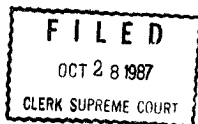


IN THE COURT OF APPEALS OF IOWA



GEORGE S. ABDALLAH,)

Plaintiff-Appellant,)

Filed October 28, 1987

vs.)

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DES MOINES INDEPENDENT COM-)
MUNITY SCHOOL DISTRICT and the)
BOARD OF DIRECTORS OF THE DES)
MOINES INDEPENDENT COMMUNITY)
SCHOOL DISTRICT,)

7-299
86-1748

Defendants-Appellees.)

Appeal from the Iowa District Court for Polk County (AA 4-940), Gene L. Needles, Judge.

Plaintiff appeals the decision of the district court affirming the decisions of an adjudicator and the board of directors of the school district that found just cause to terminate his continuing contract of employment. **AFFIRMED.**

James L. Sayre of Sayre & Gribble, Des Moines, for plaintiff-appellant.

Elizabeth Gregg Kennedy of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, for defendants-appellees.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ. Snell, J. takes no part.

HAYDEN, J.

5

Plaintiff, George Abdallah, appeals the decision of the district court affirming the decisions of an adjudicator and the board of directors of the school district that found just cause to terminate his continuing contract of employment. We affirm.

We give weight to the fact findings of the board, especially when considering the *credibility of witnesses, but are not bound by them.* Iowa Code § 279.18. In this case, we must determine whether the termination of Mr. Abdallah's employment was supported by a preponderance of the competent evidence in the record made before the board and the adjudicator when that record is viewed as a whole. Iowa Code § 279.18(6).

Mr. Abdallah was employed as a school psychologist by the Des Moines Independent Community School District (school district) since 1977. In March 1979 he began to exhibit problems with his performance in this position. These problems continued until May 1983, at which time he was placed on a three-day suspension due to the number of oral and written reprimands which he had received. On August 24, 1983, the school district provided Mr. Abdallah with an improvement plan that diagnosed his problems as follows:

- a. Failed to complete assignments satisfactorily and on time.
- b. Lacked planning and organizational skills.
- c. Exhibited poor interpersonal relationships with several support staff and administrators.
- d. Provided incomplete information interpreting data during staffings and written reports.

This plan set January 1984 as the target date for Mr. Abdallah to meet the school district's standards. Ultimately, however, the improvement plan was extended until January 1985.

Up through October 1984 Mr. Abdallah continued to exhibit performance problems. In November and December 1984 and in January 1985 Mr. Abdallah was rated as meeting the school district's standards by his supervisor, Darshan Singh, and four of his five building principals. Consequently, on February 7, 1985, Mr. Abdallah was advised he was minimally meeting the school district's standards and his assistance team under the improvement plan was being withdrawn. The next day, Mr. Abdallah was called to conference with one of the building principals, Mary Chapman, to discuss a counseling relationship Mr. Abdallah had purportedly entered into with a student without Ms. Chapman's consent and contrary to that school's rules. Also to be discussed were two individual education plans written by Mr. Abdallah that Ms. Chapman did not believe were adequately prepared. It was later determined Mr. Abdallah had not yet entered into the counseling relationship.

At the February 8th meeting, Mr. Singh joined Mr. Abdallah and Ms. Chapman. Mr. Abdallah was asked why he had entered into the counselling relationship and why his individual education plans did not show a collection of baseline data on the students involved or establish evaluation procedures that would measure the growth of the students in the areas of concern. Mr. Abdallah initially refused to answer these questions or explain his refusal to respond. At one point he exclaimed, "I don't have to do this. I won't do this. Everything is negative, negative!" A heated exchange between Mr. Singh and Mr. Abdallah then ensued. It is acknowledged by both parties they frequently raised their voices with one another. Before the end of the meeting, Mr. Abdallah agreed to perform as requested by Mr. Singh and Ms. Chapman.

On February 19, 1985, Mr. Abdallah was notified he was being placed on an indefinite paid suspension pending a review of his records and employment

history. On March 8th, he was served with a Notice and Recommendation to Terminate his contract, which stated the following reasons:

1. You have repeatedly refused to follow explicit directions given to you by your principals and supervisor.
2. You have on occasion displayed an unprofessional, disrespectful and insubordinate attitude toward your supervisors and other staff members.
3. You have not consistently provided requisite reports in a timely fashion and acceptable form.

The board upheld his termination. This decision was upheld in turn by the adjudicator and the district court.

On appeal, Mr. Abdallah asserts there is not a preponderance of competent evidence in the record to establish just cause to terminate his continuing contract with the school district. The essence of his appeal is the events which occurred prior to the termination of his improvement plan are not germane to whether there existed just cause to terminate his contract. If the pertinent time period is so delimited, it is undisputed only the events of February 8th would give rise to his termination. Mr. Abdallah contends those events, placed in context, do not provide just cause for termination.

We disagree the time period examined should be limited as Mr. Abdallah suggests. The employee's performance in prior years has often been relied upon in termination cases. See Bishop v. Keystone Area Educ. Agency, 311 N.W.2d 279, 283 (Iowa 1981); Briggs v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979); Everett v. Board of Education, 334 N.W.2d 320, 322 (Iowa App. 1983); Fay v. Board of Directors, 298 N.W.2d 345, 348-49 (Iowa App. 1980). The mere act of removing the improvement plan did not eliminate the school district's concerns which gave rise to the implementation of the plan initially. Nor did removal of the improvement plan serve as a bar to examination of Mr. Abdallah's past conduct which created those concerns.

As stated in Wedergren v. Board of Directors, 307 N.W.2d 12, 20 (Iowa

1981):

"Just cause" has been defined as conduct: which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance.

The school district worked for a year and a half to help Mr. Abdallah remedy his performance problems. When it finally appeared Mr. Abdallah was performing up to the school district's standards, he again exhibited some of the same behavior the improvement plan was thought to have remedied. Mr. Abdallah clearly was not improving in performance.

Mr. Abdallah's employment history is replete with incidents amply supporting the three reasons given him by the school district for terminating his contract. We find these incidents relevant to this matter and agree with the board, the adjudicator, and the district court that these incidents, in conjunction with the incident of February 8th, provide a preponderance of competent evidence to support Mr. Abdallah's termination.

AFFIRMED.

Donielson, P.J., concurs; Schlegel, J., dissents.

While I agree that the events which occurred prior to the termination of the improvement plan may be considered in determining whether just cause existed for his termination, I must dissent. I do not believe, even considering those events, that there was just cause for Abdallah's termination.

Apparently when one has been placed in an improvement program, has successfully carried it out, and has been released from it, he cannot become irritated, and perhaps show poor judgment in response to questions, without risking suffering the "straw that broke the camel's back" syndrome. He was called into conference to explain why he had entered into a counselling relationship that he hadn't commenced, and to discuss two educational plans that the principal of the building did not believe were adequately prepared. His irritation with the subject of the conference is more understandable than the majority and the board seem to feel. He was conducting himself, at the conclusion of the improvement plan, satisfactorily to all but one principal.

I do not believe the record shows the true reason for the termination of Abdallah. The reasons given are not adequately proven to provide just cause for his termination. In addition, the record fails to show him to be insubordinate, because during the conference he agreed to carry out the instructions the principal issued. He was guilty of nothing more than a breach of etiquette in his relationship with the principal.

I would reverse the decision of the district court and the board of education, and would order Abdallah reinstated.