

**STATE OF NEW JERSEY
COMMISSIONARE OF EDUCATION**

IN THE MATTER OF THE TENURE CHARGES OF:

STATE OPERATED SCHOOL DISTRICT, THE CITY OF NEWARK, NJ.

AND

AWARD AND OPINION

RATIBA AHMED, RESPONDENT
Agency Docket No. 50-3/15

BEFORE: ERNEST WEISS, ARBITRATOR.

FOR THE RESPONDENT: NANCY I. OXFELD, ESQ.
OXFELD COHEN, P.C.

FOR THE DISTRICT: RAMON E. RIVERA, ESQ.
EUGENE LISS, ESQ.
SHANA T. DON, ESQ.
SCARINCI HOLLENBECK

BACKGROUND

Respondent's motion to dismiss was originally granted by the undersigned on January 20, 2015 under **Agency Docket No. 284-9/14**. Subsequently, the District filed Amended Tenure Charges with the Commissioner, alleging inefficiency, deficient teaching performance and receiving negative summative evaluations.

On May 15, 2015, the District filed with the Superior Court of New Jersey, Appellate Division, **Docket No.: A-004115-14**. As a result, I placed the above matter in abeyance pending a determination by the Court. However, on September 9, 2015, the Notice of Appeal to the Court was withdrawn by the District.

On November 10, 2015 I urged the parties to agree to a date for a hearing in the above amended tenure charges. However, the parties failed to respond to my offer of three consecutive dates for the first hearing. Both parties submitted written briefs without scheduling a hearing. Respondent's brief is in support of a Motion for Summary Judgment. The District submitted a letter brief in response to the Motion of Respondent.

A written response by the District on June 15, 2015, argued in relevant part that "Respondent is essentially contending that she should be given a free pass for poor performance based upon a distortion of the applicable law." The District also points out that previously, "...the underlying matter was dismissed on the basis of a defect in filing the charges under Section 25 and no final decision on the merits was reached." Additionally, the District argued in its brief "...that this

matter should proceed to a hearing on the merits of these charges.”
However, both parties remained silent to my suggested hearing dates.
Therefore, I have no alternative but to decide this matter on the basis of
the received extensive written evidence submitted to me by Ms.
Kathleen Duncan, Director of the Bureau of Controversies & Disputes
and the briefs, submitted by both parties herein, which I considered.

POSITION OF RESPONDENT ON MOTION TO DISMISS

Ms. Nancy I. Oxfeld, Esq. argued in relevant part that this is the second time the State Operated School District of the City of Newark New Jersey has brought tenure charges based on the same factual allegations against the Respondent in a “Statement of Evidence “ signed by Monique Cumberbatch-Jenkins on August 27, 2014. Ms. Oxfeld pointed out that, in both charges, of Respondent Ratiba Ahmed (248-9/14) as well as (50-3/15) the “Amended” charge is essentially identical and the subsections, a-v, are identical with only immaterial minor differences.

In Point One of the Respondent’s brief she argues that the herein Amended Tenure charges must also be dismissed, because Section 25 of the TEACHNJ Act is the exclusive means through which a District can bring charges of inefficiency. It pointed out that the legislature clearly meant to allow only one legislated method of pursuing tenure charges of inefficiency against a tenured teacher.

Ms. Oxfeld, also argued in relevant part on behalf of Respondent, that the instant motion to dismiss the amended charges of inefficiency herein against Ms. Ratiba Ahmed, who is a tenured elementary

education teacher in the Newark public schools, are again premature and must be dismissed by the undersigned Arbitrator.

She again pointed out that." ...the arbitrator's area of review is statutorily limited." and shall only be considered whether or not:

- (1) The employee's evaluation failed to adhere substantially to the evaluation process, including but not limited to providing a corrective action plan:
- (2) There is a mistake of fact in the evaluation:
- (3) The charges would not have been brought but for consideration of political affiliation, nepotism, union activity, discrimination as prohibited by state or federal law, or other conduct prohibited by state or federal law: or
- (4) The Districts actions were arbitrary and capricious.
N.J.S.A. 18A:6-17.2a.

The arbitrator's review is limited to the four factors above and the evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review. N.J.S.A. 18A:6-17.2c.

Respondent further argued that the decisions by other arbitrators support the herein claim that the claimed amended tenure charges against Ratiba Ahmed are premature and must be dismissed. It "cannot be converted into something else." Ms. Oxfeld pointed out that each arbitrator deciding the tenure charges in the same School District of the city of Newark decided that the charges were premature and cannot begin until after the start of the 2014-2015 school year. Additionally, each arbitrator considered herein, also provided a make whole remedy.

As a result, the tenure charges against respondent Ratiba Ahmed should be dismissed for having been filed in violation of TEACHNJ.

DISCUSSION AND OPINION

Having recently decided essentially the same issue herein in my previous decision involving Ratiba Ahmed, respondent of the same District, I cannot ignore the argument herein of MS. Oxfeld, regarding the prior decisions of arbitrators with practically identical issues. She convincingly points out that, the results of the prior arbitrators with essentially identical issues in the same District, rises to a "collateral estoppel" or "res judicata".

I am reminded that the amended tenure issues before me herein of Ratiba Ahmed, is relatively identical to the previously decided case by me on January 20, 2015, as well as a number of prior decisions in the same District.

Courts "have also recognized that the doctrine of Res Judicata, submitted by M. Oxfeld, may apply to arbitrations with strict factual identities."

In considering the recent awards by the above distinguished panel members, I agree with Arbitrator Gregory where he correctly quotes that *"....the precedential value of a prior award between the parties is to be determined by the subsequent arbitrator"* (Elkouri and Elkouri, How Arbitration Works (6th Edition) (at 598.)

I have previously observed in the previous decision in Ratiba Ahmed Award (248-9/14) that, in a March 28, 2012 letter, from Chief Talent Officer Peter Shulman, he updated resources for 2012-13 school

year, as a **"planning and capacity-building year"** and prepare for the implementation of the new system in the 2013-14 school year. He further advised that from January 2013 through August 2013, districts should test and refine implementation of the observation instruments and rubrics and prepare for full implementation in the 2013-14 school year."

I have previously decided that the tenure charges within the same District of Newark were premature and are therefore contrary to the TEACHNJ statute providing for a specific beginning in the school year 2014 and having found that herein also the District prematurely invoked the new inefficiency evaluations prior to the legislated "beginning."

Respondent correctly argued that that the District herein, is not entitled to "a second bite at the apple"

Having thoroughly considered all the evidence and arguments submitted by both parties I, hereby grant the Motion to Dismiss the Amended Tenure Charges against teacher Ratiba Ahmed Of the State Operated School District of the City of Newark New Jersey, Essex County and I make the following Award.

STATE OF NEW JERSEY
COMMISSIONARE OF EDUCATION

IN THE MATTER OF THE TENURE HEARING
OF RATIBA AHMED,

(RESPONDENT)

-AND-

AWARD

STATE OPERATED SCHOOL DISTRICT OF
THE CITY OF NEWARK, N.J. COUNTY OF ESSEX
(DISTRICT)

AGENCY DOCKET NO. 50-3/15

The undersigned arbitrator having been randomly assigned pursuant to P.L. 2012 c.26, signed by Governor Christie on August 6, 2012, and was randomly appointed on, March 30, 2015, by M. Kathleen Duncan, Director of the Bureau of Controversies and Disputes, to hear and decide the above captioned tenure matter, AWARDS as follows:

For the above stated reasons, the amended tenure charges against Respondent Ratiba Ahmed are hereby dismissed.

The District is hereby directed to reinstate Respondent Ratiba Ahmed to her teaching position and make her whole with respect to her salary and benefits.



ERNEST WEISS, ARBITRATOR.

On this 23rd day of December 2015, before me came and appeared Ernest Weiss to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

NOTARY PUBLIC
My Commission Expires 12/31/2017