

**IN THE OFFICE OF THE SECRETARY OF EDUCATION
COMMONWEALTH OF PENNSYLVANIA**

SERGE VLADIMIRSKY,	:	
Appellant	:	
	:	TTA No. 02-12
v.	:	(Remanded)
	:	
THE SCHOOL DISTRICT OF	:	
PHILADELPHIA,	:	
Appellee	:	

OPINION AND ORDER

In the appeal of Serge Vladimirsky (“Appellant”), Commonwealth Court has remanded the matter to the Secretary of Education (“Secretary”) to calculate the compensation Appellant is due taking into consideration his obligation to mitigate damages. The following adjudication is issued in accordance with the Court’s direction. See *Opinion*, attached hereto.

FINDINGS OF FACT

1. Appellant was hired as a teacher at Overbrook High School in the School District of Philadelphia (“District”) in September 1997. Reproduced Record (R.) at 222a.
2. In 2011, the District’s Administration brought disciplinary charges against Appellant. *Id.*
3. By letter dated July 20, 2011, Appellant received a statement of the charges against him. R. 162a-169a. That letter recommended Appellant’s termination. R. at 226a.
4. Appellant requested a hearing before the District’s School Reform Commission (“SRC”) and on November 28, 2011 a hearing was held before the SRC’s appointed hearing officer. *Id.*
5. Effective July 20, 2011, the SRC terminated Appellant from his position. R. at 3a.

6. From July 2011 through March 2012, following his termination, Appellant made efforts to find employment as a public school teacher by sending resumes to several school districts in the Philadelphia area. Tr.¹ 45-46, 102-103.
7. The record contains no evidence to support a conclusion that Appellant made any efforts to find employment similar to his employment with the District at any time after March 2012.
8. Appellant had a bachelor's degree and was certified to teach history and social studies. Tr. 14, 21-23, 144, 201-202.
9. Appellant would have earned \$65,733 for 2011 and \$67,705 in 2012 if his employment with the District was never terminated, and he continued working for the District during those years. Tr. 12, 21, 22.
10. Appellant's actual earnings were \$54,834 in 2011 and \$25,058 in 2012. His earnings during these years was entirely from the District and unemployment compensation. V. Exs. 7-16.
11. After his employment with the District ceased in July 2011, Appellant was unemployed until 2013, when he was hired as a security guard for Sunrise Senior Living Center. He remained employed at Sunrise at all relevant times thereafter. Tr. 50, V. Exs. 7-12.
12. Appellant challenged his termination by pursuing litigation against the District before the Secretary and Commonwealth Court. On appeal, Commonwealth Court

¹ "Tr." refers to the transcripts of the proceedings held before the hearing officer appointed by the Secretary for the hearings on the issue of damages.

concluded that the Appellant's termination was a nullity. The Court reinstated Appellant with backpay. *Opinion* at 27, 30.

13. On or about February 21, 2017, February 18, 2017, December 2, 2016 and November 21, 2016, the District offered Appellant reinstatement to his teaching position. See letters attached to Appellant's *Application for Relief* submitted to the Secretary. Tr. 62-70.

14. Appellant has elected not to return to his teaching position with the District. *Id.*

PROCEDURAL BACKGROUND

On or about April 1, 2012, Appellant initiated litigation before the Secretary by appealing his termination from employment. In an adjudication dated November 19, 2014, then-Acting Secretary Carolyn C. Dumaresq held that Appellant "shall be reinstated to his position as a professional employee and shall be reimburse any amount of compensation that he lost due to his termination in fact, during the period of time from July 20, 2011 to March 15, 2012. The Acting Secretary sustained Appellant's termination as of March 15, 2012. R. at 95-111a.

The parties appealed the Acting Secretary's adjudication to Commonwealth Court. On December 19, 2014, the district filed an application for supersedeas with the Secretary. R. at 258-303a. In an opinion and order dated January 7, 2015, the Acting Secretary granted the District's application for supersedeas and ordered that her November 19, 2014 adjudication shall be stayed during the pendency of the Commonwealth Court appeal. R. at 236-247a.

On appeal, Commonwealth Court *inter alia* reversed the Secretary's adjudication, and in its opinion dated June 2, 2016, directed the Secretary "to reinstate Appellant and to calculate the compensation which he is due taking into consideration Appellant's obligations to mitigate his damages." The Court concluded that Appellant's termination was a nullity. *Opinion* at 27-30.

On August 25, 2016, Secretary of Education Pedro A. Rivera ordered the District to reinstate Appellant and initiated proceedings to determine the amount of damages to which he is entitled. In December 2016, the parties requested hearings on this issue of damages. Those hearings commenced in 2017 and continued over the course of several days throughout the year. The District and Appellant filed post-hearing briefs on April 2, 2018, and February 9, 2018, respectively. Appellant filed a reply brief on April 23, 2018.

DISCUSSION

In his appeal, Appellant requests an award in excess of \$322,000. Appellant Brief at 3. In my view, the amount Appellant requests is significantly higher than the award to which he is entitled. The requested amount ignores the Appellant's duty to mitigate damages. It is not supported by the facts or the law.

“Where a teacher is wrongfully discharged, he is to be compensated for loss of salary during such period, but there is no requirement that the school district pay the compensation provided in the contract regardless of set-off or the amount of damages the employe[e] has suffered.” *Coble v. Sch. Dist. of Metal Twp.*, 116 A.2d 113, 115 (Pa. Super. 1955). “[I]n an action for breach of contract by one employed as a teacher, the measure of damages is the wages which were to be paid, less any sum actually earned, or which might have been earned, by the [teacher] by the exercise of reasonable diligence in seeking other similar employment.” *Id.* at 116. In the present matter, Appellant is entitled to an award for lost compensation which is significantly less than what he would have received pursuant to the applicable District contract because he did not properly mitigate damages for most of the relevant timeframe as explained below.

To prove that the plaintiff failed to properly mitigate damages, the employer has the burden of proving that substantially comparable work was available and that the plaintiff failed to exercise

reasonable due diligence in seeking alternative employment. *Circle Bolt & Nut Co. v. Pa. Human Relations Comm'n*, 954 A.2d 1265 (Pa. Cmwlth. 2008). The law is clear that “the duty to mitigate damages 'is not onerous and does not require success.' All that is required to mitigate damages is to make 'an honest, good-faith effort'.” *Merrell v. Chartiers Valley School District*, 51 A.3d 286 (Pa. Cmwlth. 2012) quoting *Circle Bolt & Nut Co. v. Pa. Human Relations Comm'n*, 954 A.2d 1265 (Pa. Cmwlth. 2008) (internal citations omitted).

I. Efforts to obtain substantially comparable from July 2011 through early 2012

The record reflects that Appellant did make efforts to obtain employment as a teacher in the months immediately following his last working day for the District in July 2011. He credibly testified that these efforts from July 2011 through early 2012 were required for him to continue receiving unemployment compensation during that time. Tr. 102-103. Specifically, Appellant testified as follows:

Q. Would you please explain your efforts to find work after you were dismissed by the district?

A. Well, like I said, first thing I did was apply for unemployment. As part of my unemployment, generally, I started right from there mailing résumés to a variety of school districts, really, off the computer. Many of them I was not aware of and I never thought again, but I sent out résumés all over the area, and I documented that information to the unemployment -- Department of Labor; is that the correct office? Yeah. I documented my efforts to them monthly as far as looking for work and specific places that I looked for work. I filled out forms a couple of times of where I sent résumés. . . to continue my [unemployment compensation] payments, I had to make effort, I had to make full effort to find such a job. I tried to. I had opportunities to take lesser paying jobs, but all of them paid less than my unemployment compensation.

Tr. 45-46.

I find credible the above-quoted testimony regarding what occurred regarding Appellant’s job search during the months after he ceased working for the District. Accordingly, it is appropriate for Appellant to be paid compensation he would have received if he was employed by the District

after his last working day with the District in July 2011 through the first quarter of 2012 with an offset for his actual earnings.² In my view, the evidence demonstrates that Appellant made an honest, good-faith effort to find similar work during that time period.

II. Efforts to obtain substantially comparable work after March 2012.

At all relevant other than July 2011 through March 2012, however, Appellant clearly was not looking for a job that was similar to his position with the District. During no other timeframe did Appellant put forth the requisite effort to demonstrate proper mitigation of damages. Appellant admitted at the hearing that “toward the end of 2012” to the present, he made no efforts at all to seek a public school teaching position. Tr. 102-103. In addition, no credible evidence in the record supports a conclusion that Appellant was looking for a job as a public school teacher beginning as far back as the end of March 2012.

After his employment with the District ended in July 2011, Appellant was not employed again until 2013, when he was hired as a security guard at Sunrise Senior Living Center. He never again searched for work as a teacher. Instead, he was content to remain at Sunrise. He stayed there, according to his testimony, because “I know I have a paycheck. I know that my bosses are happy with me. I have certainty.” Tr. 50. Based upon the evidence, I find that the District has proven that Appellant ceased looking for similar work at all relevant times after March 2012.

III. Availability of substantially comparable work

The evidence provided by the District also established that similar employment opportunities were available to Appellant. Terry Leslie, a nationally certified vocational expert, provided expert testimony and a report in this matter. The report, data, and testimony provided

² See page 8 below for calculation details including offsets for actual earnings.

by Leslie supports the conclusion that Appellant did not exercise reasonable due diligence in obtaining available employment after March 2012 and also that Appellant could have reasonably expected to earn more money than he actually earned if he pursued similar employment with reasonable diligence. Exs. SDP 2, 3, 4 and 5.

Leslie obtained the data he reviewed for this matter from a database known as “CEB Talent Neuron.” (CEB) Ex. SDP-2; Tr. 193. CEB has a database of over one billion advertisements from 25,000 sources since 2005. *Id.* CEB is the industry’s most comprehensive source of global talent demand and supply data, predictive analytics and insights into real-time job market, location, and competitive intelligence data to assist employers in making talent planning and recruiting decisions. *Id.* CEB’s database is used by, among other entities, government agencies and medical companies, and it is used in assessing leading economic indicators. *Id.* The job advertisements Leslie obtained included numerous positions located within the Philadelphia area. Ex. SDP-3 at 16.

Leslie reviewed data from several school districts in the Philadelphia area regarding the social studies teacher positions filled since Appellant’s termination. Ex. SDP-4. His report, includes the positions filled in the following school districts: Abington School District, Lower Merion School District, Marple Newtown School District, Spring-Ford School District, Upper Darby School District, Upper Moreland School District, Wallingford-Swarthmore School District, and William Penn School District. Leslie found that since Appellant’s termination this group of school districts filled approximately 70 indicated positions. *Id.*

Leslie concluded that obtaining a job as a security guard that paid Appellant \$12.75 per hour and not subsequently seeking a teaching position was improper mitigation of damages. His research showed that social studies teaching positions were available to Appellant after his

termination. *Id.* at 5. I find Leslie's report and testimony to be credible. The evidence provided by Leslie when considered in conjunction with Appellant's testimony demonstrates by a preponderance of the evidence that Appellant failed to properly mitigate damages after March 2012³

IV. Calculation of Damages

Given the above analysis, Appellant is entitled to \$21,561 as a total gross amount due to him for lost compensation in this matter to be calculated as follows: For 2011, Appellant is owed \$10,899, the difference between what he would have earned in 2011 (\$65,733) and his actual earnings that year (\$54,834). For the first quarter of 2012, Appellant is owed \$10,662, one-fourth of the difference between what he would have earned in 2012 (\$67,705) and his actual earnings that year (\$25,058). Appellant is not entitled to an award for any other timeframe because he did not properly mitigate damages during any other relevant period. Appellant is entitled to this award regardless of whether he returns to work with the District.

Accordingly, the following order is hereby entered:

³ Appellant's requests for reimbursement for transcript costs and expungement of his disciplinary record with the District are outside the scope of this matter. Those issues are therefore not addressed herein because they are not before the Secretary for review.

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SERGE VLADIMIRSKY,
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:
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ORDER

Serge Vladimirsy shall be entitled to **\$21,561** as a total gross amount for lost compensation during 2011 and 2012. Mr. Vladimirsy also shall be entitled to payment for any leave that he would have earned during those two years if he remained employed with the School District of Philadelphia. The District shall have the right to make deductions for applicable retirement contributions and other payroll deductions in accordance with legal and/or contractual requirements.



Pedro A. Rivera
Secretary of Education

Date Mailed: May 1, 2018