

565-03

JAMES ALT, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF BERGENFIELD,
BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning teacher alleged the Board failed to acknowledge his tenure and seniority rights upon his reemployment following a reduction in force.

The ALJ concluded that petitioner forfeited his prior tenure and seniority rights when he refused to accept the full-time position offered to him by the Board in 1992. (The Board had sent him a certified notice, the receipt of which was signed by his daughter.) The ALJ concluded he was rehired by the Board as a new teacher in 2001 and was not entitled to his prior seniority, vacation or sick time. Moreover, the ALJ concluded that there were no equitable circumstances present that could operate to require the Board to grant any form of relief to petitioner as a result of the appeal. Petition was dismissed.

The Commissioner concurred with the ALJ's findings and conclusions, clarifying only that, under these particular circumstances, where petitioner failed to respond to a duly served recall notice in 1992, the Board reasonably determined that petitioner had abandoned his tenure and seniority rights.

<p>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.</p>

September 29, 2003

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions and the Board’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.¹

Upon careful and independent review of the record in this matter, the Commissioner essentially concurs with the ALJ’s findings and conclusions, clarifying only that, under these particular circumstances, where petitioner failed to respond to a duly served recall notice in 1992, the Board reasonably determined that he had abandoned his tenure and seniority rights.² Additionally, the Commissioner concurs, for the reasons set forth by the ALJ, that petitioner has failed to demonstrate he is entitled to equitable relief.

¹ Both the exceptions and the reply thereto essentially reiterate arguments which were presented in papers previously considered by the Administrative Law Judge (ALJ). To the extent petitioner’s submission included evidence that was not presented at the hearing or was not before the ALJ, such evidence is not considered by the Commissioner. *N.J.A.C.* 1:1-18.4(c).

² In this connection, the Board understandably questions, “[i]f Petitioner believed he was never recalled, and therefore entitled to a position, why did he submit applications to the Board in 2000 and 2001? As clearly indicated in Exhibits R-4 (2000) and R-5 (2001- when he was hired), Petitioner applied for positions with the District.

Accordingly, the Initial Decision is adopted with clarification as set forth herein and the Petition of Appeal is dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 29, 2003

Date of Mailing: September 29, 2003

Nothing is referenced in either application *** to indicate that Petitioner seeks to be employed in the position to which he would have recall rights.***” (Board’s Letter memorandum in Reply to Petitioner’s Post-hearing Brief, August 7, 2003 at 1-2)

³ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*