

JULIA PATINO

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NO. 2015-CA-1364

VERSUS

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COURT OF APPEAL

DILLARD UNIVERSITY

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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TOBIAS, J., CONCURS AND ASSIGNS REASONS.

I respectfully concur.

The Dillard University Faculty Handbook and Constitution (“Handbook”) is made a part (incorporated by reference) of the contract between Dillard and Professor Patiño for her tenured employment at Dillard. The Handbook requires that Dillard notify an employee in December of the then current school year that the employee’s services will not be continued in its employ for the following school year. Dillard gave Professor Patiño notice in May of the then current year, approximately five months late.

It is obvious that the requirement of giving notice in December is to permit a faculty member whose services are no longer required to seek employment elsewhere for the next fiscal school year. Fiscal school years for schools/colleges generally run from summer to summer, not January through December.

The late notice in May effectively prevented the professor from obtaining employment elsewhere for another school’s fiscal year, thus causing her damages of the loss of employment for one fiscal year. The trial court in my view was not therefore manifestly erroneous or clearly wrong in limiting Professor Patiño’s recovery to that period for I do find that ultimately Dillard could have terminated her for other reasons (that existed at the college at the time) permitted under the

Handbook. However, if I am wrong in that conclusion and Professor Patiño was improperly terminated on any grounds, then her damages would be limited to her work-life expectancy; the lowest number that the record supports for that is \$329,113.00.¹

¹ Under the law, if an appellate court is to adjust a damage upwards, the award must be adjusted to the lowest number that the appellate record supports.