STATE BOARD OF EDUCATION

STATE OF GEORGIA

SAMUEL BOWERS,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2008-66**
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Samuel Bowers (Appellant) from a decision by the Fulton County Board of Education (Local Board) to adopt the recommendation of a hearing tribunal to suspend him for five days without pay because of insubordination, willful neglect of duty and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Because Appellant did not receive notice of the hearing and did not attend the hearing before the tribunal, he claims that the Local Board denied him due process. The decision of the Local Board is reversed.

The principal issue in this appeal is whether a school system can conduct a hearing on charges against a teacher in the teacher's absence when the school system sent a notice of the hearing to the wrong address. Appellant is a fifth grade teacher of exceptional children. The school system charged him with insubordination, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 as a result of an incident that occurred on December 12, 2007, between Appellant and one of his students.

On March 4, 2008, the Human Resources Department mailed to Appellant, by both certified mail and regular mail, a notice of the charges and the fact that a hearing would be held at 9:00 o'clock a.m. on March 25, 2008. The letters were sent to the address that the Human Resources Department had on file. The certified letter was returned as undeliverable; the regular mail letter was not returned.

On the morning of March 25, 2008, the hearing tribunal met but Appellant was not present. A representative from the Human Resources Department testified that notice of the hearing had been mailed to Appellant at the address the Human Resources Department had on file. The Human Resources Department representative called Appellant's school before the hearing and learned that Appellant had called in sick. The hearing officer ruled that the school system had met its duty regarding notice and, after the hearing officer said, "Well, I know we all don't want to do this twice", the tribunal decided to go forward with the hearing despite Appellant's absence.

During the hearing, which lasted only thirty minutes, the tribunal heard testimony that Appellant raised his voice to one of his students and made some disparaging comments to her. The tribunal found that Appellant was insubordinate and willfully neglected his duties, and that other good and sufficient cause existed.[1] The tribunal recommended a five day suspension. The Local Board adopted the recommendation and suspended Appellant for five days without pay. Appellant then appealed to the State Board of Education.

Appellant claims he was denied due process because the tribunal conducted the hearing without him being present. The Local Board argues that it complied with the notice provisions of O.C.G.A. § 20-2-940 and it was Appellant's responsibility to provide a proper address.[2]

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950). "[F]ailure to give the notice and accord the employee the right to be heard amounts to a denial of 'due process of law'" *Morman v. Bd. of Educ. of Richmond Cnty.*, 218 Ga. 48, 50, 126 S.E.2d 217, 219 (1962). The Local Board argues that the notice it provided was reasonably calculated to apprise Appellant of the hearing and afford him an opportunity to present his objections because it followed the statutory requirement to send the notice to Appellant's last known address. The record, however, shows that the certified letter was returned as undeliverable, which placed the school system on notice that Appellant did not receive the notice. The record also shows that just before the hearing started, Appellant was contacted and he informed the tribunal that he had not received notice. The tribunal, nevertheless, decided to proceed for its own convenience. "[T]oken compliance with a state statute for ... service, when it is known and apparent that such service did not result in actual notice to the party, does not satisfy due process." *Bethco, Inc. et al. v. Cinema 'N' Drafthouse International, Inc. et al.,* 204 Ga. App. 143, 145, 418 S.E.2d 467, 469 (1992).

The Local Board argues that *Bethco* is inapplicable because the company was aware it had the wrong address when it mailed a notice, but the school system in the instant case did not know it had the wrong address. The fact, however, that the certified

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[1] There was no evidence submitted to show that Appellant disregarded a direct order of a superior that would support a finding of insubordination, or of a duty that Appellant willfully neglected to support a finding of willful neglect of duty.

[2] O.C.G.A. § 20-2-940(c) provides that "service shall be deemed perfected when a notice is deposited in the United States mail addressed to the last-known address of the addressee ...." There was nothing in the record to show that the Local Board has a policy that directs teachers to submit changes of address to the Human Resources Department.

letter was returned as undeliverable placed the school system on notice that it might have the wrong address and placed a responsibility on it to attempt to insure that Appellant received notice of the hearing. The school system also argues that it could assume that Appellant received notice since the regular mail letter was not returned. However, the only thing that can be assumed when a letter is not returned is that the letter was not returned; the lack of delivery of properly posted mail is not uncommon.

Before the hearing began, the tribunal was informed that Appellant was at home sick and had not received notice of the hearing. "'If a party is prevented by sickness from appearing at the proper court, at the proper time, to make his defense at law, he is entitled to relief ....'" *McCall v. Miller*, 120 Ga. 262, 266, 47 S.E. 920, 921 (1904). In the absence of any showing that Appellant actually received notice and was willfully avoiding the hearing under the pretense of being sick, the tribunal should have continued the hearing to another date.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the school system denied Appellant due process by proceeding with a hearing in his absence when it knew he was sick and the notice of the hearing was returned as undeliverable. Accordingly, the Local Board's decision is REVERSED.

This _____ day of September 2008.

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William Bradley Bryant
Vice Chairman for Appeals