



05/01/87 WAYNE WHALEY v. RED CLAY CONSOLIDATED

1987 | Cited 0 times | Superior Court of Delaware | May 1, 1987

John E. Babiarz, Jr., J.

This is an appeal from a decision of the Board of the Red Clay Consolidated School District terminating the employment of Wayne Whaley, an associate principal at the Wilmington High School. Whaley was charged with sexually harrassing a student by stating to her "Will you have sex with me willingly or am I going to have to force you?" Whaley denies making the statement but concedes that the uttering of such a proposal would constitute just cause for discharge.

Pursuant to 14 Del.C. § 1413 Whaley was afforded a hearing before a hearing officer appointed by the Board. The hearing extended over three days and generated over 750 pages of transcript. Seventeen witnesses testified. The entire record, which includes documentary evidence and a transcript of a preliminary investigation conducted by the school superintendent, is nearly 1,000 pages in length.

In a thorough and well-reasoned opinion the hearing officer concluded that Whaley had made the statement and recommended termination. The Board reviewed the record of the proceedings and adopted the hearing examiner's report.

14 Del.C. § 1414 provides that this Court "shall sustain any board action, findings and Conclusions supported by substantial evidence." Whaley argues that this statute serves to impose a higher burden of proof on the School District than the normal civil burden of proof by a preponderance of the evidence. The statute does not alter the burden of proof on the School District. It serves only to state the standard to be used by this Court in reviewing School Board decisions under the statute providing for the termination of services of professional employees, 14 Del.C. Ch. 14.

The phrase "substantial evidence" is a legal term of art meaning "such relevant evidence as a reasonable mind might accept as adequate to support a Conclusion - more than a scintilla but less than a preponderance." *Olney v. Cooch*, Del. Supr., 425 A.2d 610, 614 (1981). It is the normal standard applied by an appellate court in reviewing the factual findings of a lower court or administrative agency. There is nothing in the termination statute to suggest that the term substantial evidence as used in § 1414 should have any other meaning. See *Board of Education, Laurel Special School District v. Shockley*, Del. Supr., 155 A.2d 323 (1959).

The Court is therefore charged with reviewing the record to determine whether the Board's findings are supported by substantial evidence.



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The complaining student testified that the offensive proposal was uttered while she and Whaley were alone in Whaley's car. As noted previously, Whaley denies making the statement. No impropriety is alleged regarding the student's presence in Whaley's car. While there is considerable dispute on matters of detail, both stories begin with Whaley agreeing to drive the student on a personal errand.

On an elemental level substantial evidence - the student's testimony - is present to support the hearing officer's finding as adopted by the Board. It would be unsettling though for a decision of such serious consequence to Whaley to rest on a naked judgment of credibility.

The hearing officer, however, analyzed the student's testimony regarding the circumstances surrounding her coming to be in Whaley's car and found her story to be corroborated in most particulars by other witnesses and documentary evidence. On the other hand, Whaley's substantially divergent version of the circumstances was largely uncorroborated and even contradicted by other evidence. The hearing officer's Conclusion to credit the student's testimony was thus the product of an orderly and logical deductive process. *Levitt v. Bouvier*, Del. Supr., 287 A.2d 671 (1972); *Levin v. Smith*, Del. Supr., 513 A.2d 1292 (1986). Given the presence of substantial evidence in the record to support the Board's findings, this Court is obliged to affirm its decision.

IT IS SO ORDERED.

