

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2127-20**

ANGELA BENTO,

Plaintiff-Appellant,

v.

PLAINFIELD PUBLIC SCHOOL
DISTRICT,

Defendant-Respondent.

Argued November 9, 2022 – Decided November 30, 2022

Before Judges Geiger and Berdote Byrne.

On appeal from the Superior Court of New Jersey, Law Division, Union County, Docket No. L-1572-19.

Colin M. Page argued the cause for appellant (Law Offices of Damian Christian Shammass, LLC, and Colin M. Page & Associates, attorneys; Damian Christian Shammass and Colin M. Page, of counsel on the briefs).

Howard M. Nirenberg argued the cause for respondent (Nirenberg & Varano, LLP, attorneys; Howard M. Nirenberg, of counsel; Sandra N. Varano, on the brief).

PER CURIAM

Plaintiff Angela Bento, who is Caucasian, appeals from the summary judgment dismissal of her claims of race and gender discrimination brought against defendant Plainfield Public School District (District) under the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 to -50. We affirm.

We take the following facts from the summary judgment record, viewing them in the light most favorable to the non-moving plaintiff. See Richter v. Oakland Bd. of Educ., 246 N.J. 507, 515 (2021).

The District operates thirteen schools. In 2001, the District hired plaintiff as a supervisor at Plainfield High School (the high school). She remained in that position until 2008, at which time she was terminated but immediately rehired as a District vice principal.

In 2008, Superintendent Dr. Steve Gallon III assigned plaintiff to design the Plainfield Academy of Arts and Advanced Sciences (PAAAS), a specialized school for gifted and arts students that would service Grades 7 through 12 and offer a curriculum focusing on the visual and performing arts and advanced placement classes.

When PAAAS opened in September 2009 it serviced only Grades 7 and 8. An additional grade was added each year until the 2013-2014 school year,

when it serviced Grades 7 through 12. In 2009, plaintiff became the interim principal of PAAAS and remained in that position until the 2010-2011 school year, when she became the principal of PAAAS, a position she still holds.

Although plaintiff served as interim principal of PAAAS when it opened, plaintiff was paid the salary of a vice principal until the 2010-2011 school year, when she became its principal. The District contends the lower salary was based on the small number of students then attending PAAAS. Plaintiff alleges that District Superintendent Gallon told her that once PAAAS reached high school status, she would be placed on the high school principal's pay scale.

Dr. Gallon left the District in 2010. Five others have subsequently served as District Superintendent, four of whom were African American males. The current superintendent is Caucasian.

Commencing in the 2014-2015 school year, and for each school year since, plaintiff's salary has been determined by a salary guide incorporated into a collective bargaining agreement (CBA) agreed to by the District and the Plainfield Association of School Administrators (Union), the representative of the bargaining unit that includes plaintiff. The salary guide consists of ten job categories (A-J) relating to the position held and thirteen steps (0-12), which

correspond to the number of years an individual has been employed by the District.

The salary guide has three categories for twelve-month principals: Category A (Principal of Plainfield High School); Category B (Principal of Middle Schools and K-8 schools); and Category C (Principal of K-6 schools, BOAACD,¹ and PAAAS). Plaintiff has been compensated at Step 12 of Category C since the 2014-2015 school year. For the 2019-2020 school year, the salary at Step 12 of Category A was \$171,000 and the Salary of Step 12 of Category B was \$166,890, while the salary of Step 12 of Category C was \$163,557. She earns less than the principal of the District's high school and middle schools and the same as the principals of the District's elementary schools and the now defunct BOAACD. The District contends that the reason plaintiff's pay scale category has not been changed "is not related to her performance as principal of PAAAS."

Since 2013, there were six principals of Plainfield High School, all of whom were African American and all except one were male. At the time the

¹ Barack Obama Academy for Academic & Civic Development was a small specialty high school attended by about 100 students with disciplinary problems who could not attend the Plainfield High School.

complaint was filed, plaintiff was the only Caucasian principal in the District. During the eight years leading up to this lawsuit, there were five different District Superintendents; all except one were African American males. During the last six years of that period, all but one of the District's middle school principals were African American or Hispanic males and the other was an African American female who served as principal for one year.

The former principal of BOAACD, who is an African American female, was likewise paid in accordance with Category C of the salary guide. Two African American vice principals at BOAACD were paid in accordance with Category F of the salary guide. All three protested their placement on the salary guide. The District agreed to retroactively increase their salaries with the principal being compensated in accordance with Category A for school years 2008-2009 and 2009-2010 and the vice principals being compensated in accordance with Category C.

Plaintiff asserted that despite being the principal of a high school, she received the same salary as the principal of an elementary school. She contends that running PAAAS is much more demanding than running a middle school or an elementary school. Unlike elementary school principals, plaintiff is required to comply with middle school and high school guidelines and procedures.

Plaintiff compared her duties to the duties of the District's principals. She maintained that her daily student contact at PAAAS was one hour and twenty minutes longer than at the high school. Her job description is the same as the job description for the principal of the high school. The student to administrator ratio is 200:1 at PAAAS and 189:1 at the high school. The high school has five administrators and PAAAS has two plus a floating administrator. Unlike PAAAS, the high school has staff serving as lead teachers, disciplinarians, testing coordinators, clerical assistants, social workers, and psychologists.

The high school has approximately 1,600 students and 153 teachers. By comparison, PAAAS averages approximately 400 students and 44 teachers. Unlike the high school, PAAAS requires students to apply and audition for specific programs in art, dance, theatre, and vocal or instrumental music. Students who are deemed "gifted" apply for advanced study and are interviewed about their academic history and submit transcripts.

In 2020, the District requested plaintiff to conduct professional development orientation for all new high school teachers, including new teachers at Plainfield High School. In September 2020, the District requested that plaintiff review and score candidates for the vacant high school principal position. Plaintiff regularly participates in meetings held for the high school

principals that are also attended by the Superintendent and occasionally the Assistant Superintendent. These meetings concern the operation of Plainfield's high schools.

Plaintiff also attends and participates in meetings concerning the organization and operation[] of the middle schools. She asserts she has the same responsibilities as the high school and middle school principals.

Over the years, plaintiff filed several grievances regarding compensation. The District did not acknowledge the grievances. Instead, it offered to elevate plaintiff to Category B and provide some retroactive pay. Plaintiff rejected the offer.

On April 30, 2019, plaintiff filed this lawsuit against the District. The complaint alleges the District violated N.J.S.A. 10:5-12(a) and (t) by discriminating against plaintiff in compensation based on her race and gender by paying her in accordance with Category C of the salary guide. Specifically, she claims the District discriminated against her by paying her less than the male African American principals of the high school, as well as less than the African American employees who previously worked at BOAACD. Plaintiff maintains that she performed substantially similar work, when viewed as a composite of skill, effort, and responsibility.

Following discovery, defendant moved for summary judgment and plaintiff cross-moved for summary judgment as to liability. On March 3, 2021, the court issued two orders and a comprehensive written statement of reasons granting summary judgment to defendant dismissing the complaint with prejudice and denying plaintiff summary judgment as to liability.

The court recognized that a Caucasian woman "has a right to bring an action for race discrimination under the NJLAD." However, the court found plaintiff had "not satisfied the factors of the modified McDonnell Douglas² standard to establish a case for disparity of income based on race or gender discrimination under N.J.S.A. 10:5-12(a)." The court found that plaintiff did not meet the heightened standard which requires proof of: (1) background circumstances supporting the suspicion that the District is the unusual employer who discriminates against the majority; (2) that plaintiff was otherwise qualified and performing the essential functions of the job; (3) that plaintiff received disparate compensation; and (4) that the District thereafter paid similarly qualified individuals for that job. The court also found:

[Plaintiff] has not provided any evidence showing a pattern of race or gender discrimination as to the payment of principals in the district. [The District] has previously employed an African American female as

² McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Principal of [the high school], and currently has a Hispanic female serving as Acting Principal of Plainfield High School.

Additionally, [the District] has provided legitimate, non-discriminatory reasons for the disparity in pay among its principals.

. . . .

The [District] provides a reasonable rationale for the disparity in pay as there are increased responsibilities for the Principal of Plainfield High School. The school has approximately 1,600 students and employs 153 teachers; compared to PAAAS, which has approximately 390-400 [students] and employs 44 teachers.

. . . .

Further, [plaintiff] has not proffered any evidence tending to show that these legitimate, non-discriminatory reasons were pretextual.

The court noted plaintiff's purely "circumstantial evidence" of a settlement agreement between the District and the prior principal of BOAACD. Pursuant to N.J.R.E. 408, that evidence is not admissible to prove or disprove liability.

The court further found that plaintiff had not proved defendant violated N.J.S.A. 10:5-12(t). The court explained that under Section 12(t), an employer violates the NJLAD when they

pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility.

A plaintiff who is a member of a "generally favored group" must show "background circumstances supporting the suspicion that the District is the unusual employer who discriminates against the majority." The court found that plaintiff did not demonstrate that defendant was the unusual employer and failed to prove that she would not have been paid the Category A salary if she was principal of the high school. Important to the court was the fact that plaintiff "never applied" for that position "even though it has been vacant on several occasions." Plaintiff additionally did not show that if she was replaced, her replacement would be paid a different salary than she received.

The court further found that defendant was able to satisfy the five factors enumerated in N.J.S.A. 10:5-12(t) that allow an employer to pay a different rate of compensation for reasons other than a seniority system or a merit system. The court found the compensation differential "[was] based on the increased responsibilities that the role of Principal of [the high school] entails," the significantly higher number of students and teachers at the high school, and the "significantly different" "makeup of the student body . . . given the admission

qualifications for PAAAS." The court found these factors "[were] not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class." The court also found these factors

[were] applied reasonably, and were bargained for by the [District] and the [Union]. Moreover, [p]laintiff does not proffer any evidence that any alternative business practice could serve the same business purpose without producing this wage differential. In fact, [the Union] had an opportunity to negotiate an increase in salary for Category C but chose against it.

This appeal followed. Plaintiff raises the following points for our consideration:

POINT I

THE TRIAL COURT IMPROPERLY APPLIED THE TRADITIONAL MCDONNELL DOUGLAS BURDEN-SHIFTING ANALYSIS TO PLAINTIFF'S PAY DISCRIMINATION CLAIM INSTEAD OF THE NEW STANDARD SET FORTH IN THE DIANE B. ALLEN EQUAL PAY AMENDMENTS.

POINT II

THE TRIAL COURT FAILED TO CONSIDER EVIDENCE THAT [THE DISTRICT] WAS THE "UNUSUAL EMPLOYER" THAT DISCRIMINATES AGAINST CAUCASIANS AND IMPROPERLY CONCLUDED THAT [PLAINTIFF] WAS NOT A MEMBER OF A PROTECTED CLASS.

POINT III

THE TRIAL COURT FAILED TO CONSIDER WHETHER [PLAINTIFF'S] POSITION AS PRINCIPAL OF A COMBINED MIDDLE AND HIGH SCHOOL WAS "SUBSTANTIALLY SIMILAR" TO OTHER MIDDLE SCHOOL AND HIGH SCHOOL PRINCIPAL POSITIONS THAT REQUIRED THE SAME QUALIFICATIONS AND PERFORMED THE SAME DUTIES.

A. Plainfield Failed to Submit Evidence that the Alleged Differences Between the Positions Played a Role in its Decisions Regarding Pay and that they Actually Mattered.

POINT IV

THE TRIAL COURT IMPROPERLY APPLIED [N.J.R.E.] 408 TO EXCLUDE DIRECT EVIDENCE THAT AN AFRICAN-AMERICAN PRINCIPAL OF A MUCH SMALLER SCHOOL WAS PAID THE RATE OF A HIGH SCHOOL PRINCIPAL.

POINT V

THE TRIAL COURT IMPROPERLY SHIFTED THE BURDEN OF PROOF TO [PLAINTIFF] AND ITS FINDINGS REGARDING THE LEGITIMATE FACTORS HAD NO EVIDENTIARY SUPPORT.

We review the ruling on a summary judgment motion de novo, applying the same standard governing the trial court. Conley v. Guerrero, 228 N.J. 339, 346 (2017). Summary judgment will be granted when "the competent evidential materials submitted by the parties," viewed in the light most favorable to the

non-moving party, show that there are no "genuine issues of material fact" and that "the moving party is entitled to summary judgment as a matter of law." Grande v. Saint Clare's Health Sys., 230 N.J. 1, 23-24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)); accord R. 4:46-2(c). "[W]hen the evidence 'is so one-sided that one party must prevail as a matter of law,'" summary judgment is appropriate. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)).

"A plaintiff's self-serving assertion alone will not create a question of material fact sufficient to defeat a summary judgment motion." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.3.1 on R. 4:46-2 (2023) (citing Martin v. Rutgers Cas. Ins. Co., 346 N.J. Super. 320, 323 (App. Div. 2002)). Similarly, "bare conclusions in the pleadings without factual support in affidavits will not defeat a motion for summary judgment." Id. at cmt. 2.2 on R. 4:46-2.

Plaintiff alleges that defendant violated N.J.S.A. 10:5-12(a) and (t) by discriminating against her based on her race and gender by continuing to compensate her at the lower salary provided under Category C of the salary guide, rather than the higher salary paid to the principal of the high school under

Category A.³ Plaintiff asserts that as a woman, she is a member of a protected class. Plaintiff acknowledges that as a Caucasian, she is a member of the majority race in New Jersey and to mount a viable claim of reverse racial discrimination she must present evidence that defendant is the "unusual employer" who discriminates against Caucasians. Erickson v. Marsh & McLennan Co., 117 N.J. 539, 551 (1990).

New Jersey courts have "looked to federal law as a key source of interpretive authority" for the procedural and substantive standards that govern claims under the NJLAD. Grigoletti v. Ortho Pharm. Corp., 118 N.J. 89, 97 (1990). Claims of unlawful discrimination under the NJLAD "may be proven by either direct or circumstantial evidence." A.D.P. v. ExxonMobil Research & Eng'g Co., 428 N.J. Super. 518, 531 (App. Div. 2012).

Direct evidence of discrimination is evidence "that an employer placed substantial reliance on a proscribed discriminatory factor in making its decision to take the adverse employment action[.]" McDevitt v. Bill Good Builders, Inc., 175 N.J. 519, 527 (2003) (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 244-45 (1989)). "The evidence produced must, if true, demonstrate not only a

³ Plaintiff did not plead a cause of action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a).

hostility toward members of the employee's class, but also a direct causal connection between that hostility and the challenged employment decision."

Bergen Com. Bank v. Sisler, 157 N.J. 188, 208 (1999); accord McDevitt, 175 N.J. at 528.

In determining whether a plaintiff has presented direct evidence, "a court must consider whether a statement made by a decisionmaker associated with the decisionmaking process actually bore on the employment decision at issue and communicated proscribed animus." McDevitt, 175 N.J. at 528 (citing Fakete v. Aetna, Inc., 308 F.3d 335, 339 (3d Cir. 2002)). Such proof is established by evidence "of conduct or statements by persons involved in the decisionmaking process that may be viewed as directly reflecting the alleged discriminatory attitude." Fleming v. Corr. Healthcare Sols., Inc., 164 N.J. 90, 101 (2000); Jackson v. Georgia-Pac. Corp., 296 N.J. Super. 1, 19 (App. Div. 1996).

[A.D.P., 428 N.J. Super. at 533-34.]

Plaintiff has not presented direct evidence that her compensation level was intentionally set lower than male or minority principals.

When relying upon circumstantial evidence to prove unlawful discrimination, the courts of this State apply the three-step burden shifting test adopted in McDonnell Douglas. Sisler, 157 N.J. at 209-10. While the burden of production shifts back and forth from plaintiff to defendant, the burden of

persuasion is always borne by plaintiff. Jansen v. Food Circus Supermarkets, Inc., 110 N.J. 363, 382-83 (1988).

First, plaintiff must present prima facie evidence of disparity in compensation due to unlawful discrimination by showing "'it is more likely than not' that the employer's actions were based on unlawful considerations." Dixon v. Rutgers, 110 N.J. 432, 443 (1988) (quoting Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978)). Upon establishing a prima facie case, a rebuttable inference of discrimination is created. Tisby v. Camden Cnty. Corr. Facility, 448 N.J. Super. 241, 248-49 (App. Div. 2017).

The first step of the McDonnell Douglas test is modified in reverse discrimination cases because "the rationale supporting the rebuttable presumption of discrimination embodied in the prima facie elements does not apply." Erickson, 117 N.J. at 551. Thus, when the plaintiff "is not a member of the minority, courts have generally modified the first prong of the McDonnell Douglas standard to require the plaintiff to show that [s]he has been victimized by an 'unusual employer who discriminates against the majority.'" Id. at 551-52 (quoting Livingston v. Roadway Express, 802 F.2d 1250, 1252 (10th Cir. 1986)).

Step two shifts the burden of production to the employer to present a legitimate, nondiscriminatory reason for its action. Zive v. Stanley Roberts, Inc., 182 N.J. 436, 449 (2005). "The employer satisfies its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). "Where the employer produces such evidence, the presumption of discrimination disappears." Sisler, 157 N.J. at 211. "If the employer can meet its burden [of production], the burden again shifts back to the employee to prove the reason provided by the employer is 'merely a pretext for discrimination and not the true reason for the employment decision.'" Tisby, 448 N.J. Super. at 249 (quoting Zive, 182 N.J. at 449).

Step three requires the employee to present evidence that the reason proffered by the employer was pretextual by "either circumstantial or direct evidence that 'discrimination was more likely than not a motivating or determinative cause of the action.'" Ibid. (quoting El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 173 (App. Div. 2005)). This burden "is not insignificant." El-Sioufi, 382 N.J. Super. at 174. "To prove pretext, a plaintiff may not simply show that the employer's reason was false[,] but must also

demonstrate that the employer was motivated by discriminatory intent." Zive, 182 N.J. at 449. This requires a plaintiff to present evidence that:

[(1)] casts sufficient doubt upon each of the legitimate reasons proffered by the defendant so that a factfinder could reasonably conclude that each reason was a fabrication; or [(2)] allows the factfinder to infer that discrimination was more likely than not a motivating or determinative cause of the adverse employment action.

[Fuentes, 32 F.3d at 762.]

The judge found that plaintiff did not satisfy the modified McDonnell Douglas test to establish a cause of action for disparity of income based on race or gender discrimination. We concur.

The salary guide is facially neutral and applies to all principals, whether they are male or female, Caucasian, African American, or Hispanic. Plaintiff did not proffer any evidence that the salary guide incorporated into the CBA, which was negotiated and mutually agreed to by the District and the Union, and ratified by the members of the bargaining unit, was adopted for race- or gender-based discriminatory reasons. See Giammario v. Trenton Bd. of Educ., 203 N.J. Super. 356, 363 (App. Div. 1985) ("Although monetary considerations cannot normally justify policies which [have a disparate impact,] the rule must be

different with respect to labor negotiations—an exercise in which fiscal effect is a primary factor").⁴

The record supports judge's finding that the "circumstances . . . do not show that [the District] is 'an unusual employer who discriminates against the majority.' [Plaintiff] has not provided any evidence showing a pattern of race or gender discrimination as to the payment of principals in the [D]istrict." Indeed, as noted by the judge, the District previously employed an African American female as the principal of the high school, and currently has a Hispanic female serving as acting principal of the Plainfield High School.

The record further supports the judge's finding that the District "has provided legitimate, non-discriminatory reasons for the disparity in pay among its principals." Those reasons included the undisputed facts that the high school has approximately four times as many students and teachers as PAAAS, and that entry into PAAAS is very selective resulting in a higher student performance level. The record also supports the judge's finding that plaintiff did not proffer "any evidence tending to show that these legitimate, non-discriminatory reasons were pretextual."

⁴ In Giammario, we held that "a facially neutral provision in a [CBA] which impacts adversely on an older age group in an incidental manner does not [necessarily] violate" the NJLAD. Id. at 364.

Plaintiff contends that the Equal Pay Act amendments changed the standard for proving an equal pay claim. She argues the trial court analyzed the claims under N.J.S.A. 10:5-12(a) and (t) separately and failed to recognize that the amendments merged the two standards. We discern no error.

As amended, N.J.S.A. 10:5-12(t) prohibits "an employer to pay any of its employees who is a member of a protected class at a rate of compensation, including benefits, which is less than the rate paid by the employer to employees who are not members of the protected class for substantially similar work, when viewed as a composite of skill, effort and responsibility." However:

An employer may pay a different rate of compensation only if the employer demonstrates that the differential is made pursuant to a seniority system, a merit system, or the employer demonstrates:

- (1) That the differential is based on one or more legitimate, bona fide factors other than the characteristics of members of the protected class, such as training, education or experience . . . ;
- (2) That the factor or factors are not based on, and do not perpetuate, a differential in compensation based on sex or any other characteristic of members of a protected class;
- (3) That each of the factors is applied reasonably;
- (4) That one or more of the factors account for the entire wage differential; and

(5) That the factors are job-related with respect to the position in question and based on a legitimate business necessity. A factor based on business necessity shall not apply if it is demonstrated that there are alternative business practices that would serve the same business purpose without producing the wage differential.

[N.J.S.A. 10:5-12(t).]

The judge found plaintiff failed to present evidence showing a violation of the statute. She reiterated that the background circumstance did not show the District is "an unusual employer who discriminates against the majority." The judge explained that plaintiff "[did] not provide any evidence that she would not receive the Category A salary if she was [p]rincipal of Plainfield High School," a position she never applied for when that position became vacant. Nor did plaintiff present "any evidence that if she were replaced at PAAAS that her replacement would be paid a different salary than that provided in the CBA." Because of the settlement, the former principal at BOAACD received retroactive compensation at a rate that differed from the salary guide. The judge applied the "substantially similar work" standard and found the District satisfied the five factors enumerated in N.J.S.A. 10:5-12(t), allowing it to pay a different rate of compensation to plaintiff as the principal of PAAAS.

Each of these findings is supported by the record. Plaintiff's claims were properly dismissed on summary judgment.

Plaintiff contends the trial court erred by excluding evidence of the settlement paid by the District to the former principal of BOAACD that resolved a salary dispute. The settlement resulted in retroactive compensation at the higher high school principal level under Category A for two prior school years. The judge ruled the evidence was inadmissible under N.J.R.E. 408.

"Trial court evidentiary determinations are subject to limited appellate scrutiny, as they are reviewed under the abuse of discretion standard." State v. Buda, 195 N.J. 278, 294 (2008) (citing Hisenaj v. Kuehner, 194 N.J. 6, 12 (2008)). An abuse of discretion only arises on demonstration of "manifest error and injustice." State v. Torres, 183 N.J. 554, 572 (2005) (quoting State v. Ravenell, 43 N.J. 171, 182 (1964)). An abuse of discretion occurs when the court's "decision [was] made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." United States v. Scurry, 193 N.J. 492, 504 (2009) (alteration in original) (quoting Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002)).

N.J.R.E. 408, which governs the admissibility of settlements, settlement offers, and settlement negotiations, provides in pertinent part:

When a claim is disputed as to validity or amount, evidence of statements or conduct by parties or their attorneys in settlement negotiations, with or without a mediator present, including offers of compromise or

any payment in settlement of a related claim, is not admissible either to prove or disprove the liability for, or invalidity of, or amount of the disputed claim.

Under the rule, "not only is the making of a compromise offer inadmissible as proof of the offeror's liability, but also the amount set forth in the offer may not be used to prove the quantum of any purported damages allegedly sustained by the offeree." Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 408 (2022-2023). The inadmissibility extends to settlements paid to third parties, particularly where the settlement does not contain an admission of liability. A primary reason for the rule is that the law of this State "favors and encourages amicable out-of-court settlements of disputes. For that reason, the law chooses not to recognize settlements and settlement offers as admissions of liability." Ibid.

The court correctly applied N.J.R.E. 408 in finding that evidence of the settlement of the BOAACD principal's salary dispute claim was inadmissible. Plaintiff sought to use the evidence of the settlement to prove that the principal of BOAACD, which plaintiff claimed was a substantially similar position, received a retroactive compensation increase to the level paid to the high school principal under Category A. The payment of that settlement is clearly inadmissible. We discern no abuse of discretion.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION