

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOE SHOFFEITT

VS.

CASE NO. 1975-12

LUMPKIN COUNTY BOARD
OF EDUCATION

ORDER

Joe Shoffeitt, a school bus driver under contract with the Lumpkin County Board of Education, drove a school bus for the County for the 1973-74 school year. On May 27, 1975, he signed a new contract as a bus driver but on May 30, 1975, only three days after signing the contract, the Lumpkin County Board of Education acting through the Superintendent of Schools, wrote Shoffeitt a letter purporting to relieve him of his duties and responsibilities as a bus driver and placed him under suspension until the Board could meet at which time the Superintendent would recommend his dismissal.

Shoffeitt through his attorney demanded a hearing but on July 14, 1975, the Lumpkin County Board of Education met and voted not to grant him one. Shoffeitt appeals to the State Board of Education.

At issue is whether or not Shoffeitt is entitled to a hearing and if the State Board of Education is the proper forum.

Section 1(b) of the "Fair Dismissal Act" of 1975 reads in part, "Before the discharge or suspension of a teacher, principal or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing, and shall state....." (Georgia Laws 1975, 360).

The second sentence of Shoffeitt's contract of employment reads as follows: "That pursuant to the terms, conditions and agreements hereinafter expressed, which are mutually

acknowledged, the employer has employed the driver and the driver has accepted employment for the school term of the Lumpkin County School System during the 1975-1976 school year at a salary of \$255.58 per month for 12 months."

The State Board of Education holds that Shoffeitt is an employee under the "Fair Dismissal Act" and his contract with the Lumpkin County Board of Education is for a definite term entitling him to a hearing before he is discharged.


The Lumpkin County Board of Education contends that the State Board of Education does not have jurisdiction to hear this appeal under decisions of Mallard vs. Warren, 222 Ga. Appeals 731(1966) and Boney vs. County Board of Education of Telfair County, 203 Ga. 152(1947). Those cases held that there must be a decision of the local board on disputed issues or sitting as a court and not mere action of the board in order to give the State Board of Education jurisdiction. Administrative decisions are not appealable unless local board discretion is grossly abused.

However, these principles of law were modified by the "Fair Dismissal Act" when teacher and employee dismissal or contract non-renewal is involved. This legislation not only requires notice and hearing before discharge but under Section (f) requires the local board to render its decision within five days after the hearing and appeals to the State Board of Education are provided for under Georgia Code §32-910. It was the apparent intention of the General Assembly to afford notice and hearing before a teacher or employee under contract was discharged and we hold that a refusal of the local board to give a hearing is a decision itself which is appealable to the State Board of Education and a local decision over which the State Board of Education has jurisdiction.

Therefore, this Board holds that it does have jurisdiction in this case and of this appeal and orders the Lumpkin County Board of Education to afford Joe Shoffeitt a hearing.

All members of the State Board of Education except Kenneth Kilpatrick who dissents.

This the 13th day of November, 1975.


Richard Neville,
Vice Chairman for Appeals

I agree that the appellant ought to be heard by the Lumpkin County Board of Education but I do not agree that the State Board of Education has the legal authority to order that done. An appeal to the State Board of Education should rightly come about only after a hearing has taken place and evidence presented and a record made. If a person has a legal right which his government denies him, the law provides a remedy in the form of mandamus for the compelling of that to be done, which the law requires to be done. The forum which has the power to order the Lumpkin County Board of Education to give the appellant a hearing is the Lumpkin Superior Court and not the Georgia State Board of Education. For the reason explained I must respectfully dissent from the majority opinion in this case.

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