

EDU #6259-97
C # 8-99
SB # 10-99

IN THE MATTER OF THE TENURE :
HEARING OF SAAD RADWAN, SCHOOL :
DISTRICT OF THE BOROUGH OF : STATE BOARD OF EDUCATION
CARTERET, MIDDLESEX COUNTY. : DECISION ON MOTION

Decided by the Commissioner of Education, January 14, 1999

For the Petitioner-Respondent, Wilentz, Goldman & Spitzer (Viola S. Lordi,
Esq., of Counsel)

For the Respondent-Appellant, Ashton E. Thomas, Esq.

On February 9, 1999, Saad Radwan (hereinafter "appellant") filed an appeal to the State Board of Education from a decision of the Commissioner of Education dismissing him from his tenured employment as a custodian for unbecoming conduct, insubordination and failure to properly perform his duties. By letter dated February 25, counsel for the appellant requested that the briefing schedule be placed in abeyance pending receipt of the transcripts from the hearing held in the Office of Administrative Law ("OAL"). By letter dated March 3, the Director of the State Board Appeals Office ("Director") informed counsel for the appellant that the briefing schedule was being placed in abeyance pursuant to his request.

On June 21, the Director requested that counsel for the appellant advise her of the status of his efforts to obtain transcripts. In response, counsel for the appellant informed the Director in a letter dated June 25 that he had "a partial transcript because

several tapes of the proceeding were blank. The missing portions involved the cross examination of a central witness, Drew Packard. Pursuant to rule 2:5-3F, the OAL must supervise the reconstruction of the record. I cannot estimate the time necessary for the reconstruction of the record.” Counsel attached a copy of a letter dated April 15 from Audio Transcription Service indicating that “the third tape [of the hearing on May 15, 1998] ends during the cross of Drew Packard and the fourth tape is blank. We have contacted the office of Administrative law and they have advised us that there are no other tapes available.”

On November 12, the Board filed a motion to dismiss the appeal, observing that the appellant had still failed to file a brief in support of his appeal or to provide the State Board with a complete copy of the transcript.¹

After a careful review of the record, including the papers submitted by the parties, we deny the Board’s motion to the extent that it seeks dismissal of the appeal. However, under the circumstances, we reestablish the briefing schedule at this time. As previously indicated, the briefing schedule was placed in abeyance over ten months ago, and counsel for the appellant has known for more than eight months that a portion of the hearing tape was blank. Yet, there is no indication in the papers before us that he has made a request to the Office of Administrative Law for reconstruction of the record or otherwise taken the necessary steps to facilitate such action. The papers before us indicate only that counsel for the appellant sent a copy of his June 25th letter, in which he advised the Director of the State Board Appeals Office that several tapes from the hearing were blank, to the ALJ who presided over the hearing. Nor has counsel

¹ The hearing in this matter lasted 15 days, and counsel for the appellant provided this agency with a copy of the transcripts, except for the missing portion, on July 30, 1999.

provided us with any indication that proceedings designed to reconstruct that portion of the record are scheduled or pending in OAL.

In view of the amount of time that has transpired since this appeal was placed in abeyance and the fact that counsel for the appellant has failed to take the necessary steps to facilitate reconstruction of the record, we direct that the appellant file a brief in support of his appeal within 20 days from the date of this decision.

January 5, 2000

Date of mailing _____