

STATE BOARD OF EDUCATION

STATE OF GEORGIA

W. K. EMERSON, :
Appellant, :
v. : CASE NO. 1981-28
WALKER COUNTY BOARD :
OF EDUCATION, :
Appellee. :

O R D E R

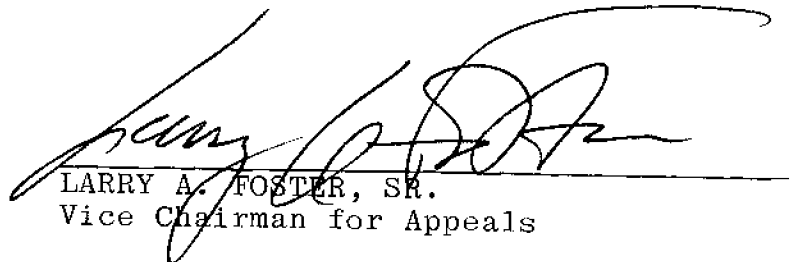
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Walker County Board of Education herein appealed from is hereby sustained.

Messrs. Smith, Temples and Lathem were not present.

This 11th day of February, 1982.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

W. K. EMERSON,	:	
	:	
Appellant,	:	CASE NO. 1981-28
	:	
vs.	:	REPORT OF
	:	HEARING OFFICER
WALKER COUNTY BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by W. K. Emerson (hereinafter "Appellant") from a decision by the Walker County Board of Education (hereinafter "Local Board") not to renew his contract because of insubordination and willful neglect of duties. The appeal complains that the decision was contrary to the evidence and law, the Local Board unlawfully reversed the findings of fact of a Professional Practices Commission tribunal, the testimony of two expert witnesses was improperly excluded during the hearing, and the hearing was improperly conducted by only three members of the Professional Practices Commission rather than the entire membership

of the Professional Practices Commission. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On January 30, 1981, the superintendent of the Walker County School System delivered a letter to Appellant which advised him that he was being transferred from his position of principal of one of the high schools in another location "to develop the Competency Based Education plan" effective on the following Sunday, February 1, 1981. Appellant told the superintendent that he would have to think about the transfer. On Sunday, Appellant sought legal counsel concerning what he viewed as a demotion. Both the attorney and Appellant called the superintendent on Sunday and advised the superintendent that Appellant would not report for his new job the following day because he was going to file suit in an attempt to block what was considered to be an illegal action on the part of the superintendent.

On February 2, 1981, Appellant went to the high school and informed the assistant principal that

he would be absent for a period of time. He also stopped by the superintendent's office and delivered a letter which requested a hearing before the Local Board on the question of his transfer from the position of principal. Appellant then went with his attorney to find the presiding judge of the superior court in an effort to obtain an injunction against the superintendent in making the transfer. Appellant returned to the high school at approximately 1:30 p.m. and was hand-delivered a letter from the superintendent which directed him to report immediately to his new position, and also advising Appellant that the Local Board had met in special session during the morning and had approved the transfer. The letter also stated that "Failure to do so will necessarily result in my recommendation to the Board that your contract be terminated." Appellant did not open the letter until after the school day was completed. The next day, he reported to his new position. The Local Board referred Appellant's request for a hearing to the Professional Practices Commission.

On April 6, 1981, Appellant was informed that the Local Board had tentatively decided not to renew his contract for the 1981-1982 school year. Appellant filed a request for a hearing on the nonrenewal of his contract, a request for a statement of charges, and a

request that the hearing be before the Professional Practices Commission. The hearing on whether Appellant had been demoted or transferred had been postponed. The Local Board referred the new request for a hearing to the Professional Practices Commission and a combined hearing was scheduled for June 25, 1981. Appellant was notified that he was charged with insubordination and willful neglect of duties because of his failure to report to his assigned duty station on February 2, 1981 after being given a directive by the superintendent. A tribunal consisting of three members of the Professional Practices Commission conducted the hearing as scheduled and issued their report on August 4, 1981.

The Professional Practices Commission tribunal found that Appellant had been employed by the Local Board for a total of eighteen years and that during the past four years, he had served as the principal of one of the high schools. The tribunal found that the superintendent had given a directive to Appellant to report to a new duty post, the Local Board had approved the transfer, Appellant was notified that the Local Board had approved the transfer, and Appellant did not appear at his new duty post until the next day.

The tribunal also found that Appellant's salary remained the same, his responsibilities, although different, were the same or greater than that of a high school principal because he was concerned with system-wide policies, and his prestige was the same as that of a high school principal. The tribunal concluded that Appellant had been transferred rather than demoted, and that he had been insubordinate and willfully neglected his duties by not reporting to his duty post on February 2, 1981 after receiving a directive from the local superintendent. The tribunal recommended that Appellant be given a reprimand and be offered a contract for the 1981-1982 school year because of what it considered to be the mitigating circumstances of Appellant being given such short notice concerning the transfer.

The Local Board met on August 10, 1981, and adopted the findings of fact of the Professional Practices Commission tribunal. After adopting the findings, however, the Local Board determined that the mitigating circumstances were not such that they warranted renewal of Appellant's contract. The Local Board, therefore, decided not to renew Appellant's contract. Appellant filed his appeal with the State Board of Education on September 2, 1981.

PART III

CONCLUSIONS OF LAW

Appellant contends on appeal that the Professional Practices Commission tribunal's finding that he had been transferred rather than demoted was erroneous, contrary to law, contrary to the evidence, and without evidence to support it. The record, however, clearly shows that Appellant did not suffer any reduction in pay as a result of the change in positions. Notwithstanding Appellant's argument that it was not equitable for him to be paid more than the person from whom he received his directions, or that the position did not command the salary that was being paid to him, he did not suffer a salary reduction and the reasons therefor were the concern of the Local Board rather than Appellant. Under the holding of Rockdale County School District v. Weil, 245 Ga. 730 (1980), an employee's responsibility, prestige, and salary must all be decreased in order for there to be a demotion. In the instant case, there is no question that Appellant's salary was not decreased. The tribunal also had evidence before it that the new responsibilities of Appellant were the same or greater than his responsibilities as a high school principal because the new position

involved the making of system-wide policy decisions rather than decisions which affected only one school. The Hearing Officer, therefore, concludes that Appellant was not demoted, and the evidence before the Professional Practices Commission tribunal supported its finding that Appellant was transferred rather than demoted.

The appeal also claims that the Professional Practices Commission tribunal's finding that Appellant was insubordinate and willfully neglected his duties was erroneous, contrary to law and the evidence, and without any evidence to support it. Appellant's principal contention is that the superintendent's directive to report to a new position was illegal and he was not required to obey an illegal command. Since he did not have to obey an illegal command, he, therefore, was neither insubordinate nor willfully neglecting his duties when he failed to report to his new position on February 2, 1981. The charge of illegality stems from Appellant's contention that he was demoted and thus entitled to a hearing before the local board before he had to assume any new duties. Since Appellant's entire argument is predicated on his contention that he was demoted rather than transferred, his argument fails because of the determination that he was not demoted. He was not entitled to a hearing before the Local Board

when he was transferred to his new position and the superintendent made a lawful directive to Appellant in requesting him to report to a new duty station on February 2, 1981. Appellant also failed to follow the directive that was contained in the letter hand-delivered to him on the afternoon of February 2, 1981, which stated that the Local Board had approved the transfer and he was to report immediately to his new duty station. The directive was lawful, Appellant understood the directive, and Appellant refused to follow the directive. The Hearing Officer, therefore, concludes that there was evidence before the Professional Practices Commission tribunal which supports its finding that Appellant was insubordinate and willfully neglected his duties by failing to report to his new duty station on February 2, 1981.

Appellant also claims that the Local Board was bound by the findings, conclusions, and recommendations of the Professional Practices Commission tribunal because the Local Board had selected the tribunal to conduct the hearings. Contrary to Appellant's claim, the Local Board did adopt the findings of the tribunal. The State Board of Education has previously decided that a local board of education is not bound to follow the recommendations of a hearing tribunal. See, Poland

v. Cook County, Case No. 1977-4. Ga. Code Ann. §32-2101c(e) provides that a hearing tribunal can conduct the hearing and make its findings and recommendations, but the final decision-making authority remains with the local board. Since there was a finding of insubordination, the Local Board had the lawful power not to renew Appellant's contract. Ga. Code Ann. §32-2104c(b)(1).

For the first time, Appellant challenges the conduct of the hearing by three members of the Professional Practices Commission and the participation by a member of the bar as the law officer. Since this challenge was not made at the hearing, it cannot be raised for the first time on appeal. See, Long County Bd. of Ed. v. Owen, 150 Ga. App. 245 (1979); Hobby v. Tift County Bd. of Ed., Case 1977-6.

Appellant's final contention is that the testimony of two expert witnesses was improperly excluded when they were asked to testify whether Appellant had been demoted because of a loss of prestige and responsibility. As previously pointed out, Appellant's salary was not reduced, and it is necessary that all three factors--salary, responsibility, and prestige--must be adversely affected in order for there to be a demotion. The exclusion of the testimony of these

witnesses, therefore, was harmless error, if it was error.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the decision of the Local Board was supported by the evidence, and was a lawful exercise of the authority of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.

Appearances: For Appellant - Frank M. Gleason; John W. Davis, Jr; For Local Board - Fletcher & Womack; Ronald R. Womack.



L. O. BUCKLAND
Hearing Officer