

GLENN CIRIPOMPA,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE BOROUGH	:	DECISION
OF BOUND BROOK, SOMERSET COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – formerly employed as a physical education teacher in the respondent Board’s school district – claimed entitlement to back pay for the period from March 10, 2015 through October 31, 2015, which represents a period of time after he had completed a 120-day suspension imposed under an October 2014 arbitrator decision that returned petitioner to his job following a guilty finding in one of two counts of unbecoming conduct (sending nude photographs from a District computer and iPad), but a not guilty finding in the second count (inappropriate and harassing interactions with female staff members). Subsequent to appeals by the Board that culminated with the vacating of the 2014 arbitrator decision, a second arbitrator found petitioner guilty of unbecoming conduct on both counts, and determined that the charges were sufficient to warrant dismissal. The initial decision in the instant case was filed prior to the second arbitrator decision, and in expectation of continued employment in the District.

The ALJ found, *inter alia*, that: based upon the original arbitrator decision in 2014, the Board restored petitioner to its payroll as of November 1, 2015; since that time, the parties have attempted to resolve the outstanding issue of the amount of money owed to petitioner for the period from March 10, 2015 through October 31, 2015; the petitioner claimed that the Board owed him a total of \$22,325.53 for this period; the Board believed that certain monies earned by petitioner during that period of time should be counted as mitigation against the back pay owed, including several payments petitioner received for serving as an umpire at baseball games and earnings received while working for Snyder Bus Service during the summer months of 2015. The ALJ concluded that \$325 of petitioner’s earnings from serving as an umpire must count as mitigation against monies owed by the Board, but concluded that the summer earnings from Snyder Bus Service are not subject to mitigation; accordingly, the ALJ ordered the Board to pay the petitioner \$22,000.53 following the issuance of the decision of the Commissioner.

In exceptions to the within ALJ’s decision, the Board contended that – given significant developments in this case since the instant petition was filed, it would not make sense to reach a determination on back pay for an arbitrary period of time, and instead urged that it would be more logical to consolidate this matter with a second appeal that petitioner filed on May 8, 2017 regarding back pay.

Upon a comprehensive independent review, the Commissioner agreed with the Board and rejected the Initial Decision of the OAL, finding that the issue of back pay in this matter should not be dealt with in a piecemeal manner, but rather should be resolved in one proceeding. Accordingly, the Commissioner remanded this case to the OAL with the recommendation that it be consolidated with Agency Docket Number 89-5/17, OAL Docket Number EDU 9073-17, for a determination as to the total calculation of back pay owed, if any, in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Board, and petitioner Glenn Ciripompa's reply thereto. The parties' supplemental responses requested by the Commissioner following Arbitrator De Treux's June 16, 2017 decision have also been reviewed.

This matter involves a request by the petitioner for an award of back pay for the period of March 10, 2015 through October 31, 2015. A summary of the procedural history is required to provide the necessary context for this matter. On July 14, 2014, the Board filed tenure charges against petitioner, alleging two counts of conduct unbecoming a teacher due to his use of a District computer and iPad to send nude photographs and due to inappropriate and harassing interactions with female staff members. On October 20, 2014, an arbitrator found petitioner guilty of unbecoming conduct on the first count only, and imposed a 120-day suspension rather than removal. The Board filed an action challenging the arbitrator's award in the Superior Court of New Jersey, Chancery Division. On January 8, 2015, the Chancery judge vacated the award and remanded the matter to be heard by a different arbitrator. The Petitioner appealed and the Appellate Division reversed the Chancery Division's decision on October 29, 2015, reinstating the arbitrator's award. *Bound Brook Bd. of Educ. v. Ciripompa*, 442 N.J. Super. 515 (App. Div. 2015). Thereafter, the Board appealed to the New Jersey Supreme Court, which reversed the Appellate Division on February 21, 2017, vacating the award and remanding the matter to be heard by a different arbitrator. *Bound Brook Bd. of Educ. v. Ciripompa*, 228 N.J. 4 (2017). Arbitrator De Treux

issued his award on June 16, 2017, finding petitioner guilty of conduct unbecoming a teacher on both counts and determining that the charges are sufficient to warrant dismissal.

Upon the certification of tenure charges before the Commissioner, the Board suspended petitioner's pay for 120 days in accordance with *N.J.S.A. 18A:6-14*. That suspension, as well as the 120-day suspension imposed by the initial arbitrator in his October 20, 2014 decision, ended on March 9, 2015. Petitioner remained suspended without pay until the Appellate Division issued its decision on October 29, 2015. Petitioner was then reinstated on the payroll on November 1, 2015. This matter involves petitioner's request for back pay for the period from March 10, 2015 (after he completed the 120-day suspension imposed by the initial arbitrator's decision) to October 31, 2015 (the day before he was reinstated to the payroll following the Appellate Division decision).

The Administrative Law Judge (ALJ) concluded that the Board is obligated to pay petitioner \$22,000.53 for the period from March 10 to October 31, 2015. The ALJ also noted that further issues regarding payments and/or mitigation involving the period post-November 1, 2015 must be the subject of a new petition. Subsequently, on May 8, 2017, petitioner filed another petition before the Commissioner, seeking back pay from the 121st day following the certification of the tenure charges through March 9, 2015.

In its exceptions, the Board argues that due to the significant developments in this case since the instant petition was filed, it would not make sense to make a determination as to back pay for an arbitrary period of time, and instead urges that it would be more logical to handle all issues of back pay at once. Moreover, the Board points out that the March 10, 2015 through October 31, 2015 period is no longer relevant as the initial arbitrator's suspension has been vacated and replaced by a dismissal. The Board explains that the ALJ's decision is "just one piece of a much larger puzzle" and until that puzzle is completed, no order should be adopted. (Board's supplemental submission at 4) Furthermore, following Arbitrator De Treux's June 16, 2017 decision, the Board now takes the position that it does not owe any back pay at all because the dismissal should be deemed effective in October 2014, when the initial

arbitrator issued his decision. As such, the Board requests that the ALJ's decision be rejected, and that the matter be remanded to the OAL for consolidation with the May 8, 2017 petition regarding back pay.¹

In reply, petitioner argues that that the Board previously admitted that it owed petitioner back pay for the period of March 10 through October 31, 2015. Additionally, petitioner argues that his entitlement to back pay for this period is not dependent on the outcome of the tenure case. Instead, pursuant to *N.J.S.A. 18A:6-14*, petitioner is entitled to payment from the 121st day after tenure charges have been filed until there is a final determination – which petitioner now argues occurred on June 16, 2016 when Arbitrator De Treux issued his decision. Accordingly, petitioner contends that the Initial Decision – the result of comprehensive litigation between the parties – should not be disturbed.

Upon a comprehensive review of the record in this matter, the Commissioner agrees with the Board that the issue of back pay in this matter should not be dealt with in a piecemeal fashion, but rather resolved in one proceeding. New Jersey courts support the resolution of legal matters in a single comprehensive proceeding. *See Wadeer v. N.J. Mfrs. Ins. Co.*, 220 *N.J.* 591, 605 (2015) (noting that one purpose of the entire controversy doctrine is “the need for complete and final disposition through the avoidance of piecemeal decisions”). The instant petition was filed in January 2015. Much has changed in the procedural context of this case since that time: the Appellate Division issued its decision reinstating the Arbitrator's award; the Supreme Court reversed the Appellate Division and ordered a new arbitration proceeding; and Arbitrator De Treux issued a decision finding that the tenure charges are sufficient to warrant dismissal.

Given Arbitrator De Treux's recent award removing petitioner, it is inevitable that more issues of back pay – beyond those at issue in this petition – will need to be decided. Indeed, the Board now argues that no back pay is owed, while petitioner disputes that argument. In the event that back pay is owed, further issues involving mitigation will also need to be decided. The Commissioner cannot make a decision about the back pay owed for March 10, 2015 through October 31, 2015, because it is unclear at this juncture – or until the matter is looked at as a whole – how much back pay, if any, will be owed to

¹ The Board also takes exception to the merits of the Initial Decision, but it is unnecessary to address those arguments in this decision.

petitioner. As such, the Commissioner is constrained to remand this case – with the recommendation that it be consolidated with Agency Docket Number 89-5/17 – so that all issues of back pay relating to this matter may be fully adjudicated and decided in one proceeding.

Accordingly, the Initial Decision is rejected and this matter is hereby remanded to the OAL. It is recommended that this matter be consolidated with Agency Docket Number 89-5/17, OAL Docket Number EDU 9073-17, for a determination as to the total calculation of back pay owed in this matter.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 27, 2017

Date of Mailing: July 27, 2017

² Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 638-15

AGENCY DKT. NO. 5-1/15

GLENN CIRIPOMPA,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF BOUND BROOK,
SOMERSET COUNTY,**

Respondent.

Edward Cridge, Esq., for petitioner (Mellk O'Neill, attorneys)

Robert J. Merryman, Jr., Esq., for respondent (Apruzzese, McDermott, Mastro
& Murphy, attorneys)

Record Closed: April 12, 2017

Decided: April 28, 2017

BEFORE **JEFF S. MASIN**, ALJ t/a:

In a previous initial decision, the Board of Education of the Bound Brook School District was ordered to restore Glenn Ciripompa, a tenured staff member, to its payroll following the completion of the statutory 120-day suspension period commencing upon the certification of tenure charges to the Commissioner of Education. That decision, which arose from a Petition for Emergency Relief filed by Mr. Ciripompa requesting that he be restored to the Board's payroll and receive the salary and emoluments due him

until his tenure arbitration was completed, also acknowledged that an arbitrator had issued an award which imposed an additional suspension upon Mr. Ciripompa arising from the allegations contained in that tenure certification. That suspension, which at the time Ciripompa effectively accepted as valid, ended on March 10, 2015. Based upon that decision, the Board restored Mr. Ciripompa to its payroll as of November 1, 2015. Since that time, the parties have attempted to resolve the outstanding issue of the amount of money owed to Ciripompa for the period from March 10, 2015 through October 31, 2015. However, despite the fact that the parties agreed upon much, they have been unable to resolve the question of how much money is owed to him, as the Board believes that certain monies earned during that period of time should be counted in mitigation against the back pay owed from March 10 forward. Mr. Ciripompa disagrees with the Board's assessment. This initial decision will resolve this dispute. As the New Jersey Supreme Court has recently ordered a new arbitration be held concerning the Board's charges, any issues concerning either party's financial obligations with respect to each other following the restoration of pay on November 1, 2015, are deemed to fall outside of the parameters of the initial Petition filed with the Commissioner by Mr. Ciripompa and will not be addressed herein.³

Based on the submissions from counsel, Mr. Ciripompa contends that the Board owes him \$22,325.53. The Board claims it owes him \$19,881.16. The Board acknowledges it cannot claim mitigation against the pay owed from March 10 through October 31 from monies earned by Ciripompa during the summer, evenings, weekends and holidays, recognizing that these earnings are properly considered in mitigation against Ciripompa's pay. However, the Board contends that with respect to his earnings from three baseball games which Mr. Ciripompa umpired for CBUAO, these should be considered as being within his obligation to mitigate his losses. More particularly, these games occurred on April 6, 2015, at Lehigh Carbon Community College, located in Schnecksville, Pennsylvania, on April 8, 2015, at Rowan University in Glassboro, New Jersey, and on April 23, 2015, at Northampton Community College in Bethlehem, Pennsylvania. According to a Certification from the Board's attorney, Rowan University

³ That Petition sought his restoration to the payroll. He has been restored and has actually received his pay since November 1, 2015. He remains on the payroll at this time. Thus, while the exact amount of money he is owed for the period prior to the actual resumption of his normal receipt of pay has been unresolved until now, the relief he sought in the Petition has, and will now finally, be obtained.

is 83.5 miles and 92 minutes from Bound Brook High School, Northampton Community College is 49.4 miles and 48 minutes from the high school and Lehigh Carbon Community College is 70.4 miles and 71 minutes from the high school. The event at Lehigh Carbon Community College started at 4:30 p.m.; at Rowan at 4:00 p.m.; and at Northampton at 3:30 p.m. According to Mr. Merryman's Certification, the dismissal time for Mr. Ciripompa from his duties at the high school would have been 2:55 p.m. As a result, had he been working he could not possibly have served as an umpire at these events. The total earnings from these three assignments were \$450. This amount should be offset against amounts owed to petitioner.

In response, Mr. Ciripompa provides his own information concerning the distance from the high school to these events. According to information attached to his brief, Rowan University is 85.5 miles and one hour and 28 minutes from the high school; Northampton Community College 49.4 miles and 48 minutes travel time; and Lehigh Carbon Community College is 70.4 miles and one hour and 11 minutes travel time from the high school.

Based upon Mr. Ciripompa's own information, as the game at Rowan commenced at 4:00 p.m. and travel to that location would take almost an hour and a half, it does not seem possible that he could have arrived there at 4:00 p.m., even if he left the school at precisely 2:55 p.m. The Northampton event was scheduled for 3:30, 35 minutes after he would have been free to leave Bound Brook High School. He himself offers that the trip would take 48 minutes for a 49.4 mile journey. As it is only fair to conclude that he had to be at the game from its scheduled start time, he could not have been there by 3:30. Finally, as for the Lehigh Carbon Community College, the journey was, as Ciripompa reports, a one-hour 11 minute trip. This event started at 4:30 p.m.

As to each of these umpiring assignments, I **FIND** that, based upon the information submitted by both parties, given the distance and time involved and the time at which Ciripompa would have been free to leave the high school, had he been working he could not reasonably have accepted and/or fulfilled either the April 8, event at Rowan (4:00 p.m.) or the April 23, event at Northampton(3:30 p.m.), by arriving at the site of the

games on time. However, while it may be that the travel times offered by the parties, drawn from computer sites, may be optimistic given the hour of the day when he would have had to travel, it does seem reasonable enough that he could have arrived at Lehigh Carbon by the 4:30 start of that game. As such, I **CONCLUDE** that his earnings for the Rowan and Northampton events, totaling \$325 must count as mitigation against the monies owed by the Board.

In addition, the Board asserts it should be entitled to mitigation for earnings received by petitioner while working for Snyder Bus Service during the summer months of 2015. The basis for this claim is that while the Board recognizes that it is generally not permitted to seek mitigation for earnings during a period of time when an employee would not have been working for the Board, in this case it posits that were it not for petitioner's employment with the bus company during the school year while he was serving his suspension, he would never have been employed by the company during the summer. It states its claim as follows, identifying Snyder as a

Small privately held company located in Washington, New Jersey . . . the company employs five (5) to nine (9) employees . . . Most school bus services operate predominately during the school year. Common sense would dictate that to the extent that the Snyder Bus Company needed drivers during the summer, they would draw from the regular drivers to work for them during the school year. That being the case, Petitioner would likely not have had the opportunity to work for Snyder during the summer but for the fact that he drove for them during the school year.

The Board notes that Mr. Ciripompa did not work for the bus company prior to his suspension and could not have done so had he been actively working for the Board. The Board cites cases in which an employee had already been employed by an outside employer prior to a suspension and continued that employment during the period of suspension. In such cases mitigation has not been required from the earnings obtained from that employer. However, here, employment with the bus company did not predate the suspension. Thus, the Board argues that mitigation should be permitted from these earnings.

Mr. Ciripompa does not appear to respond to the Board's contentions regarding the summer employment with Snyder Bus Service. However, he more generally notes that earnings during the summer, when an employee is not expected to be working for the school employer, are generally not subjected to mitigation. Presumably he contends that as for the monies earned from the bus service during the summer which the Board seeks to be included in mitigation, no mitigation should be permitted.

Any determination of whether Mr. Ciripompa might have obtained employment with the bus service for the summer of 2015 had he been actively employed by the Board for the entire 2014-2015 school year must be based upon speculation.⁴ Any testimony on this issue would involve hypothetical scenarios. The "but for" scenario presented by the Board is open to exactly that type of guesswork. While it is reasonable to assume that if a Board employee suspended continues to work while suspended for another employer with whom the employee has already been working that he would be able to continue with that employer, it is not equally so reasonable to assume that merely because he had not already been employed by the bus service prior to his suspension that he could not have obtained summer employment with the company during a time that he was not expected to be working for the Board. I do not think that it is necessary or proper to indulge in speculation about what might have been, and do not believe testimony on hypothetical scenarios is warranted. Therefore, I **CONCLUDE** that the summer earnings from Snyder Bus Service are not subject to mitigation.

As the parties agree that the "maximum" back pay due for the period from March 10 through October 31, 2015, is \$22,325.53 and, as I have concluded that \$325 must be mitigated against that total, **IT IS HEREBY ORDERED** that the Bound Brook Board of Education shall pay Mr. Ciripompa \$22,000.53 within ten work days of the issuance of the final decision of the Commissioner of Education.⁵

⁴ Neither party has presented any affidavits or certifications from anyone connected to Snyder, nor otherwise addressing the circumstances under which the employment was obtained, or might, or might not, have been obtained, in a different factual scenario.

⁵ As already noted, any further issues regarding payments made and/or mitigation involving the period post-November 1, 2015, must be the subject of a separate petition to the Commissioner.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



April 28, 2017 _____

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency: _____

Date Mailed to Parties: _____

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EXHIBITS:

For petitioner:

- P-1 Mitigation Calculation of Glenn Ciripompa
 - Exhibit A: 2014 Form 1099 with attachments
 - Exhibit B: Last Day for Staff
 - Exhibit C1-C17: Snyder Bus Service, Inc. Time Reports
 - Exhibit D: Regular Day Schedule
 - Exhibit E: Paysheet, June 12, 2015
 - Exhibit F: Calendar, April 2015
 - Exhibit G1-3: E-mail directions
- P-2 Letter to counsel from Jeff S. Masin, ALJ t/a, dated March 24, 2017

For respondent:

- Exhibit A: Syllabus, Bound Brook Board of Education v. Glenn Ciripompa
- Exhibit B: Paysheet, June 12, 2015 (also marked as petitioner's Exhibit E)
- Exhibit C: E-mail directions
- Exhibit D: Form W-2 Wage and Tax Statement 2015
- Exhibit E: Snyder Bus Service, Inc. Time Report
- Exhibit F: Snyder Bus Service, Inc., Time Report
- Exhibit G: Snyder Bus Service, Inc., Time Report
- Exhibit H: Snyder Bus Service, Inc., Time Report
- Exhibit I: Snyder Bus Service, Inc., Time Report
- Exhibit J: Snyder Bus Service, Inc., Time Report
- Exhibit K: Snyder Bus Service, Inc. Trip Ticker
- Exhibit L: Snyder Bus Service, Inc. Trip Ticker
- Exhibit M: E-mail directions, Snyder Bus Service
- Exhibit N: Snyder Bus Service, Inc., Time Report
- Exhibit O: Snyder Bus Service, Inc., Time Report
- Exhibit P: Snyder Bus Service, Inc., Time Report
- Exhibit Q: Snyder Bus Service, Inc., Time Report