
LUCY VAN LAANEN,

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)
)
PETITIONER,

) MEMORANDUM DECISION

vs.

) Case No. 145-395

STATE PERSONNEL BOARD,

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)
)
RESPONDENT.

JUSTICE-

11: 12

The petitioner, an academic teacher employed by the Department of Health and Social Services, has sought review in this court, under ch. 227, Wis. Stats., of an order of the State Personnel Board, dated January 2, 1975, which dismissed her appeal from a decision of the Director of the State Bureau of Personnel and his delegatee denying her request to be reclassified from the position of Teacher 2 to that of Teacher 3. The sole ground for the Board's order of dismissal was that the appeal was not timely.

In January, 1972, the petitioner was hired as a Teacher 2 by the Department of Health and Social Services to work at the Mendota State Hospital. At that time, she held a B.A. degree from the University of Wisconsin-Madison, and had obtained 10 post-graduate credits in education courses. She was also certified to teach by the Department of Public Instruction. The classification and Compensation Plan of the State Bureau of Personnel which was then in effect provided that in order to qualify for Teacher 3 status, an academic teacher must be eligible for certification from the Department of Public Instruction and have a "Bachelor's degree plus 12 credits." By September, 1972, the petitioner had obtained an additional 2 credits, making a total of 12, and applied for Teacher 3 status. Her application was denied in a letter from Gilbert Szymanski, Special Education Consultant for the Department of Health and Social Services. The stated ground for the denial was that 8 of the petitioner's 12 post-graduate credits had been used for certification purposes and could thus not, under the Department's administrative practice, count toward the 12 post-graduate credits required for Teacher 3 status. This denial was not appealed.

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On February 18, 1974, the petitioner again requested reclassification. Her request led to a memo from Dennis Dokken, Personnel Manager at Mendota State Hospital, dated and received by the petitioner on February 28, 1974, which read:

"Attached is the copy of the transcript which was sent to me along with a request that you be reclassified to Teacher III. With regard to this request I have contacted Mr. Szymanski of the Division office, who has indicated to me that his position of October 1972, remains unchanged with regard to allowing your eight credits of student teaching to be considered in this reclassification action."

On March 5, 1974, the petitioner wrote to Mr. Szymanski and on March 8, 1974, received a letter from him, dated March 7, 1974, which read, in part:

* * *

"To meet the requirements for Teacher III, you must acquire 12 credits or more beyond the credentials used for initial employment. According to the information you have furnished us, you do not, as yet, have the additional credits."

* * *

The Board found that the petitioner was notified on February 28, 1974, of the decision denying her reclassification and that it received her letter of appeal on March 19, 1974. It held that since more than 15 days elapsed between these two dates, the appeal was not timely under sec. 16.05(2), Wis. Stats., and accordingly dismissed.

We disagree with the Board's conclusion that the petitioner received notification on February 28. The memo bearing that date did not say that a decision had been made in the matter, but only that Mr. Szymanski "indicated" that his position was unchanged. It is consistent with the possibility that the matter was still pending, and that the final decision would come directly from Mr. Szymanski, as it had in response to petitioner's previous application for reclassification. It is our opinion that the March 7 letter constituted notification of the denial decision within the meaning of the statute, and the time for appeal commences on the date of its receipt, March 8, 1974.

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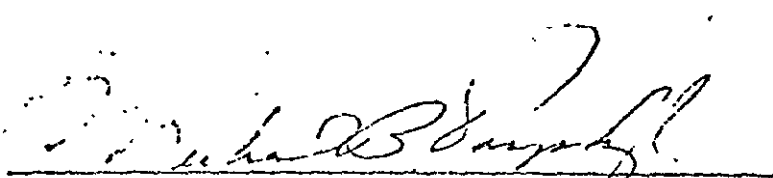
The Board's finding that the February 28 memo constituted notification of the decision in question is a legal conclusion. This court need not defer to that conclusion since it cannot be said that the Board has a particular competence or expertise to determine whether a writing constitutes notification of a personnel decision. Pabst v. Department of Taxation, (1963), 19 Wis. 2d 313, 120 N.W. 2d 77.

We hold that the Board committed an error of law when it found that notification was received on February 28, 1974, rather than March 8, 1974. We further hold that the petitioner was notified of the decision on March 8, 1974, and that her letter of appeal was timely filed when it was received by the Board on March 19, 1974.

The Personnel Board's order of dismissal is reversed. The case is remanded to the Board for further proceedings consistent with this opinion.

Dated this 26th day of August, 1975.

BY THE COURT:



Hon. Michael B. Torphy, Jr.
Judge, Circuit Court, Br. 2.