

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| MARVIN H. PEAVY, | * | |
| | * | |
| Appellant | * | CASE NO. 1975-15 |
| | * | |
| VS. | * | |
| | * | |
| PULASKI COUNTY BOARD | * | |
| OF EDUCATION, | * | |
| | * | |
| Appellee | * | |

Marvin H. Peavy, the Appellant, had been employed by the Pulaski County Board of Education for five years, and from 1973 to 1975 was principal of Boseman Junior High School. Prior to April 15, 1975, the Appellant was notified by Warren Alexander, Superintendent of Schools, that he was not going to recommend to the Board of Education that it renew the Appellant's contract for the 1975-76 school year. Subsequently, the Appellant entered his demand for a written list of charges and a hearing whereupon the Superintendent requested the State of Georgia Professional Practices Commission to appoint a tribunal to hear this case. This was done on September 5, 1975, at the Pulaski County Courthouse. The Appellant was present at the hearing conducted by the tribunal and was represented by counsel. The charges against Peavy by the Superintendent of Schools included insubordination, willful neglect of duties, nonperformance of duties and inefficiency. At the conclusion of the hearing, the tribunal found that eight out of twelve grounds were supported by the evidence and that the Board of Education's decision not to renew the Appellant's contract should be affirmed. Thereafter, the Board of Education of Pulaski County reaffirmed its decision not to renew Mr. Peavy's contract and he then appealed to the State Board of Education.

(1)

The Appellant argues that the charges against him should be dismissed because they were brought under the 1975

Fair Dismissal Act (Ga. Laws 1975, page 360) and this Act did not become effective until March 31, 1975. The Appellant contends that all of the charges against him were to have taken place prior to March 31, 1975, and this would cause retroactive application of the Fair Dismissal Act.

We cannot agree with this argument, for the 1975 Act did not create new grounds for dismissal (or discharge) but readopted or clarified the grounds previously in existence at the time the alleged misconduct of the Appellant took place. The following information, taken from the tribunal's report, shows this very clearly:

| Prior to July 1, 1974 (Ga. Code Ann. Sections 32-912, 1010) | From July 1, 1974, to March 31, 1975 (Ga. Code Ann. Section 32-608.1) | After March 31, 1975 (Ga. Laws 1975, p. 360) |
|---|--|--|
| (a) nonperformance of duty | (a) incompetency | (a) incompetency |
| (b) incompetency | (b) insubordination | (b) insubordination |
| (c) immorality | (c) willful neglect of duties | (c) willful neglect of duties |
| (d) inefficiency | (d) immorality | (d) immorality |
| (e) other good and sufficient cause | (e) other good and sufficient cause | (e) other good and sufficient cause |

Therefore, the Appellant's substantive rights were not affected by the 1975 legislation and he was not harmed thereby. The rules of law which prohibit retroactive operation of laws which affect one's substantive rights do not apply to laws procedural and remedial in nature. See St. Paul Fire and Marine Insurance Co. vs. Postell, et al, 113 Ga. App. 862, 865 (1966). Even so, the procedural rules set forth in the 1975 Fair Dismissal Act are very much to the Appellant's advantage, not disadvantage, and the Appellant was not harmed by following the procedure in that Act, for the obvious purpose of its adoption was to afford teachers and school employees better procedural protection than previously existed under State law.

(2)

The Appellant contends he was denied fundamental due process rights by the way in which the decision was made not to renew his contract in that this decision was made prior to

first handing to the Appellant a list of charges and affording him a hearing. As this Board understands the decision in the case of Ferguson vs. Thomas, 430 F2d 852 (5th Cir. 1970), the Court ruled that if the notice of nonrenewal of the contract is accepted by the employee without challenge, then there is no need to afford him certain fundamental due process rights such as a list of charges against him and notice of time and place of hearing. The Court states, however, that once the employee makes his challenge to the decision not to renew his contract, he then has a right to notice of the charges, list of witnesses and nature of the testimony and an impartial tribunal. The 1975 Fair Dismissal Act provides the same basic procedures and safeguards, and we do not believe that the procedure as specified in the 1975 Fair Dismissal Act and followed by the Appellee violates the Appellant's rights of due process. This is the substance of our decision in Hudson vs. Bibb County Board of Education (Case No. 1975-8).

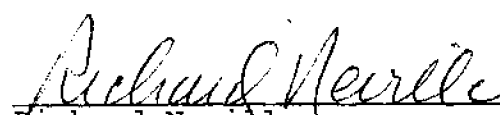
(3)

There is no need to consider argument of the Appellant that one of the charges made against him violated his first amendment right to free speech, since the Appellee withdrew that particular charge from consideration by the tribunal.

(4)

We find no merit to other contentions of the Appellant and find that there was sufficient evidence in the record to support the decision of the Pulaski County Board of Education not to renew the Appellant's contract for the school year 1975-76.

This the 8th day of January, 1976, by all members of the State Board of Education except Mr. Henry Stewart who was absent.


Richard Neville,
Vice Chairman for Appeals
State Board of Education
of Georgia