

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF
EDUCATION

UGURHAN K. AKTURK KOSEREIS
V.
DEPARTMENT OF CHILDREN, YOUTH
AND FAMILIES

DECISION

Held: The appellant's claim for reimbursement of reasonable litigation expenses under the Equal Access to Justice Act is denied even though he prevailed on several of his claims against the Department of Children, Youth and Families.

Date: November 16, 1998

Travel of the Case

On September 25, 1996 the commissioner determined that the Department of Children, Youth and Families had insufficient proof that timely notice of dismissal was provided to the appellant, Ugurhan K. Akturk¹. The appellant was employed as a tenured teacher at the Rhode Island Training School and under law was entitled to be notified on or before March 1st that he would be dismissed. The notice mailed to him by certified mail was received on March 7, 1995, and conflicting testimony was presented on the issue of when Mr. Akturk received a separate, hand-delivered notice. The commissioner thus ruled that his dismissal at the close of the 1994-95 school year was not effectuated, even though DCYF had established “good and just cause” for his dismissal. The parties were directed to confer to determine what compensation was owed to Mr. Akturk. See decision of the commissioner dated September 25, 1996.

On February 13, 1997 the appellant’s attorney notified the hearing officer of the parties’ inability to reach a complete agreement on the issue of compensation. On March 14, 1997 the hearing officer wrote to the parties requesting that they select an agreed-upon hearing date, and if they could not, to notify her to select the hearing date. The parties were again requested to notify the hearing officer of an agreed-upon hearing date on December 23, 1997. The parties were apparently unable to agree upon a date, and a hearing was then scheduled by the hearing officer for March 30, 1998. A second hearing was held on April 20, 1998 at which time the parties informed the hearing officer that all issues as to compensation owed Mr. Akturk were settled. The parties described on the record the details of their agreement as to back wages and other monetary sums to be paid to the appellant.

¹ The appellant’s last name is now Kosereis.

The only remaining point of dispute between Mr. Akturk and DCYF was and is his claim that he is entitled to attorney's fees for the initial hearing as well as the second two hearings on the issue of damages. The parties presented argument on this point at the April 20, 1998 hearing and the record in the case closed with the filing of a stipulation as to Mr. Akturk's net worth on May 19, 1998².

Issue

Is the appellant entitled to reimbursement for his attorney's fees under the Equal Access to Justice Act, R.I.G.L. 42-92-1 et seq.?

Findings of Relevant Facts

- The appellant prevailed on the merits of the issue of whether his dismissal as a tenured teacher at the Rhode Island Training School complied with the provisions of the teacher tenure act. See September 25, 1996 decision of the commissioner.
- The attorney's fees incurred in litigating the issue of the legality of his dismissal were in the amount of \$2,025.00. Akturk Ex. 2.
- Following the decision on the merits, DCYF paid Mr. Akturk the amount of back wages it determined he was owed (\$31,967.90). Akturk Ex. 1.
- At that time Mr. Akturk executed an affidavit identifying wages and other benefits he had received during the period of his dismissal. The parties agreed that the amounts identified in the affidavit would reduce the amount of back wages paid to the appellant at that time. It was also agreed that Mr. Akturk would retain the right to litigate the propriety of these offsets. See Akturk Ex. 1, letters of October 10, 1996 and November 27, 1996.
- Mr. Akturk filed an affidavit in June of 1997 which corrected the amount he had received as unemployment compensation during the period of his layoff from the Training School. Akturk Ex. I.

² A condition of eligibility for recovery of fees under R.I.G.L. 42-92-2 is a net worth under \$500,000.00.

- At no time subsequent to the filing of this affidavit did DCYF dispute that it owed the appellant additional monies pursuant to the corrected affidavit.³
- DCYF did continue to dispute other amounts claimed by the appellant as compensation owed to him as a result of his invalid dismissal. Tr. Vol. II pp. 37-38
- The appellant prevailed on the issue of additional compensation owed to him. Such additional compensation was paid pursuant to a settlement agreement described in the transcript of the April 20, 1998 hearing at pages 5-7. The amount paid was \$11,899.60.
- The attorney's fees incurred by the appellant in litigating the issue of the compensation and other monetary damages owed to him were in the amount of \$1,387.50. Akturk Ex. 3.
- The appellant is an individual whose net worth was less than five hundred thousand (\$500,000.00) dollars at the time his appeal was initiated. See undated stipulation of the parties filed as part of the record on May 19, 1998.

Positions of the Parties

The Appellant

Mr. Akturk argues that he has twice prevailed against DCYF under circumstances which fall within the scope of the Equal Access to Justice Act, R.I.G.L. 42-92-1 et seq. In the initial adjudication, he prevailed on the issue of the validity of his dismissal as a tenured teacher. In the second adjudication, although the monetary issues were ultimately settled, he prevailed in the sense that he recouped an additional \$11,899.60 of compensation from a previously intransigent state agency.

Counsel acknowledges that a recovery of attorney's fees under the Equal Access to Justice Act must be premised on a finding that the agency acted without substantial

³ Tr. Vol. I, pp. 14-16; Vol. II, pp. 17-18

justification. He points out that even though his client filed a corrected affidavit in June of 1997 and even though this document clearly entitled him to additional monies which were not disputed by his employer, it was not until DCYF was brought to a second hearing that it agreed to make this payment. If one looks at the total amount to be paid under the provisions of the settlement, counsel argues that his client has clearly “prevailed” because he is recouping a substantial portion of what he claimed were improper offsets used by DCYF in computing the \$31,967.90 paid to him. Clearly, under these circumstances, he is entitled to recover reasonable litigation expenses as provided by the statute. He notes that this reimbursement is only a portion of the legal expenses he has incurred as a result of the unjustified action of DCYF.

Department of Children, Youth and Families

Counsel notes at the outset that the proceedings conducted before the Commissioner of Education arise under 16-39-1 et seq. of the General Laws. Chapter 39 clearly states that such process shall be provided “without cost to the parties involved”. Thus, any award of attorney’s fees would be in derogation of this statute.

Secondly, he argues that the Equal Access to Justice Act was intended to apply only to administrative adjudications which originated as contested cases under Title 42 Chapter 35 (The Rhode Island Administrative Procedures Act). Evidence of such intent, he argues, is found in the express language of the law in Section 42-92-7 - “this chapter is intended to supplement the provisions of Chapter 35 of Title 42.” Application of the statute to proceedings outside of the Administrative Procedures Act would thus be unauthorized.

Even if the Equal Access to Justice Act did apply to this litigation, counsel for DCYF maintains that his agency has had substantial justification for its actions at all times. The commissioner confirmed that DCYF acted with substantial justification in finding that there

was good and just cause for the appellant's dismissal. He argues that the fact that Mr. Akturk prevailed on a procedural technicality does not render DCYF's action unjustified.

Throughout the damages phase of this appeal, DCYF maintained that all of the offsets used in computing the amount of back wages paid to Mr. Akturk in 1996 were proper. The incorrect information provided by Mr. Akturk in his affidavit as to the amount of his unemployment benefits did, counsel acknowledges, create a clear additional liability to him in the amount of \$4,180.00⁴. The affidavit was not corrected until June of 1997, at which time there existed several other amounts in dispute and counsel for the appellant had already requested that the hearing be reconvened to resolve these issues. DCYF's decision to defer payment of this additional undisputed amount was reasonable given the likelihood that all remaining issues would be submitted forthwith to the Commissioner. For these reasons, DCYF argues that it has, at all times, acted with substantial justification in all aspects of its employment relationship with Mr. Akturk.

Decision

The issue of recovery of attorney's fees in proceedings before the Commissioner of Education has been raised on several occasions. The argument in each case has been that appeals to the commissioner fall within the scope of the term "adjudicatory proceedings" as defined by 42-92-2 (b). The applicability of the Equal Access to Justice Act to hearings before the commissioner under 16-39-1, 16-39-2 (and numerous other statutes conferring appellate authority on the commissioner) is unclear. The legislative intent expressed in 42-92-1, as

⁴ By computation from the affidavits submitted in the record, this amount should have been \$4,080.00.

amended⁵, would clearly be served by holding school committees⁶ responsible, as agents of the state and as municipal departments, for actions taken without substantial justification. The same rationale for reimbursement of an individual's or small business' reasonable litigation expenses would apply. However, the language of the act does not bring such appeals squarely within its coverage. DCYF's argument that general appeals to the commissioner under Sections 16-39-1 and 16-39-2 are required to be "without cost to the parties involved" is a strong one.

Even though we are uncertain of the applicability of R.I.G.L. 42-92-1 et seq. to these proceedings, we will assume, arguendo, that the statute applies. This does not result in an award of reasonable litigation expenses to the appellant because in each of the phases of these proceedings, we find that DCYF's actions and positions were substantially justified.

First, with respect to his dismissal, we have found that the appellant was the sole instructor in the auto body/auto mechanics program and that this was the only subject area in which he was certified to teach. The conclusion of the school administrators that the program lacked adequate resources and was not a viable instructional program at the Training School as of the 1994-1995 school year was well grounded. Future viability of the program was doubtful because of the state's deficit projections at that time. Our conclusion of law was that good and just cause existed for elimination of the appellant's position and his dismissal as a tenured teacher. Thus DCYF's initial action was substantially justified.

The decision to litigate the issue of the validity of Mr. Akturk's dismissal was also substantially justified. Proof submitted on the issue of the timeliness of the appellant's notice

⁵ The act was extended from the state and its various agencies to "the state and its municipalities and their respective various agencies." "Municipality" is defined in subsection (g) of 42-92-2 to include local or regional school districts.

⁶ DCYF functioned as a school committee in its dismissal of the appellant.

of dismissal was substantial. DCYF was, however, unable to prove by a preponderance of the evidence that the notice was delivered on or before March 1st. The failure to meet this burden of proof resulted in a decision in the appellant's favor. Again, however, the agency's position throughout the proceedings was substantially justified.

In the damages phase of these proceedings, we find that DCYF's position was also substantially justified. It disputed all of the additional monies claimed by the appellant, except for a sum owed because of an incorrect affidavit previously filed by the appellant. At the time of the filing of the corrected affidavit (June of 1997) the appellant had already requested resolution of his additional claims through the hearing process. It was not unreasonable for DCYF's counsel to defer payment of the undisputed amount to the time of resolution of these other disputed monetary claims by the commissioner.

DCYF's position on the disputed claims cannot be found to be lacking substantial justification. These items were the subject of compromise, set forth in the terms of an agreement of settlement. Although resolution through settlement does not necessarily preclude an award under 42-92-1, et seq., the settlement in this case precluded adjudication of these claims by the hearing officer. Thus, there was no submission of legal support for the positions of the parties with respect to these items. There were no findings, nor could there be, as to the merits of the positions of the parties based on the very brief arguments submitted. Under these circumstances, we are unable to determine if DCYF's position with respect to the additional sums in issue lacked substantial justification.

Based on the foregoing reasons, the appellant's claim for reimbursement for his attorney's fees under R.I.G.L. 42-92-1 et seq. is denied.

KATHLEEN S. MURRAY
Hearing Officer

DATE: November 16, 1998