

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

EDWARD CHARLAND

V.

PAWTUCKET SCHOOL COMMITTEE

DECISION ON REMEDY

Held: Evidence does not warrant reduction of backpay for unlawfully discharged teacher based on duty to mitigate damages. Offset for previously-received unemployment compensation is appropriate, and total damages are subject to 12% simple interest. Request for attorney's fees is denied.

DATE: November 26, 2001

Introduction

This matter concerns the appropriate remedy to be afforded Edward Charland in light of the Commissioner's previous decision reinstating him to his teaching position.¹

Background

On March 24, 1998, the Pawtucket School Committee terminated Mr. Charland from his physical education/health teaching position. By a 4-3 vote, the School Committee denied Mr. Charland's appeal in a decision dated October 13, 1998.² Mr. Charland appealed the School Committee's decision to the Commissioner of Education. On August 11, 2000, the Commissioner sustained Mr. Charland's appeal and ordered that he be reinstated to his teaching position with backpay, subject to his duty to mitigate his damages. On December 14, 2000, the Board of Regents denied the School Committee's appeal of the Commissioner's decision. Mr. Charland returned to his teaching position shortly thereafter.

The record shows that Mr. Charland's gross salary for the time he was away from his job was \$143,129.00.³ Mr. Charland received \$16,125.00 in unemployment compensation. He incurred \$9,058.32 in health care expenses. The evidence also documents \$781.30 in class overage stipends due Mr. Charland.

The record further shows that Mr. Charland did not have any other employment during this period except for his regularly-assigned driver education classes.⁴ He testified that he periodically checked newspapers for comparable-paying physical education/health jobs, but he did not find any.⁵ He testified that he contacted North Smithfield Super-intendent Richard Scherza regarding comparable employment in that

¹ By letter dated January 9, 2001, counsel for Mr. Charland requested that a hearing be conducted to clarify the Commissioner's August 11, 2000 decision in this matter. Following the recusal of the hearing officer who rendered that decision, the Commissioner of Education designated the undersigned hearing officer to hear and decide the request. Hearings were conducted on March 28, April 26, May 4 and May 17, 2001. Following the submission of memoranda by the parties, the record closed on July 20, 2001. The record consists of the transcripts and exhibits from the above-mentioned hearings, the parties' memoranda, the previous decisions in this case, and the record in the prior proceeding before the Commissioner, which includes the transcripts and exhibits from the hearings before the School Committee.

² The decision found that Mr. Charland harassed and intimidated a 7th-grade student by repeatedly ordering the emotionally-upset student into the shower with his shirt on after gym class and allowing the student to wear the soaking wet shirt to his next class. The Committee's decision was widely reported in the local news media.

³ In addition, contributions are due to Mr. Charland's FICA, Medicare and retirement accounts.

⁴ Mr. Charland has been a driver-education instructor since 1972.

⁵ Mr. Charland's salary at this time was in excess of \$50,000.

system, only to learn that there was none.⁶ While in Florida, Mr. Charland visited a school district, looked at pay scales, and obtained an employment application that he never filled out. In 1999 he enrolled in a stockbroker training class, but he did not complete it.

The School Committee submitted evidence of physical education positions that were advertised or filled in several public school districts or private schools during the period in question. The salaries for these positions ranged from \$15,000 to \$35,000.

Positions of the Parties

Counsel for Mr. Charland contends that the School Committee failed to prove that he did not mitigate his damages following his termination. The evidence of appointments to physical education jobs in other districts and schools did not show that the positions were advertised, and the pay was not comparable. Mr. Charland made reasonable efforts to find comparable work, but his efforts were significantly hampered by the severity and notoriety of the allegations brought against him. As a whole, the evidence did not show that it was reasonably likely Mr. Charland would find a similar job. Counsel also argues that Mr. Charland is entitled to retain his unemployment compensation as a collateral benefit because his termination was grounded in bad faith; that under Rhode Island General Law 9-21-10, Mr. Charland's backpay should include 12% interest, compounded annually; that the sick leave he would have been entitled to during the termination period should be awarded to him as personal days; and that he is entitled to an award of attorney's fees under R.I.G.L. 42-92-1 et seq. because the Committee's position in this matter was not substantially justified.

The School Committee contends that appropriate setoffs against Mr. Charland's backpay should be entered for the following reasons: (1) he did not mitigate his damages because he failed to seek any alternative employment despite evidence that comparable positions were available; (2) he unjustifiably delayed the proceedings before the School Committee with repeated requests for continuances; and (3) his retention of unemployment benefits would result in a double recovery contrary to decisions of the

⁶ Mr. Charland had known Dr. Scherza since they were youngsters. Dr. Scherza did not recall being contacted by Mr. Charland during this time. Dr. Scherza testified that he would have given Mr. Charland serious consideration for employment, but his school district did not have any regular or long-term substitute physical education/health positions become available during the period in question. Per diem

Commissioner. The Committee further contends that interest on backpay is a discretionary matter and, if awarded, should be amortized on the sums actually owed, not compounded annually. Finally, the Committee argues that Mr. Charland is not entitled to attorney's fees under the statute because its action had a reasonable basis in law and fact and because Mr. Charland's failure to request such an award at the hearing before the School Committee bars him from seeking fees at this stage of the proceedings.

Discussion

In Morinville v. Moran, 477 A.2d at 76 (1984), the Rhode Island Supreme Court addressed mitigation of damages. It stated as follows:

. . . in situations in which an employee seeks to recover compensation for damages sustained during a period of unlawful discharge, the burden of proof on the mitigation of damages is on the employer, and this burden can be satisfied by proof that (1) one or more discoverable opportunities for comparable employment were available in a location as convenient as, or more convenient than, the former place of employment, (2) the employee made no attempt to apply for any such job, and (3) it was reasonably likely that the employee would obtain one of those comparable jobs.

While Mr. Charland certainly did very little to find alternative employment during the period of his unlawful discharge, we do not find that the School Committee fully met its burden as delineated above. In particular, we are not convinced that a school with a comparable job would have hired Mr. Charland upon learning that he had been dismissed by the Pawtucket School Committee for the reasons stated in its decision of October 13, 1998 (see footnote 2). Given the nature of the allegations brought against Mr. Charland, we believe that a significant cloud was placed on his professionalism and character during his separation from the Pawtucket school district. In our view, it was not reasonably likely that another school district or private school would have employed Mr. Charland prior to the removal of that cloud. As a result, we do not find that a reduction of Mr. Charland's backpay based on a failure to mitigate damages is warranted.⁷

substitute work was available at \$50 per day. Mr. Charland did not seek per diem substitute work in any public school district.

⁷ Nor do we find that the requests for continuances during his appeal to the School Committee justify a reduction in backpay. The School Committee saw fit to grant those requests, thereby implying that good cause to do so existed.

We shall, however, deduct from Mr. Charland's backpay the amount of unemployment compensation he received. In making this deduction in the past, we have noted our aversion to a double recovery by appellants and relied on evidence of the unemployment benefit contribution by school committees.⁸ While the record is not clear as to the School Committee's contribution to Mr. Charland's unemployment benefits, we are not persuaded that we should depart from long-standing precedent in this area.⁹

The parties' disagreement regarding interest also has been addressed previously. In D'Ambra v. North Providence School Committee, July 7, 1994, we discussed the reasons for including statutory interest in backpay awards. As in that case, we shall order simple pre-judgment interest at the annual rate of 12% to be applied to the sum owed to Mr. Charland. Compounding of interest is not required.¹⁰

Mr. Charland's request for attorney's fees is denied. Under the Equal Access to Justice Act (R.I.G.L. 42-92-1 et seq.), a prevailing party in an adjudicatory proceeding before a state or municipal agency is entitled to reasonable litigation expenses unless it is shown that the agency which initiated the adjudication acted with substantial justification. R.I.G.L. 42-92-2(5) defines "party," in part, as "any individual whose net worth is less than five hundred thousand dollars (\$500,000) at the time the adversary adjudication was initiated" The record evidence in this matter does not establish that Mr. Charland meets this definition. He therefore is not eligible for reimbursement under the statute.¹¹

Conclusion

The record evidence shows the Mr. Charland is entitled to \$143,129.00 in back wages,¹² \$9,058.32 in health care reimbursements, and \$781.30 in class overage stipends. This amount is to be reduced by \$16,125.00, the amount of previously received

⁸ Howard Union of Teachers on behalf of Sandra M. McCarthy v. Department of Corrections, November 15, 1982, affirmed by the Board of Regents, June 23, 1983; Bilodeau et al v. Providence School Committee, December 15, 1982; Jackson v. Providence School Committee, October 16, 1984, affirmed May 23, 1985.

⁹ See also Brown v. Bristol School Committee, December 14, 1981.

¹⁰ D'Ambra, p. 6.

¹¹ In the absence of specific evidence regarding Mr. Charland's use of sick leave during the 1997-98 school year and the manner in which sick leave is provided and accumulated, we are unable to consider Mr. Charland's request that he be awarded personal leave in the amount of sick leave he would have been entitled to during the termination period.

¹² Corresponding contributions also must be made to Mr. Charland's FICA, Medicare and retirement accounts.

unemployment compensation. The resulting total of \$136,843.62 is subject to simple interest at the rate of 12%.

It is so ordered.

Paul E. Pontarelli
Hearing Officer

Approved:

Peter McWalters
Commissioner of Education

Date: November 26, 2001