

Jackson v New York City Dept. of Educ.

2012 NY Slip Op 31829(U)

July 5, 2012

Supreme Court, New York County

Docket Number: 102147/11

Judge: Alice Schlesinger

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SCANNED ON 7/13/2012

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER

~~PIA~~ PART 16

Index Number : 102147/2011

JACKSON, DARLENE

VS.

NYC DEPARTMENT OF EDUCATION

SEQUENCE NUMBER : 001

VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

his motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

petition is denied and the proceeding is dismissed in accordance with the accompanying memorandum decision.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: _____

JUL 05 2012

Alice Schlesinger

ALICE SCHLESINGER *s.c.*

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
DARLENE JACKSON,

Petitioner,

Index No.102147/11
Motion Seq. No. 001

-against-

NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondent.

-----X
SCHLESINGER, J.:

This is an Article 75 proceeding in which a tenured teacher, the petitioner Darlene Jackson, is seeking to vacate an Opinion and Award dated January 31, 2011 issued by Hearing Officer Jack D. Tillem after a hearing. At the time of the hearing, Ms. Jackson was teaching fourth grade at P.S. 70 in the Bronx.

Originally, three Specifications had been brought against Ms. Jackson. However, at the time of the hearings, only Specifications 2 and 3 were left; Specification 1 had been dismissed. Specification 2 read as follows:

On or about May 6, 2010, the respondent [Ms. Jackson] said words to the effect of to Student P.V.:

- a) What, you want to fight?
- b) You scared?
- c) You're a sissy.
- d) Your mother and sister are sissy's too.
- e) You're a pussy.
- f) Faggot.

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Specification 3 read as follows:

On or about May 6, 2010, the Respondent [Ms. Jackson] did the following to student P.V.:

- a) Pushed P.V.
- b) Hit and/or slapped P.V. in the back of the head.
- c) Pushed P.V. out of the classroom.

Hearings were held where testimony was taken on November 24, December 6, and December 14, 2010. In his seventeen-page Opinion and Award, Hearing Officer Tillem made findings of fact based on the testimony not only of P.V., but of another child as well. Ms. Jackson also testified on her own behalf. There she explained that she had been working at PS 70 as a substitute teacher in the Assigned Teacher Reserve program. It appears that this program dealt with children with special needs and there were only twelve students in the class.

The Hearing Officer realized that this case presented an issue of who was telling the truth and who was not. Two boys in the class had testified as to certain happenings, which Ms. Jackson said never happened. On this issue, Hearing Officer Tillem found as follows: "As the trier of the facts, I believe the boys. What happened is not a figment of their imagination. Their testimony, albeit not dovetailing, was credible." (Page 12 of Opinion and Award, Exh B to Petition).

Hearing Officer Tillem also pointed out that these children had learning disabilities and that the better question to ask, instead of whether the testimony of one boy was consistent with that of the other, was whether or not the testimony made sense. Mr. Tillem found that the boys' testimony did make sense, but that Ms. Jackson's testimony did not.

Hearing Officer Tillem acknowledged that P.V. was a difficult student. He was a twelve-year-old boy with emotional problems and a learning disability who had been held back and was older than the rest of the students. The Hearing Officer also acknowledged that P.V. had made nasty comments to Ms. Jackson, had interrupted lessons, and was intending to create chaos in the classroom. In fact, as pointed out by Mr. Tillem, on cross-examination P.V. admitted that he had been disruptive and disrespectful to Ms. Jackson.

The Hearing Officer found that the weight of the evidence suggested that instead of seeking instructive intervention in dealing with this child, Ms. Jackson chose to take the boy's disruptive behavior and insults personally. In the Award, Mr. Tillem gives five examples of such actions (p.14 of the Award). They do all illustrate his finding.

The Hearing Officer points out that Chancellor Regulation A-420 prohibits corporal punishment, which is defined as any act of physical force upon a pupil for the purpose of punishing that pupil. Chancellor Regulation A-421 prohibits verbal abuse of students. The Hearing Officer found that Ms. Jackson was well aware of these regulations as they had been given to her at the opening day orientation, where the regulations were reviewed.

Also, and arguably more important as to Ms. Jackson's awareness of these regulations, was the fact that she had violated them in the past. In the 2003/04 school year, Ms. Jackson was found guilty after a hearing of similar verbal abuse and corporal punishment and received a penalty of a fine. In the 2007/08 school year, she received a letter of discipline for violating CR A-420. Specifically as to the latter violation, in the letter from her principal, Principal Castellano stated that she had concluded that Ms. Jackson had lifted a student and hit him.

To sum it up, Hearing Officer Tillem found that the Department of Education had sustained its burden of proving Ms. Jackson guilty of Specifications 2 and 3. With regard to the penalty, the Hearing Officer recognized that Ms. Jackson had worked for the Department for 21 years in various capacities and that "she has never shrunk from taking on the most difficult classes". He imposed a fine of \$5,000, describing it in his conclusion as "a sum that should hammer home to respondent [Jackson] that she is now walking on a high wire without any safety net." It should be noted that the Department had urged the penalty of termination, arguing that Ms. Jackson was "incorrigible"

Ms. Jackson argues here that the Hearing Officer exceeded his power in failing to base his decision on the record. Also, he allegedly exceeded his power in recommending, by insinuation via the last sentence in the Award, that it was actually a threat that if Ms. Jackson were to be charged again she should be terminated. Petitioner also argues that the penalty here shocks the conscience. Additionally, counsel points out that there was no actual injury to the child involved. Finally, it is argued that the Department violated its own rules and regulations by allowing Ms. Jackson to be alone with her students, which placed her in an unsafe environment.

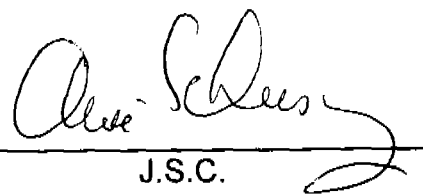
The Department argues that it acted properly and that the petition fails to state a cause of action. More significantly, counsel for the Department argues that Hearing Officer Tillem's determination that Ms. Jackson was guilty of the two Specifications was based on a fair review of the entire record, was supported by substantial evidence, and was lawful and proper. Finally, the Department argues that the \$5,000 fine, which was to be paid in monthly installments, was reasonable, lawful and proportional to the evidence and not shocking to one's sense of fairness.

The petition is denied in its entirety. I find that the Hearing Officer, as argued by counsel for the Department, issued a well-reasoned and proportionate Opinion and Award. In light of two prior similar instances, the \$5,000 fine was extraordinarily moderate in this Court's opinion and does not in any way shock this Court's conscience. Hearing Officer Tillem explained the basis of his findings in the record. He also justified the Award by balancing Ms. Jackson's length and difficulty of service with the seriousness of the conduct and its recidivist nature. The last sentence he wrote was not a threat. Rather, it was a realistic appraisal of what may happen if Ms. Jackson continues on the same course.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed. The Clerk is directed to enter judgment in favor of the respondent.

Dated: July 5, 2012
JUL 05 2012



 J.S.C.
ALICE SCHLESINGER

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