

FRANCINE DORSEY,

Appellant

v.

CARROLL COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19-35

OPINION

INTRODUCTION

Francine Dorsey (Appellant) appeals the decision of the Carroll County Board of Education (local board) to terminate her from her position as an hourly assistant. The local board filed a response maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

FACTUAL BACKGROUND

Appellant worked as an hourly instructional assistant at the Carroll Springs School, part of Carroll County Public Schools. Carroll Springs is a public day school for students ages 3 to 21 who need special education and related services, have multiple severe disabilities, and/or chronic health issues. Appellant worked for Carroll County Public Schools for approximately 14 years before the school system terminated her. (Appeal; Local Board Response, Ex. 1).

On December 5, 2018, one of Appellant's co-workers (Employee A) yelled at another employee for being unprofessional, told her she was being disrespectful, and insisted that she use "please" and "thank you" in addressing him. Appellant and her co-workers complained to their supervisor, a special education teacher. (Appeal).

On December 14, 2018, Employee A approached Appellant in a school bathroom while she was assisting a special needs student and discussed the December 5 incident. He told her he tended to handle disputes in a direct manner because of his military background, and mentioned his experience in handling lie detector tests and special military operations. Appellant felt threatened by his statements and informed the special education teacher that Employee A posed a danger to staff and students. The teacher, in turn, reported the matter to Mary Pat Dye, the school's Program Coordinator, who reported it to Principal Gretchen Rockafellow. Principal Rockafellow and Ms. Dye concluded the report was vague and decided to investigate further. Principal Rockafellow informed staff she would meet with them on the following Monday, December 17, 2018, to conduct individual interviews about the allegations. (Appeal; Local Board Response, Ex. 1, 2).

On December 16, 2018, a Sunday, Appellant texted the special education teacher and

informed her she would not be coming in to work. Her text stated, in part:

After much thought this weekend, I feel I cannot come in to work this week and be around [Employee A]. It is an unfortunate incident that could have been rectified when it occurred. Condescending behavior should never be allowed, especially to the point where co-workers are feeling uncomfortable at work. I feel I handled the situation in a professional manner. . . . We should not have to say anything to [Ms. Dye]. She already knows what happened and I don't believe anything will come of it. [Ms. Dye] is the one who did not do her job by talking to [Employee A]. . . . (Appeal).

The special education teacher did not respond to the message. Appellant did not report to work on Monday, December 17. According to Appellant, as an hourly assistant, she did not have any leave days, but she used text messages to communicate when she would not be coming in to work. In a separate text, the special education teacher suggested Appellant could speak with Principal Rockafellow and Ms. Dye on Tuesday, December 18. Appellant texted back, "No like I said they can talk to [Employee A] ask him what he did. They have enough information to decide what to do with him. I also will not be around him." (Local Board Response, Ex. 2).

Principal Rockafellow conducted an investigation into Appellant's allegations by interviewing Appellant's co-workers. They reported that Employee A told another employee that she was being unprofessional and needed to say please and thank you; Employee A was also rude on another occasion and gave off a "bad vibe." They also accused Employee A of talking about his military achievements and awards. The staff reported no examples of inappropriate comments or unsafe behavior with staff or students, and Principal Rockafellow concluded the matter amounted to a personality conflict among staff members. School officials altered schedules for the staff members and discussed expected standards of professionalism in response to the incidents. (Local Board Response, Ex. 2, 9; Appellant's Response).

After Appellant did not report to work on Tuesday, December 18, Principal Rockafellow and Ms. Dye informed Appellant by letter that her services were "no longer needed." Appellant came into the office the following day, December 19, to fill out a time card. She met with Principal Rockafellow, but was unable to give examples of what Employee A did to make her feel unsafe, other than talking about commendations he received in the military and his skills. Principal Rockafellow requested that she turn in her badge. Appellant reportedly did not receive the termination letter until December 20, and so was unaware of her termination at the time she met with Principal Rockafellow. The other employees who met with Principal Rockafellow and Ms. Dye were not terminated. According to Appellant, Employee A quit his job that same week. (Local Board Response, Ex. 3).

Appellant appealed to the local board. She argued that she had been fired for exercising her protected rights to report a potentially dangerous co-worker and had been dismissed without cause. The local superintendent's designee responded, requesting the local board uphold Appellant's termination. The local board treated this response as a *de facto* decision of the local superintendent. The local board declined Appellant's request for a hearing. (Local Board Response, Ex. 5, 9).

On July 10, 2019, the local board issued its decision upholding Appellant's termination.

The board found that Principal Rockafellow conducted a thorough investigation in response to Appellant's complaint, but did not find anything to substantiate the allegations, other than general personality conflicts among staff. The board dismissed Appellant's claim that she had been fired for protected activity, observing that Principal Rockafellow treated Appellant's complaint seriously and conducted an investigation in response. The board determined that the reason for Appellant's termination was her failure to report to work for two days without permission. (Local Board Response, Ex. 1).

This appeal followed.

STANDARD OF REVIEW

A non-certificated employee is entitled to administrative review of a termination pursuant to § 4-205(c)(3) of the Education Article. *See Goines v. Prince George's County Bd. of Educ.*, MSBE Op. No. 17-16 (2017). Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered *prima facie* correct. COMAR 13A.01.05.06A.

LEGAL ANALYSIS

As an hourly instructional assistant, Appellant qualified as an "at will employee." "An employer can terminate an at-will relationship for any reason – good or bad, fair or unfair, and at any time – so long as the motivation for the termination does not violate some clear mandate of public policy or some statutory prohibition against such termination." *King v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 14-19 (2014) (quoting MARYLAND EMPLOYMENT LAW § 3.03 (2013)). Appellant argues that her termination was illegal because she was fired for reporting Employee A as a "bully and potential danger to students and faculty."

The State Board has recognized retaliation as an illegal reason for terminating an employee if it is done in response to an employee engaging in the protected activity of reporting illegal activity or harassment based on protected categories, such as sex or race. *See Young v. Prince George's County Board of Education (Young II)*, MSBE Op. No. 17-39 (2017). In order to establish a *prima facie* case of retaliation, an Appellant must show that (1) he or she engaged in a protected activity; (2) that the school system took a materially adverse action against him or her; and (3) that a causal connection existed between the protected activity and the materially adverse action. *Id.* (citing *Burling N. & Santa Fe Ry. Co. v. White*, 584 U.S. 53, 68 (2006)). The school system may then rebut the *prima facie* case by showing that there was a legitimate and legal reason for the adverse action. *Id.* The burden then shifts back to the Appellant to show that the reasons given by the school system are pretextual. *Id.*¹

Although Appellant characterizes her complaint as one about a potential danger, the record lacks support for those allegations. Employee A acted in a rude and condescending manner to other staff, bragged about his military accomplishments, and gave a "bad vibe" to

¹ Appellant does not assert protection under the Public School Employee Whistleblower Protection Act, and we conclude the law does not apply to Appellant's actions because she was not reporting a violation of the law by her employer; abuse of authority, gross mismanagement, or waste; or a substantial and specific danger to public health or safety. *See* Md. Code, Educ. §§ 6-902, 6-903.

other employees. Principal Rockafellow found no specific allegations that Employee A acted in a dangerous manner or made threatening comments.

Even assuming that Appellant's report about Employee A constituted a protected activity, and we do not reach that conclusion, the school system articulated a legitimate reason for her termination. Appellant did not appear for work for two days, did not provide any information on when she would return, and declined to speak with investigators as part of an investigation she initiated. The record supports the school system's decision and Appellant has not met her burden to show the reason is merely pretextual, particularly given that the school conducted a full investigation into her complaints. Accordingly, we do not find that the school system illegally terminated Appellant.

Appellant also maintains that her termination lacked cause because her immediate supervisor (the special education teacher) knew she would be away all week. The record is far from clear on this point, as Appellant's text is ambiguous on whether she would ever return to work and contains no reply from the teacher indicating her approval of Appellant's leave of absence. Even so, the school system could terminate Appellant's at-will employment at any point, with or without cause, so long as it did not act illegally. *See King*, MSBE Op. No. 14-19. That does not mean that this Board, under the same circumstances would have made the same decision to terminate Appellant, but because we do not find the local board acted illegally, we must uphold the termination.

Unemployment insurance appeals decision

As part of her appeal, Appellant provided a May 7, 2019 Unemployment Insurance Appeals Decision of the Maryland Department of Labor, Licensing, and Regulation. In considering whether Appellant committed misconduct in the context of unemployment compensation, the hearing examiner found conflicting evidence and concluded both sides were equally credible. Because the burden rests with the employer in an unemployment benefits hearing, the hearing examiner ruled in favor of Appellant. (Appeal, May 7, 2019 Unemployment Insurance Appeals Decision). Appellant apparently desires to have the State Board reach a similar conclusion and restore her employment.

The hearing examiner faced a different legal question than the one that is before us, based on different legal rules. We focus not on whether Appellant committed misconduct, but on whether the school system acted illegally by terminating her. In addition, we must base our decision on the record before us in this case, not on a record that we do not have presented to a hearing examiner for another agency. The record before us supports the school system's decision. For these reasons, the hearing examiner's decision is not material to our decision.

CONCLUSION

For all of these reasons, we affirm the decision of the local board because it is not arbitrary, unreasonable, or illegal.

Signatures on File:

Warner I. Sumpter
President

Jean C. Halle
Vice-President

Gail H. Bates

Clarence C. Crawford

Charles R. Dashiell, Jr.

Vermelle D. Greene

Justin M. Hartings

Rose Maria Li

Joan Mele-McCarthy

Michael Phillips

David Steiner

October 22, 2019