

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JANICE SMITH,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1992-29
	:	
THOMASTON - UPSON COUNTY	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Janice Smith (Appellant”) from a decision by the Thomaston-Upson County Board of Education (“Local Board”) not to renew her contract as a bus driver for the 1992-1993 school year. Appellant claims that the Local Board’s decision denied her substantive due process because it violated a Local Board policy. The appeal is dismissed because the State Board of Education lacks jurisdiction since the case does not involve an interpretation of school law.

Appellant began working for the Local Board at the beginning of the 1991-1992 school year as a bus driver, apparently without a written contract. In February, 1992, Appellant was involved in a collision while driving her bus. The Local Superintendent suspended her. On March 9, 1992, a judge dismissed all the charges against Appellant. On March 10, 1992, the Local Board decided to reinstate Appellant as a driver.

Shortly after the Local Board reinstated Appellant, the Local Superintendent received a petition that complained about Appellant’s service as a bus driver. On April 21, 1992, the Local Superintendent wrote to Appellant that he would not renew her contract as a bus driver for the 1992-1993 school year. Following an exchange of letters between Appellant’s attorney and the Local Board’s attorney, the Local Board decided to hear Appellant. On July 7, 1992, Appellant appeared before the Local Board and was questioned by her attorney. The Local Board did not put up any evidence and did not cross-examine Appellant. The Local Board delayed until August 12, 1992, before voting to affirm the Local Superintendent’s decision not to renew Appellant’s contract. Appellant then appealed to the State Board of Education under the provisions of O.C.G.A. § 20-2-1160.

O.C.G.A. § 20-2-1160 provides for appeals to the State Board of Education in cases where a local board decides “any matter of local controversy in reference to the constitution or administration of the school law....” O.C.G.A. § 20-2-1160(a). Without a local controversy

involving the construction or administration of school law, the State Board of Education cannot exercise jurisdiction because the State Board of Education's jurisdiction is limited. See, Boney v. County Bd. of Educ., 203 Ga. 152, 45 S.E.2d 442 (1947) (limits on State Board of Education's jurisdiction). The State Board of Education has previously held that it does not have jurisdiction to hear cases where there is not a contract for a definite term because there is no interpretation of school law. See, Henderson et al. v. Fulton Cnty. Bd. of Educ., Case No. 1976-17 (SBE 1976).

Appellant claims that this case involves the interpretation of school law because it requires an interpretation of a local board policy and whether the Local Board granted Appellant any substantive due process rights.

The Local Board's Policy GCN provides:

An employee may be discharged by the Superintendent for dereliction of duty, insubordination or immoral conduct. The action of the Superintendent may be appealed to the Board of Education.

Nonprofessional employees may be asked to resign immediately if physical, mental or emotional problems interfere with performance of assigned duties as determined by the principal, supervisor and/or the Superintendent.

On appeal, Appellant claims there was no showing of any dereliction of duty, insubordination, or immoral conduct or any physical, mental, or emotional problems. Appellant, therefore, claims that the Local Board improperly discharged her.

Appellant's claim of improper discharge is based upon her argument that her employment is a constitutionally recognized property right, which the Local Board granted to her until there was dereliction of duty, insubordination, or immoral conduct. In the absence of any dereliction of duty, insubordination, or immoral conduct, Appellant contends that the Local Board's decision to terminate her was arbitrary and capricious.

The Local Board argues that it did not terminate Appellant's employment. Instead, it merely let Appellant's contract lapse without renewal for another year. Since the contract lapsed, the Local Board argues that the existence of any dereliction of duty, insubordination, or immoral conduct is immaterial.

The arguments of both the Local Board and Appellant rest upon an interpretation of general law that governs the relations between employers and employees; they do not require any interpretation of school law because there is nothing within Title 20 of the Official Code of Georgia that aids in deciding what rights Appellant has been granted and how those rights are to be protected. The Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq., which governs contract terminations, only applies to teachers, principals, and other employees who have "a contract for a definite term..." O.C.G.A. § 20-2- 940(a). In this case, Appellant did not have a contract for a definite term. Instead, Appellant worked under an oral agreement, which does not obtain any protections under Title 20 of the Official Code of Georgia. Therefore, the issue to be decided is whether, under the principles of general employee-employer law, Appellant obtained any rights

to continued employment because the Local Board's written policy limits termination to cases where there has been dereliction of duty, insubordination, or immoral conduct. The interpretation of the principles of general employee-employer law is the province of the courts and not the State Board of Education.

We, therefore, conclude that Appellant's dispute with the Local Board does not involve an interpretation of school law. The State Board of Education, therefore, is without jurisdiction to decide this matter.

Based upon the foregoing, the appeal from the decision of the Local Board is hereby

DISMISSED.

This 14th day of January, 1993.

Mrs. King and Mr. Sears were not present.

Robert M.. Brinson
Vice Chairman for Appeals

