

EDMOND SAINT-JEAN,

Appellant

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 23-14

OPINION

INTRODUCTION

Appellant appeals the decision of the Prince George's County Board of Education ("local board") charging Appellant with restitution in the amount of \$3,367.00 for receipt of unearned wages. The local board responded to the appeal. Appellant filed a reply and the local board filed a surreply.

FACTUAL BACKGROUND

Appellant is a vocal music teacher who has been employed by Prince George's County Public Schools ("PGCPS") for approximately six years. (T. 171-172). During the 2019-2020 school year, Appellant held a .5 position at two different schools, Samuel P. Massie Academy ("Massie") where he worked on A days and Andrew Jackson Academy ("AJA") where he worked on B days, to account for a full-time equivalent position ("FTE"). *Id.*; 74-76. Sometime towards the end of the 2019-2020 school year, Appellant sought a transfer out of AJA for the following school year. (T. 106).

For the 2020-2021 school year, Appellant was assigned to .5 positions at both the Robert Goddard Montessori School ("Goddard") and Dora Kennedy French Immersion School ("Kennedy"). *Id.* On May 27, 2020, and again on June 9, 2020, Judith Hawkins, Vocal and General Music Content Supervisor, emailed teachers notice of their 2020-2021 school assignments via a Google spreadsheet of the staffing assignments. She had been notifying teachers of their assignments in this same manner for many years. (T. 27-29, 104; 221). The spreadsheet contained Appellant's .5 assignment at Goddard and .5 assignment at Kennedy.¹ At the time the emails were sent by Ms. Hawkins, Appellant did not realize he had received them and he did not open them to view the spreadsheet to see his 2020-2021 school assignments. (T. 219-220). Appellant was expecting instead to receive an email of his school assignments from Human Resources, as he had received in prior years. (T. 221). Having received no email of his 2020-2021 school assignments, Appellant reported to Massie representing that it was his

¹ The spreadsheet reflected that the .5 positions at Massie and AJA were vacant. (T. 29, 38).

assigned school. He did not report to AJA, from where he had requested the transfer, or to any other school. (T. 75, 172).

At the start of the 2020-2021 school year, instruction was virtual and teachers reported to work by logging in to the PGCPS computer system. (T. 89-90). Teachers had the ability to log in each day regardless of whether they had assigned duties. (T. 78-79). It was each teacher's responsibility to enter leave for time not worked. (*Id.*; T. 83-84).

Appellant sent Ms. Hawkins emails on August 24 and September 16, 2020, inquiring about his second school assignment. (Emails). Dr. Hawkins did not recall receiving or seeing those emails. (T. 61). On August 31, 2020, Appellant attended a meeting with Dr. Hawkins and other dual assigned teachers who had not received all of their school assignments. *Id.*

The record demonstrates that there was confusion about Appellant's assignment for several weeks after he reported to Massie. On October 30, 2020, Appellant attended a meeting with Tracie Miller, Senior Human Resources Partner, to discuss his assignments. (Hearing Examiner Report "HER" at 5). On November 2, 2020, Appellant received official notice of his school assignments to report to Massie and William Hall Academy for the remainder of the 2020-2021 school year. (T. 52-54).

Meanwhile, from the start of the school year through October 2020, Appellant logged into the PGCPS computer system daily. Although Appellant was assigned to teach only on A days at Massie, he testified that he did lesson planning on his B days and performed other functions for which he was unable to provide any detail during his testimony. (T. 224-226). Contrary to Appellant's claims, Massie's Principal, Michelle Pegram, testified that Appellant was assigned to Massie on A days only as his position was a .5 position and there was already a full time music teacher there providing instruction to the students on B days. (T. 81-82, 87-88, 98, 262-265; *See also* CEO Letter at 3). She also testified that there was more than sufficient planning time on the A days, and she was not aware of any tasks Appellant would have needed to perform on B days. (T. 267-268). Neither the assistant principal nor the administrative assistant at Massie could confirm Appellant's claim that he performed work on B days. (CEO Letter at 3).

Appellant collected his regular full-time pay during the period at issue. (T. 46-51, 83).

On October 5, 2021, and again on November 2, 2021, Nicole R. Parker, Employee and Labor Relations Advisor, conducted two separate *Loudermill* hearings attended by Appellant and his union representative Randal Mickens, UniServ Director, PGCEA, to address allegations about Appellant's failure to report to his assigned schools at the start of the 2020-2021 school year and his receipt of compensation for time that he did not work.² (Appeal, CEO Letter). Appellant had the opportunity to hear the claims and evidence against him and to respond. The Employee and Labor Relations Office ("ELRO") found that Appellant failed to report to his second school of assignment from August 31, 2020, through October 30, 2020, while receiving full compensation during that time in violation of the Employee Code of Conduct and local

² It is unclear from the record why so much time passed between the time Appellant's assignments were clarified and the first *Loudermill* hearing, but that is of no import to the issues on appeal.

board Policy 0109 (*Fraud, Waste and Abuse*) and PGCPs Administrative Regulation 2200 (*Fraud, Waste and Abuse and Whistleblower Protection*).

The ELRO referred the matter to the CEO. By letter dated January 5, 2023, the Chief Executive Officer (“CEO”) recommended that the Appellant be suspended for ten days for misconduct in office, willful neglect of duty, and insubordination pursuant to §6-202 of the Education Article. (CEO Letter). The CEO found that Appellant failed to report to his new school assignments, and that when he reported to his previous assignment Appellant failed to report for the second B day assignment while still receiving a full paycheck. The CEO found that Appellant violated various provisions of the Employee Code of Conduct related to failure to report to and complete work. The CEO also found violation of board Policy 0109 and Administrative Procedure 2200 for acceptance of compensation for days not worked for which the CEO recommended Appellant pay restitution in the amount of \$6,823.13. *Id.*

Appellant appealed the CEO’s recommendation to the local board. The local board referred the matter to a Hearing Examiner who conducted an evidentiary hearing on April 5, 2022. At the hearing, Appellant was represented by counsel.

In a decision issued on August 25, 2022, the hearing examiner recommended that the CEO’s recommendation for suspension pursuant to §6-202 be rejected, but that Appellant be required to pay restitution in the adjusted amount of \$6,734.08 for 16 days of compensation received for days not worked in violation of board Policy 0109 and PGCPs Administrative Regulation 2200.³ (Hearing Examiner Report “HER”).

With regard to the suspension, the hearing examiner concluded that Appellant was not sufficiently made aware of his .5 B day assignment for the 2020-2021 school year and, thus, he did not willfully fail to discharge his duties at the second school assignment. (HER at 8-9). The Hearing Examiner also found that there was no misfeasance or malfeasance or other course of conduct to support a misconduct finding. (HER at 9-10). The Hearing Examiner concluded that Appellant did not willfully disregard express or implied directives from his supervisor by failing to report for the second .5 B day assignment, and that Appellant did not see the email with the assignments spreadsheet. (HER at 10).

With regard to the restitution, the Hearing Examiner found the testimony of Massie’s Principal, Dr. Pegram, that Appellant had no assigned duties at Massie on B days to be credible and convincing. (HER at 11). In light of the fact that Appellant had received compensation for the B days, the Hearing Examiner found a violation of the Policy and Administrative Regulation and recommended restitution for repayment of the wages. (HER at 12). The Hearing Examiner noted that Appellant was only a .5 employee at any one school at a given time and that “any work Appellant did on those B days was on his own as enough time was given for Appellant to plan on A days when he was actually scheduled.” *Id.*

The local board heard oral argument on the hearing officer’s recommendations. By Amended Order dated March 9, 2023, the local board granted the Appellant’s appeal in part denying the CEO’s recommendation to suspend Appellant for ten days without pay.⁴ However,

³ The Hearing Examiner adjusted the amount to reflect the correct daily pay rate. (HER at 12).

⁴ The local board initially issued an undated order and thereafter the amended order. (Appeal at 2).

the local board affirmed the CEO's and the Hearing Examiner's recommendations that Appellant pay restitution to PGCS for violation of board Policy 0109 and Administrative Procedure 2200. Although the Hearing Examiner recommended Appellant pay restitution in the amount of \$6,734.09, the local board reduced the amount to \$3,367.00. The local board explains in its sur-reply that the reduction in restitution was an acknowledgement that the school system played some role in the confusion about the second assignment while also recognizing that Appellant received full pay for days that he had no assigned duties at Massie. (Surreply at 3, fn2).

This appeal followed.

STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

At the outset, we clarify that this case is an appeal of the local board's decision to charge Appellant restitution for violation of local policy and regulation. Although the initial recommendation by the CEO was for a suspension pursuant to §6-202 of the Education Article, the local board did not accept that recommendation and did not suspend the Appellant pursuant to §6-202. Thus, this case is subject to review pursuant to §4-205 of the Education Article.

Appellant argues that the local board does not have the authority to require payment of restitution absent a finding of misconduct in office, willful neglect of duty, or insubordination. Local board Policy 0109 PGCS and Administrative Procedure 2200 prohibit all conduct considered fraud, waste, or abuse. The Policy and Regulation provide that "acceptance of compensation for hours not worked or duties not performed" constitutes fraud. *Id.* Employees who violate the Policy and Regulation can be required, among other remedies and sanctions, to pay restitution. *Id.*

There is nothing that prohibits the local board from determining, based on the facts of a particular case, that an employee's actions violate a local policy or regulation but do not rise to a level warranting a finding of misconduct in office, willful neglect of duty, or insubordination. Here, the local board determined that Appellant received compensation for "hours not worked and duties not performed" in violation of the policy and regulation. The local board also recognized that school system personnel played some role in the confusion about the second assignment. In light of that, the local board determined that the violation was unintentional and did not rise to a level warranting a suspension pursuant to §6-202, but that it justified imposition of restitution. We find that the local board was well within its discretion to do so.

Appellant also argues that the local board improperly charged him restitution because he worked on both A and B days at Massie. The record reflects that all staff worked virtually from home at the start of the 2020-2021 school year and could electronically sign into the system on any day, regardless of whether they were performing duties. (T. 78-79). Thus, the fact that

Appellant signed into the system on B days does not mean that he was performing compensable assigned duties for Massie.

Further, Dr. Pegram, Massie's principal, testified that Appellant was assigned to work A days only and that he had no assigned duties as Massie on B days. (T. 87-88; 262-265). Supporting this fact, Massie had a music teacher for instruction on B days and neither the assistant principal nor the administrative assistant at Massie could confirm Appellant's claim that he performed work on B days. The hearing examiner found Dr. Pegram's testimony to be credible and in conflict with the testimony of the Appellant. (HED at 12). As to witness credibility, it is well established that determinations concerning witness credibility are within the province of the trier of fact. *See, e.g., Bd. of Trustees v. Novik*, 87 Md. App. 308, 312 (1991) *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence."); *see also Board of Education v. Paynter*, 303 Md. 22, 36 (1985). Further, hearing officers are not required to give equal weight to all of the evidence and their failure to agree with an Appellant's view of the evidence does not mean their decisions are arbitrary, unreasonable, or illegal. *See Karp v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-39 (2015). The hearing examiner found that even if Appellant signed into the system each day and did lesson planning as he testified, he did so on his own time given that he was only ever a .5 employee at any given school. In our view, the record supports the determination that Appellant should have only received compensation for working A days at Massie.

We note that the local board reduced the hearing examiner's recommended restitution amount in half from \$6,734.08 to \$3,367.00. It did so to reflect the fact that the school system played a part in the confusion about Appellant's assignment. It mitigates for this fact while also recognizing that Appellant received compensation for days he should not have. We believe this is a fair assessment.

CONCLUSION

For the foregoing reasons, we find that the local board's decision was not arbitrary, unreasonable, or illegal and we affirm

Signatures on File:

Clarence C. Crawford
President

Susan J. Getty
Vice-President

Shawn D. Bartley

Chuen-Chin Bianca Chang

Charles R. Dashiell, Jr.

Jean Halle

Rachel McCusker

Joshua Michael

Lori Morrow

Warner I. Sumpter

Holly Wilcox

Absent:

Gail H. Bates

Joan Mele-McCarthy

May 23, 2023