

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| <b>JOSEPH A. MEDEIROS, JR.,</b> | : |                         |
|                                 | : |                         |
| <b>Appellant,</b>               | : |                         |
| <b>v.</b>                       | : | <b>CASE NO. 1992-21</b> |
| <b>CLAYTON COUNTY</b>           | : | <b>DECISION</b>         |
| <b>BOARD OF EDUCATION,</b>      | : |                         |
|                                 | : |                         |
| <b>Appellee.</b>                | : |                         |

**PART I**

**SUMMARY**

This is an appeal by Joseph Medeiros (“Appellant”) from a decision by the Clayton County Board of Education (“Local Board”) to terminate Appellant’s teaching contract after a Professional Practices Commission Tribunal (“PPC Tribunal”) found that Appellant had improperly taken money from a school fund. Appellant claims that the evidence does not support the charges, the notice of charges was defective, and the hearing before the PPC Tribunal was improper. The Local Board’s decision is sustained.

**PART II**

**FACTUAL BACKGROUND**

Appellant was a sixth grade teacher at Adamson Middle School. He was employed by the Local Board for four years. The school operated an ice cream stand in the lunchroom. One of Appellant’s duties was to tend the ice cream stand for 20 minutes each day.

The principal became suspicious about the ice cream fund on March 20, 1992, when he discovered that there were no \$5 bills in the ice cream box after he had seen two of them in the box on the previous day. On March 23, 1992, the principal saw a \$10 bill in the box early in the day, but, at the end of the day, there were only \$1 bills in the box. The principal then recorded the serial number on a \$10 bill and put it in the box on March 24, 1992. At the end of the day, the bill was not in the 20-minute shifts, which caused the principal to suspect the last two individuals who attended the ice cream stand. Appellant was the last one to attend the stand.

On March 25, 1992, the principal changed the shifts so that an unsuspected individual worked a shift between the two suspected individuals. The principal then recorded the serial

numbers on a \$5 and a \$10 bill and put them in the ice cream box. At the end of the day, the two bills were still in the box.

On March 26, 1992, the principal had the next to last attendant record the serial numbers of the \$5 and \$10 bills in the box. The principal recorded the serial numbers of two additional \$10 bills and placed them in the box. At the end of Appellant's shift, the two \$10 bills and three of the \$5 bills were missing.

Approximately two hours later, the principal called Appellant to his office. Two of the missing \$10 bills and two of the missing \$5 bills were found in Appellant's backpack. During the hearing before the PPC Tribunal, Appellant claimed that someone else put the money into his backpack, that he had not returned to his room following ice cream stand duty and could not have put the money in his backpack.

The teachers keep their rooms locked when they are away, but some teachers testified that Appellant's room had been unlocked between 1:30 p.m. and 3:30 p.m., the times when Appellant finished his ice cream stand duty and when Appellant was confronted in the principal's office.

The PPC Tribunal found that the preponderance of the evidence supported the charges that Appellant had taken the money from the ice cream fund. The PPC Tribunal recommended termination of Appellant's teaching contract. On May 20, 1992, the Local Board voted to adopt the findings and recommendation of the PPC Tribunal.

### **PART III**

### **DISCUSSION**

Appellant argues on appeal that the evidence was insufficient to substantiate the charges against him. Appellant's argument is based on the PPC Tribunal's conclusion that Appellant "acted improperly and unprofessionally" because money belonging to the school was found in Appellant's backpack, "all of which constitutes other good and sufficient cause for appropriate disciplinary action to be taken against" Appellant. Appellant maintains that the genesis of the unprofessional conduct was theft by taking, but there was no evidence that Appellant had actually taken any of the funds. Appellant cites Bigby v. State, 148 Ga. App. 555, 251 S.E.2d 790 (1978) and Peacock v. State, 131 Ga. App. 651, 206 S.E.2d stolen funds is not sufficient to authorize a finding of theft by taking if the accused has a reasonable explanation for the possession. Appellant also argues that the notice of charges was insufficient because it only charged Appellant was being in possession of stolen funds, not the theft of funds, but the evidence presented went to Appellant's theft of the funds.

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransom v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (St. Bd. of Ed., 1976).

The foundation for Appellant's argument is that the Local Board had to resort to speculation that Appellant took the funds because there was no direct evidence that anyone saw him take the money. A proceeding to terminate a teacher's contract, however, is not a criminal proceeding; instead, it is an administrative proceeding. As an administrative proceeding, the charge letter does not have to have the specificity of a criminal charge, nor does the degree of proof have to reach the level of a criminal proceeding. There was evidence established through the investigation by the principal that Appellant was responsible for the missing money. The discovery of the money in Appellant's backpack served as corroboration that he took the funds. As the trier of fact, the PPC Tribunal was not required to accept Appellant's claim that he did not have an opportunity to return to his classroom and place the money in the backpack. Similarly, the PPC Tribunal was not required to adopt Appellant's claim that someone else put the money in his backpack. The charge letter was sufficient to permit Appellant to present a defense. The State Board of Education concludes that the notice of charges was sufficient and there was evidence to support the charges made against Appellant.

Appellant also claims on appeal that he has a substantive due process right to be free from arbitrary, capricious and irrational action by the principal. Appellant argues that the principal's actions were arbitrary, capricious and irrational because the procedures of O.C.G.A. § 20-2-795.1 were not followed.

O.C.G.A. § 20-2-795.1 provides that superintendents, associate or assistant superintendents, and directors of personnel have to make a written report to the board of education upon receiving a written report that a school employee has committed certain specified crimes, including theft. The local board can then turn the matter over to the Professional Practices Commission for investigation. O.C.G.A. § 20-2-795.1, however, does not provide teachers with any additional substantive rights.

Instead, it provides a measure of protection against civil and criminal liability to the reporting administrator and boards of education who investigate charges that employees have committed certain crimes. There is nothing in the act that required the principal in this case to make a report to the board of education before he conducted his investigation. In the absence of the investigation, the principal would not have had any evidence upon which he could have based a report. The State Board of Education concludes that O.C.G.A. § 20-2-795.1 does not provide Appellant with any substantive rights. The principal's investigation, therefore, did not violate any of Appellant's due process rights.

Appellant also makes reference to a claim that the investigation was pretextual because the principal was aware for two years that money was missing from the ice cream fund and he wanted to escape any blame because someone was taking money from the fund. There is no evidence in the record to support Appellant's allegation and Appellant's argument is wholly without foundation.

**PART IV**

**DECISION**

Based upon the foregoing, the State Board of Education is of the opinion that the notice of charges was sufficient, there was evidence to support the charges, and that Appellant was not denied any substantive due process rights. The decision of the Local Board, therefore, is hereby

SUSTAINED.

This 10<sup>th</sup> day of September, 1992.

Mr. Abrams, Mr. Brinson, Mr. Sears and Mr. Sessoms were not present.

James H. Blanchard  
Vice Chairman for Appeals