 30 D. & C. 628.

We therefore conclude that the Appellant did persistently and wilfully violate the School Laws of the Commonwealth.

Ambridge School District vs. Snyder, 346 Pa. 103

Sintons Case, 151 Pa. Sup. 548

Johnson vs. United School District, 201 Pa. Sup. 375

The School District also charged the Appellant with incompetency and in substantiation thereof offered the unsatisfactory rating given the teacher in March, 1971. A finding on this charge must be based on the decision in *Thall Appeal*, 410 Pa. 222, wherein the Court stated that evidence of two unsatisfactory ratings is required to establish incompetency of a professional employe. The absence of same in this matter precludes sustaining incompetency as a charge for dismissal.

The solicitor for the School District, at the time of the appeal hearing, raised, for the first time, the question of no written contract between the parties, as required by the School Code, Section 1121. Counsel for the Appellant stipulated that no written contract existed. *Taggart vs. Cannon McMillan Joint School System*, 409 Pa. 33, upheld the requirements of Section 1121 of the Public School Code, and further stated that a contract must be executed and a vote of the majority of the school board must affirm the appointment.

In *Mullen vs. DuBois Area School District*, 436 Pa. 211, the Court overruled that part of the *Taggart* decision, *supra*, relative to the affirmative vote of the school board, stating that said requirement was directory and not mandatory. No determination was made as to the written contract in this case, as a contract had been executed. The Court did say that the burden of compliance rested with the school board and the teacher should not be penalized.

We are bound to comply with the decisions of the Courts in determining the validity of any appeal presented to us. Considering the fact that the question of the noncontractual relationship between the parties having been raised for the first time on the appeal proceedings, and the trend of the Court, as expressed in the *Mullen vs. DuBois* case, *supra*, we will not take a position at this time on this specific question. We will therefore base our conclusion solely on the testimony taken at the hearing before the School Board, and the argument and briefs presented to us at the appeal hearing.

In accordance with the above, we find that the dismissal of the Appellant on the charges of cruelty and persistent and wilful violation of the School Laws of the Commonwealth has been sustained.

We, therefore, make the following

ORDER

AND NOW, to wit, this 19th day of October, 1971, the Appeal of James Justice from the decision of discharge by the Board of School Directors of the Fairfield Area School District is hereby dismissed, and the action of the School Board dismissing him as a professional employe is hereby sustained on the grounds of cruelty and persistent and wilful violation of the School Laws of the Commonwealth.