

BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:)
)
 X B. T) OAH No. 14-0240-TRS
) Div. R&B No. TRS 2014-002
 _____)

DECISION

I. Introduction

X B. T was employed as a teacher by the No Name School District for the 2012-2013 school year.¹ On April 30, 2013, the district notified Mr. T that he would not be offered a contract for the 2013-2014 school year.² Mr. T fell and incurred a serious traumatic brain injury on May 19, 2013. His employment contract expired on or about May 24, 2013. Through his guardian, Mr. T applied for non-occupational disability retirement benefits from the Teachers' Retirement System (TRS) on July 8, 2013.³ The administrator denied the application on the ground that Mr. T's employment did not terminate because of a permanent disability.⁴

Mr. T filed an appeal. The appeal raised two issues: (1) whether Mr. T has a permanent disability, and (2) whether his employment was terminated because of the disability. By agreement of the parties, the issues were bifurcated. A hearing was conducted on the latter issue. Mr. T represented himself; Assistant Attorney General Kevin Wakley represented the Administrator. Testimony was heard from Mr. T and three school district employees: superintendent Dr. M C, business manager E X, and payroll supervisor (later executive secretary) D G.

Mr. T's employment contract expired on or about May 24, 2013. Because the district had provided notice of non-retention, expiration of the employment contract marked the complete severance of the employment relationship (termination). The district did not take any action prior to the severance of the employment relationship to discharge Mr. T. Accordingly, Mr. T's employment terminated because his contract expired, not because of his disability. Mr. T is therefore ineligible for disability retirement benefits.

//
//
//

¹ R. 50-51.
² R. 48.
³ R. 32-44.
⁴ R. 15-16.

II. Facts

X B. T was employed as a non-tenured teacher by the No Name School District for the 2012-2013 school year.⁵ His employment contract was effective on or about August 27, 2012 and continued to on or about May 24, 2013.⁶ It called for teaching on 180 days (the number of working days in the school year) and for payment in twelve equal (monthly) installments.⁷ The district had the right to terminate the contract without penalty at any time for the employee's failure to discharge his duties as a result of disability.⁸

On April 30, 2013, the district notified Mr. T that he would not be offered a contract for the 2013-2014 school year.⁹ Mr. T fell and incurred a serious traumatic brain injury on Sunday, May 19, 2013. He was medivaced out of town and did not return to work for the last three teaching days of the school year, May 20-22. The district did not take any action prior to the end of the school year to terminate Mr. T's employment before his employment contract expired on or about May 24.

In August, D G, a district employee who had previously been employed as the district's payroll clerk, but by this time was the executive secretary to the school board and the superintendent, updated district personnel information for TRS.¹⁰ Because Mr. T had not returned to work after his injury, she was unsure of his status.¹¹ She spoke with Dr. M C, the superintendent of schools.¹² Ms. G understood Dr. C to have told her that, because Mr. T did not have any sick leave, and no request to use banked leave had been submitted by the union, he was terminated prior to the end of the school year.¹³ On August 20, Ms. G sent an email to Linda Zagar of TRS stating, "Please terminate X T effective 5-19-13[.]"¹⁴ Ms. Zagar entered that termination date in TRS's records, and it remains the termination date stated in the division's records.¹⁵

⁵ R. 50-51.

⁶ R. 50.

⁷ R. 50. The witnesses' testimony established that compensation was paid through the summer months, after the contract had expired.

⁸ R. 50 (¶III G). See 4 AAC 18.010(a)(8)(A).

⁹ R. 48. See AS 14.20.175(a); AS 14.20.140(b).

¹⁰ D. G testimony.

¹¹ D. G testimony.

¹² D. G testimony.

¹³ D. G testimony.

¹⁴ Ex. 17, p. 1.

¹⁵ L. Zagar testimony.

Through his guardian, Mr. T applied for non-occupational disability retirement benefits from TRS on July 8, 2013.¹⁶ The administrator denied the application on the ground that Mr. T's employment did not terminate because of a permanent disability.¹⁷

III. Analysis

AS 14.25.130(a) provides:

A member who has five or more years of membership service is eligible for a disability pension if...the member's employment is terminated because of a permanent disability....

Mr. T has more than five years of membership service, and for purposes of this case, it is presumed that Mr. T is permanently disabled as a result of an injury incurred on May 19, 2013. Therefore, he is eligible for a disability pension if his employment was terminated because of that disability.

Employment is terminated, within the meaning of AS 14.25.130(a), when the employment relationship is completely severed.¹⁸ In this case, the contract of employment gave the district the right to terminate the contract for failure to provide services as a result of disability. Because Mr. T did not return to work after he was injured, the district could have terminated the employment contract. However, the contract does not state that termination of the employment contract for failure to provide services is automatic. Moreover, before dismissing a teacher, the district is required to provide notice and an opportunity for a pretermination hearing.¹⁹ Thus, termination of the contract requires some action by the district. In this case, there is no evidence that, before the end of the school year, the district took any action to terminate the employment contract. Rather, the contract expired by its own terms on or about May 24, 2013.

Mr. T was not a tenured teacher, and because he had been provided notice of non-retention on April 30, he had no legal, contractual, or otherwise reasonable expectation of re-employment after his contract had expired. When the employment contract expired, the

¹⁶ R. 32-44.

¹⁷ R. 15-16.

¹⁸ See *Rhines v. State*, 30 P.3d 621, 625 (Alaska 2001). *Rhines* involved a claim under the Public Employees Retirement System, not TRS. The statutory language at issue in that case, AS 39.35.410(a), provides: An employee is eligible for an occupational disability benefit if employment is terminated because of a total and apparently permanent occupational disability....

In both statutes, the operative language is identical: "if employment is terminated because of a...disability."

¹⁹ AS 14.20.180(a). See AS 14.20.215(2) ("dismissal" means termination by the employer of the contract services of the teacher during the time the teacher's contract is in force, and termination of the right to the balance of the compensation due the teacher under the contract").

employment relationship between the district and Mr. T was completely severed: his employment was terminated within the meaning of AS 14.25.130(a). His disability was not the cause of the termination of his employment at that time.

Mr. T contends that the district terminated him due to disability effective on or about May 19. The only evidence he presented to support his assertion that he was terminated because of his disability is a conversation between Dr. C and D G on or about August 20. Dr. C had no specific recollection of the conversation, but did recall speaking with her about Mr. T's last day of work. As Ms. G recalled it, Dr. C told her to terminate Mr. T effective on or about May 19 because he did not have any sick leave and the union had not offered leave from the leave bank.

Precisely what was said is unclear. But it not reasonable to read the employment contract as self-effectuating with respect to termination for non-performance of duties due to disability, and there is no evidence that the district took any action prior to the expiration of the employment contract to terminate Mr. T's employment, other than to provide him with a notice of non-retention (before he was disabled). Given that termination of the contract is not self-effectuating, and that the district took no action prior to its expiration to terminate Mr. T because of his disability, the most that can be said of the August conversation is that it suggests the district took an action *after* the end of the school year to retroactively terminate his employment effective on or about May 19 because of disability.

An employer may have the ability to retroactively terminate employment due to disability while the employment contract remains in effect.²⁰ But in this case, the conversation between Dr. C and Ms. G occurred *after* the employment relationship had already been completely severed. If the district had decided, prior to the end of the school year, to exercise its right to terminate Mr. T's employment for failure to perform his duties, and Dr. C's comments to Ms. G during the August 20 conversation reflected that prior decision, this would be a different case. But the preponderance of the evidence is that this is not what occurred, since the substance of the conversation, as described by Ms. G, was that the district waited to see if the union would provide leave from the leave bank before it decided to terminate Mr. T. Moreover, the district provided no notice of termination to Mr. T, and prior notice of a proposed dismissal and an opportunity for a hearing are required to effectively dismiss a teacher.²¹

²⁰ See *Wilcox v. Cornell University*, 986 F. Supp. 2d 281 (S.D. N.Y. 2013) (retroactive termination for absence resulting from disability).

²¹ AS 14.20.180(a).

Assuming that the district could retroactively terminate Mr. T's employment after his contract had expired, the preponderance of the evidence is that this did not occur. First, Dr. C testified that he did not have authority to discharge a teacher prior to the end of the school year without authorization from the school board, and there is no evidence that Dr. C sought or obtained permission from the board to discharge Mr. T because of his failure to return to work.²² Second, the district paid Mr. T for the last three days of the school year, even though he did not teach on those days, and there is no evidence that it has sought reimbursement from him (as would be appropriate if his employment had terminated). Third, given its legal obligation to provide notice prior to dismissal,²³ it is unlikely that the district would have terminated Mr. T without notice, and notice was not provided.

IV. Conclusion

Mr. T's contract expired on or about May 24, 2013. The district did not, before the contract expired, terminate his employment. Mr. T did not prove by a preponderance of the evidence that the district, after the contract had expired, retroactively terminated his employment because of his disability. Because Mr. T has not shown that his employment was terminated because of a disability, the administrator's decision is sustained.

DATED: October 6, 2014.

Signed

Rebecca L. Pauli
Administrative Law Judge

²² There was testimony that Dr. C on occasion had himself discharged an employee. However, that Dr. C may have acted independently with respect to some employment decisions does not mean that he had authority to unilaterally terminate a teacher before the end of the school year, or that a decision to do so was not subject to ratification by the school board. *See* AS 14.14.130(c).

²³ AS 14.20.180(a).

Adoption

This Order is issued under the authority of AS 39.35.006. The undersigned, in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days of the date of this decision.

DATED this 3rd day of November, 2014.

By: Signed _____
Final Decision Maker under the authority of AS 14.25.006.
Rebecca L. Pauli
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication.]