

JUSTIN ARON, Petitioner-Appellant
v.
TRUST TERRITORY OF THE PACIFIC ISLANDS,
Respondent-Appellee
Civil Appeal No. 187
Appellate Division of the High Court
Ponape District
March 30, 1979

Teacher terminated by district director of education, whose termination was upheld by personnel board and the trial division, appealed. The Appellate Division of the High Court, Hefner, Associate Justice, held that allegedly unsubstantiated grounds for termination could not be successfully raised on appeal where personnel board hearing was de novo, entitling such issues to be heard there.

1. Administrative Law—Judicial Review—Weight of Evidence

On appeal from trial division's denial of petition for review of personnel board action the appellate division is not to reweigh the evidence and substitute its judgment for that of the personnel board.

2. Administrative Law—Judicial Review—Sufficiency of Evidence

Where termination of teacher by district director of education was considered on de novo review by personnel board, teacher could not, on appeal to appellate division, complain he was terminated because of a charge not substantiated at the personnel board hearing, for the hearing before the board was de novo and a full hearing and teacher could not complain that one charge or another was not substantiated at one hearing or another.

Counsel for Appellant:

Micronesian Legal Services,
Incorporated

Counsel for Appellee:

MINOR POUNDS, *Attorney General's Office*

Before HEFNER, *Associate Justice*, NAKAMURA, *Associate Justice*, and GIANOTTI, *Associate Justice*

HEFNER, *Associate Justice*

At issue in this case is whether the appellant was properly terminated as a school teacher after various administrative and judicial procedures.

The appeal comes to us after the Trial Division of the High Court denied appellant's petition for judicial review of the actions of the Trust Territory Personnel Board.

At the outset, it is important to note that the Trial Division did not grant a trial de novo but only heard arguments and considered the record of the Personnel Board hearings. Thus, this Court is only to consider if the Trial Court committed error in refusing to set aside the determination of the Personnel Board.

[1] The Trial Court found that there was adequate evidence to support the decision of the Personnel Board. This Court, just as the Trial Court, is not to reweigh the evidence and substitute its judgment for that of the Personnel Board.

The appellant has alleged various procedural defects in the Personnel Board hearing and in the proceedings prior to the Personnel Board hearing.

As to the alleged defects prior to the formal hearing of the Personnel Board, both the appellant and appellee stipulated to a hearing de novo before the Personnel Board (Transcript of Pre-hearing Conference of 5/6/74, p. 6-7). The appellant had the opportunity to be heard, and, in fact, did present witnesses at the full hearing before the Personnel Board.

By its decision letter of June 24, 1974, the Board found that charges one and three were "substantiated." Charge one stated: "That while under the influence of alcohol you uninvited entered a house not belonging to you." Charge

three stated: "That you have previously been suspended from duty on a previous occasion for being drunk and causing a disturbance."

[2] Appellant's first objection is that when the District Director of Education terminated the appellant, he did not do so on the basis of charge number one, but on another charge which was not substantiated at the formal hearing before the Personnel Board.

This is of no moment because it is clear that in appellant's appeal to the Personnel Board, a new and full hearing was held with the permission and at the request of the appellant. There is nothing found in Title 61 which prohibits the Board in considering all factors involved when the appellant himself asks for a hearing de novo. The Board is not analogous to an Appellate Court which is limited to issues raised on appeal. In fact, the Board allowed the appellant to have a full hearing and not be limited by what actions were taken by the District Director of Education. After a full hearing, appellant cannot be heard to complain that since one charge or the other was not substantiated at one hearing or another, the Board had no power to find grounds for termination. No denial of due process is found. The appellant was well apprised of the charges, had a full hearing, and was represented by counsel.

The appellant also asserts that reference to the prior suspension in 1972 was error since that suspension did not comply with the requirement that a hearing be held before the suspension was issued.

Although the record is not absolutely clear, it is indicated that the appellant voluntarily agreed to the suspension. There is no evidence of any appeal or complaint being filed by the appellant as to the validity of the prior personnel action.

Charge number three is an accurate statement of fact. Once again, appellant cannot be heard to complain now of

an alleged irregularity in another personnel matter occurring about two years before the incident giving rise to this disciplinary action.

After reviewing the record and arguments of the other issues raised on appeal, we find no merit in them.

The Judgment of the Trial Court is AFFIRMED.