

New Jersey Commissioner of Education
Decision

Lovena Batts,

Petitioner,

v.

Board of Education of the Borough of
Roselle, Union County,

Respondent.

Synopsis

This matter stems from tenure charges certified and filed by the respondent Board on April 9, 2019, against petitioner – a tenured teacher – charging her with incapacity, excessive absenteeism and other just cause, and seeking her dismissal. Petitioner began working in the Board’s district in September 2010, earning tenure in September 2013. During the 2015-2016, 2016-2017, and 2017-2018 school years, petitioner was absent from work an excessive number of days each year. Petitioner has not worked in the school district since September 2017 and has been off the payroll since that time. In January 2020, petitioner filed the within appeal, seeking immediate reinstatement to the Board’s payroll and reimbursement for all compensation withheld since October 2019, pursuant to *N.J.S.A. 18A:6-14*. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; *N.J.S.A. 18A:6-14* does not entitle petitioner to be paid her salary as of October 2019 and during the pendency of the tenure proceedings; *N.J.S.A. 18A:6-14* only applies when a tenured employee is taken off payroll – or suspended without pay – due to suspension following tenure charges; petitioner in this matter was not suspended upon certification of the tenure charges, but rather had been removed from the Board’s payroll in 2017, long before tenure charges were filed in April 2019; and the doctors’ letters petitioner submitted clearing her for work in September 2019 do not impact whether she is entitled to payment under *N.J.S.A. 18A:6-14*. Accordingly, the ALJ granted the Board’s motion for summary decision, denied petitioner’s opposing motion, and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter for the reasons expressed therein. The petition was dismissed.

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.

275-21

OAL Dkt. No. EDU 01936-20

Agency Dkt. No. 8-1/20

New Jersey Commissioner of Education

Decision

Lovena Batts,

Petitioner,

v.

Board of Education of the Borough of Roselle,
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the petitioner, in accordance with *N.J.A.C. 1:1-18.4*, and the Board's reply thereto.

This matter stems from tenure charges certified and filed by the Board on April 9, 2019, against petitioner – a tenured teacher – charging petitioner with incapacity, excessive absenteeism and other just cause, and seeking her dismissal. Petitioner had been absent approximately 46-56 days in the 2015-2016 school year, 30.5 days in the 2016-2017 school year, and 168.5 days in the 2017-2018 school year. Petitioner has been absent from work since on or about September 13, 2017 and has been off the Board's payroll since 2017. Following the filing of tenure charges, petitioner submitted letters from two doctors, dated September 12 and 16, 2019, clearing her to return to work in September 2019. Petitioner subsequently filed the within petition of appeal seeking to be reinstated to the payroll during the pendency of the tenure hearing as of October 6, 2019, based on *N.J.S.A. 18A:6-14*.

Following motions for summary decision, the Administrative Law Judge (ALJ) found that *N.J.S.A.* 18A:6-14 does not entitle petitioner to be paid her salary as of October 6, 2019 and during the pendency of the tenure proceedings. *N.J.S.A.* 18A:6-14 provides:

Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. . .

The ALJ concluded that, considering the principles of statutory construction, *N.J.S.A.* 18A:6-14 only applies when a tenured employee is taken off payroll – or suspended without pay – due to suspension following tenure charges. Here, the ALJ found that petitioner was not suspended upon certification of the tenure charges, but rather had been removed from the Board’s payroll in 2017, long before tenure charges were filed in April 2019. Further, the ALJ noted that the letters petitioner submitted clearing her for work in September 2019 do not impact whether she is entitled to payment under *N.J.S.A.* 18A:6-14.

In her exceptions, petitioner argues that the ALJ incorrectly determined that she was not suspended upon certification of the tenure charges and that therefore *N.J.S.A.* 18A:6-14 did not apply. Petitioner attached a copy of a “Resolution Certifying Charges and Suspension without Pay,” (Resolution) in which she contends the Board approved the filing of tenure charges against her and suspended her without pay, effective March 25, 2019. According to petitioner, because she was suspended without pay upon the certification of tenure charges, *N.J.S.A.* 18A:6-14 applies to her case, and she is entitled to be reinstated to the payroll with back pay. As such, petitioner urges the Commissioner to reject the Initial Decision. Alternatively, petitioner argues that whether she was suspended is a disputed material fact that warrants a hearing.

In reply, the Board argues that petitioner failed to make that argument before the ALJ; regardless, the argument is without merit. The Board contends that the Resolution did not take petitioner off payroll as she was removed from payroll in 2017, so the sentence suspending petitioner in the Resolution is irrelevant. As such, the Board argues that the Initial Decision should be adopted.

Upon review, the Commissioner agrees with the ALJ that *N.J.S.A.* 18A:6-14 does not entitle petitioner to be paid her salary during the pendency of the tenure proceedings. Petitioner was not removed from the payroll due to the filing of tenure charges; rather, she had not been to work nor been on the payroll for two years prior to the filing of the charges. *N.J.S.A.* 18A:6-14 is intended “to alleviate ‘the economic hardship endured by teachers . . . suspended without pay pending the outcome of charges filed against them and certified for [a] hearing. . . .’” *Pugliese v. State Operated School District of the City of Newark*, 454 *N.J. Super.* 495, 505 (App. Div. 2018) (quoting *In re Grossman*, 127 *N.J. Super.* 13, 35-36 (App. Div. 1974)). In this circumstance, it is not the statute’s intent to give petitioner a windfall by having her placed on the payroll solely because tenure charges were filed when she had not appeared for work nor been paid in two years. Although the petitioner’s argument regarding the Resolution was not presented before the ALJ, the Commissioner notes that this Resolution appears to consist of standard language that did not have the actual effect of suspending petitioner as she was already not working or getting paid.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed herein. The petition is hereby dismissed.

IT IS SO ORDERED.¹


ANGELICA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 28, 2021
Date of Mailing: October 28, 2021

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 01936-20

AGENCY DKT. NO. 8-1/20

LOVENA BATTS,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF ROSELLE, UNION
COUNTY,**

Respondent.

Nicholas Poberezhsky, Esq., for petitioner (Caruso, Smith, Picini, attorneys)

Stephen J. Edelstein, Esq., for respondent (Weiner Law Group, attorneys)

Record Closed: July 26, 2021

Decided: August 4, 2021

BEFORE MARGARET M. MONACO, ALJ:

STATEMENT OF THE CASE

Petitioner Lovena Batts (petitioner or Batts) seeks reinstatement to the payroll pursuant to N.J.S.A. 18A:6-14 during the pendency of tenure proceedings by respondent Roselle Borough Board of Education (the Board).

PROCEDURAL HISTORY

On January 9, 2020, petitioner filed a Certified Petition with the Commissioner of Education (the Commissioner) seeking an order requiring the Board “to immediately reinstate her to the payroll and benefits plan, and to reimburse her for all compensation withheld from her since October 6, 2019.” Petitioner’s claim is predicated on N.J.S.A. 18A:6-14. On January 29, 2020, the Board filed an Answer and Affirmative Defenses, and the Department of Education transmitted the matter to the Office of Administrative Law for determination as a contested case. Telephone conferences were held on March 2 and April 15, 2020, after which I entered an order on April 29, 2020, at petitioner’s request, placing the matter on the inactive list until July 15, 2020. During a telephone conference on July 7, 2020, a schedule was established for the submission of cross-motions for summary decision.¹ Petitioner filed a brief (with exhibits attached) in support of her motion, along with a certification by petitioner (Batts Cert.). The Board submitted a brief in support of its motion; a brief in opposition to petitioner’s motion; a Sworn Statement of Evidence by the Interim Superintendent of Schools (Dr. James Baker); and certifications by counsel (Edelstein Cert.). The parties also filed a Joint Stipulation of Facts. Oral argument on the cross-motions was entertained on July 26, 2021.

FINDINGS OF FACT

Based upon a review of the documentary evidence presented, including the Joint Stipulation of Facts (Stip.) and the certifications submitted, I **FIND** the following pertinent **FACTS**:

The Board operates the Roselle Public School District, which is duly organized under the laws of the State of New Jersey and tasked with educating students Grades Pre-K-12. (Stip. at ¶ 1.) Batts has been employed by the Board as a certificated elementary teacher since on or about September 2010. (See Stip. at ¶¶ 2, 7.) She

¹ The Board had previously filed a motion for summary decision with its answer, after which petitioner filed a cross-motion for summary decision. These motions were withdrawn and replaced by the later submissions.

became tenured in or about September 2013. (Stip. at ¶ 2.) Batts was assigned to teach basic skills at Dr. Charles C. Polk Elementary School. (Stip. at ¶ 3.)

During the 2015–2016 school year, Batts was absent approximately forty-six to fifty-six days, including five family illness days, ten sick days, three personal days, thirty-one Family Medical Leave Act (FMLA) days, and seven unpaid days. (See Edelman Cert. at Exhibit A (Tenure Charges); Sworn Statement of Evidence at Exhibit 4.)²

For the 2016–2017 school year, Batts was absent a total of thirty and one-half days, including twelve sick days, three personal days, one other, and fourteen and one-half unpaid days. (See Edelman Cert. at Exhibit A (Tenure Charges); Sworn Statement of Evidence at Exhibit 9.)

For the 2017–2018 school year, Batts was absent a total of one hundred sixty-eight and one-half days, including twelve sick days, one and one-half personal days, and 155 unpaid days. (See Edelman Cert. at Exhibit A (Tenure Charges); Sworn Statement of Evidence at Exhibit 10.) Batts has been absent from work since on or about September 13, 2017. (Stip. at ¶ 10.)

On or about April 9, 2019, the Board certified and filed tenure charges with the Commissioner charging Batts with incapacity, excessive absenteeism and other just cause and seeking her dismissal. (Stip. at ¶ 11; see Edelman Cert. at Exhibit A.) After being granted an extension of time to respond, Batts, through her then-counsel, filed her answer to the tenure charges on May 2, 2019. (Stip. at ¶ 12.) On or about May 11, 2019, the Commissioner appointed Dr. McKissick to serve as the arbitrator. (Stip. at ¶ 13.) To date, the tenure charges have not been adjudicated. (Edelman Cert. at ¶ 2.)

Batts has been off the Board's payroll since 2017, and her payroll status did not change because of the filing of the tenure charges in April 2019. (See Edelman Cert., Exhibit B at ¶¶ 3 and 12.) Batts admits that "while out on medical leave since October

² Although the Sworn Tenure Charges state that Batts was absent a total of forty-six days, the listed days equal fifty-six days.

2017, [she] exhausted her accumulated sick days and was consequently removed from the payroll prior to April 2019.” (Batts’ brief at 3.)

More than five months after the tenure charges were filed, Batts’ attorney provided letters from two doctors, dated September 12 and September 16, 2019, to the Board’s attorney. (Batts Cert. at ¶ 4 and Exhibit 3.)³ The letters state that the two doctors have cleared Batts to return to work in September 2019. (Id. at Exhibit 3.)

LEGAL DISCUSSION AND CONCLUSIONS

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” This rule is substantially similar to the summary-judgment rule embodied in the New Jersey Court Rules. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in deciding the motion:

[A] determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. The “judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact for purposes of Rule 4:46-2.

[Citations omitted.]

³ According to Batts’ brief, the letters were issued to the Board’s attorney in September 2019. (Batts’ brief at 4.)

In evaluating the merits of the motion, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Judson, 17 N.J. at 75. However, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” N.J.A.C. 1:1-12.5(b). The New Jersey Supreme Court has cautioned that, “if the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature, a mere scintilla, . . . ‘[f]anciful, frivolous, gauzy or merely suspicious’ . . . , he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts in the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact.” Judson, 17 N.J. at 75 (citation omitted). Stated differently, “[b]are conclusions . . . without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry Co. v. Am. Arbitration Ass’n, 67 N.J. Super. 384, 399-400 (App. Div. 1961). Further, the “non-moving party cannot defeat a motion for summary judgment merely by pointing to any fact in dispute.” Brill, 142 N.J. at 529. Disputed issues of fact that are immaterial or of an insubstantial nature will not suffice. Ibid. Rather, “[c]ompetent opposition requires ‘competent evidential material’ beyond mere ‘speculation’ and ‘fanciful arguments,’” Cortez v. Gindhart, 435 N.J. Super. 589, 605 (App. Div. 2014), certif. denied, 220 N.J. 269 (2015) (citation omitted), and the party opposing the motion “must do more than simply show that there is some metaphysical doubt as to the material facts.” Alfano v. Schaud, 429 N.J. Super. 469, 474 (App. Div. 2013), certif. denied, 214 N.J. 119 (2013) (citation omitted).

Judged against these standards, I **CONCLUDE**, and the parties agree, that there is no genuine issue as to any material fact and that the matter is ripe for summary decision.

N.J.S.A. 18A:6-14, entitled “[s]uspension upon certification of charge; compensation; reinstatement,” directs in pertinent part:

Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is

made, with or without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made (Emphasis added.)

The Legislature's intent in enacting the statute was "to alleviate 'the economic hardship endured by teachers . . . suspended without pay pending the outcome of charges filed against them and certified for [a] hearing. . . .'" Pugliese v. State-Operated Sch. Dist. of City of Newark, 454 N.J. Super. 495, 505 (App. Div. 2018) (quoting In re Grossman, 127 N.J. Super. 13, 35-36 (App. Div. 1974)).

Batts argues that the Board certified the tenure charges on April 9, 2019; the 121st calendar day following certification was August 7, 2019; Batts was granted a sixty-day adjournment of the tenure arbitration to afford her time to seek new counsel; and, if the 120-day unpaid suspension period is tolled by sixty days, the Board was required to reinstate Batts' salary by October 6, 2019 pursuant to N.J.S.A. 18A:6-14.⁴

The principles governing statutory construction are well settled. The "overriding objective in determining the meaning of a statute is to 'effectuate the legislative intent in light of the language used and the objects sought to be achieved.'" McCann v. Clerk of Jersey City, 167 N.J. 311, 320 (2001) (citation omitted). The general rule of statutory construction requires an examination of the language of a statute to determine whether the language is clear or ambiguous and susceptible to more than one interpretation. The

⁴ On February 27, 2020, Arbitrator McKissick issued an "Order Pursuant to N.J.S.A. 18A:6-14" ordering that Batts "be reinstated with pay, beginning on the one hundred twenty-first day until a determination is made regarding . . . [the tenure] charges." (Batts Cert. at Exhibit 2.) Batts "acknowledge[s] that Dr. McKissick's February 27, 2020, Arbitration Award and Order is not binding on this tribunal[.]" (Batts' brief at 7.) In May 2020, the Board filed a Verified Complaint in the Superior Court of New Jersey, Chancery Division, seeking to "Vacat[e] the Arbitration Award of February 27, 2020." (Edelstein Cert. at ¶ 3 and Exhibit B.) In response, Batts filed a Counterclaim seeking to "Confirm[] . . . [the] February 27, 2020, Arbitration Award and Order," along with reinstatement to the payroll and reimbursement of salary withheld. (Edelstein Supplemental Cert. at Exhibit D.) On June 19, 2020, the Honorable Robert J. Mega, P.J.Ch., issued Orders dismissing the Board's Verified Complaint and Batts' Counterclaim. (Id. at Exhibit E.) According to the parties' submissions, the court determined that the parties failed to exhaust their administrative remedies and that the Commissioner had jurisdiction to hear the matter. (See Batts' brief at 3; Board's reply brief at 2, fn. 1.)

Supreme Court explained in Murray v. Plainfield Rescue Squad, 210 N.J. 581, 592 (2012) (citations omitted):

The objective of all statutory interpretation is to discern and effectuate the intent of the Legislature. To achieve that objective, we begin by looking at the statute's plain language, ascribing to the words used "their ordinary meaning and significance." We do not view the statutory words in isolation but "in context with related provisions so as to give sense to the legislation as a whole." If the Legislature's intent is clear on the face of the statute, then we must apply the law as written. It is not our function to rewrite a plainly written statute or to presume that the Legislature meant something other than what it conveyed in its clearly expressed language.

Pursuant to the plain and unambiguous language of N.J.S.A. 18A:6-14, the 120-day rule only applies to situations where a tenured teacher is taken off the payroll because of a suspension following the certification of tenure charges. See N.J.S.A. 18A:6-14 ("Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made . . . without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges . . . then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made.") (emphasis added.) Indeed, the title of the statute itself (i.e., "[s]uspension upon certification of charge") makes clear that the intended purpose of the statute is to address the permitted length of a suspension during the pendency of tenure proceedings.

Succinctly stated, N.J.S.A. 18A:6-14 is not applicable to Batts' situation. Batts was not suspended upon certification of the tenure charges. Rather, Batts had been removed from the Board's payroll long before the April 2019 tenure charges were filed. Batts has been off the Board's payroll since 2017, and her payroll status did not change as a result of the filing of the tenure charges in April 2019. In other words, Batts' pay was not stopped because of the certification of tenure charges against her, which is the circumstance contemplated by and addressed in N.J.S.A. 18A:6-14. Rather, her pay was stopped because she had exhausted all paid leave and had not returned to work as of the filing of the tenure charges. That Batts provided letters from two doctors more than five months

after the tenure charges had been filed, indicating that she was medically cleared to return to work in September 2019, has no bearing on the issue of whether Batts is entitled to pay pursuant to N.J.S.A. 18A:6-14. And Batts' Petition does not assert any claim relating to alleged action that the Board should have taken after receiving the doctors' letters. Equally unpersuasive is petitioner's "fairness and equity" argument based on the Board's alleged delay in the tenure proceedings.⁵ Equity is not an issue here. Whereas here, "the Legislature's intent is clear on the face of the statute," this forum "must apply the law as written" and it is not the function of this forum to "rewrite a plainly written statute." Murray, 210 N.J. at 592.

Based upon the foregoing, I **CONCLUDE** that N.J.S.A. 18A:6-14 does not entitle petitioner to be paid her salary as of October 6, 2019, and during the pendency of the tenure proceedings.

ORDER

I **ORDER** that respondent's motion for summary decision be and hereby is **GRANTED** and petitioner's motion for summary decision be and hereby is **DENIED**. I further Order that petitioner's Certified Petition be and hereby is **DISMISSED**.

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

⁵ According to petitioner, the "tenure arbitration is inactive pending the conclusion of the Board's ongoing appeal before the Appellate Division" relating to the Board's action to vacate a prehearing discovery ruling by the arbitrator and to have the arbitrator removed. The Board disputes petitioner's assertion. The Board contends that on October 16, 2019, Judge Dupuis entered an Order in Roselle Borough Board of Education v. Lovena Batts, et al., Docket No. UNN-C-143-19, providing that "[t]he Arbitration of the tenure matter scheduled for October 17, 2019, is temporarily enjoined and restrained pending the further Order of this Court" (Edelstein Supplemental Cert. at Exhibit A); that "further Order of this Court" came on February 12, 2020, when Judge Dupuis entered a Final Order dismissing the Verified Complaint and, with it, the restraints (Id. at Exhibit B); because of this Order, and the Board's decision to appeal, Board counsel wrote to the arbitrator on February 18, 2020, advising of the Board's intention to appeal and stating, "[i]n the meantime, we are requesting that you stay the Arbitration in this case until the Appellate Division has ruled on the merits" (Id. at Exhibit C); and the arbitrator did not respond to or grant the request for a stay.

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.

August 4, 2021
DATE

Margaret M. Monaco
MARGARET M. MONACO, ALJ

Date Received at Agency:

8-4-21

Date Mailed to Parties:

8-4-21

jb