

Gilbert H. Sauer,

Appellant,

vs.

Levi Nacotee, Chairman
Menominee County Board of
Social Services,

Respondent.

MEMORANDUM DECISION

#361

This is an appeal to the Personnel Board taken pursuant (4)
(a) and (b) of the County Merit System Rules.

Appellant had been Director of the Menominee County Department of
Social Services and was terminated by the County Board of Social Services.

Board Exhibit No. 1

Menominee County is a recently created county. It may be identified
as an Indian County and has very real problems particularly in the welfare
area. It is the least populated county in the state, has the lowest per capita
income and the highest rate of unemployment. 46% of the residents receive some
type of public assistance. Costs of administration of welfare have been high.

Appellant's Exhibit 1.

In 1969, extreme friction developed between the Appellant and the
majority of the Board of Social Services. On the surface, the basis of the
trouble was the Appellant's unwillingness or inability to reorganize his
department.

In his Annual Report dated December 26, 1969 on page 7, Respondent's
Exhibit 3,

"But the attack upon public welfare continues, and
it now appears that I am expected to reorganize
that which I spent three years in organizing. In
answer to your request I keep saying that I have
done the best I know how, that I do not know how to
do any better. This is not to say that someone else
could not do better, but that I cannot, and if you
must have what you are asking, someone else must
give this to you, and I must leave."

On January 21, 1970, the Social Services Board requested the Appellant to resign and it was agreed between the Appellant and the Board that he would resign on April 22, 1970.

Appellant's testimony on that matter upon his adverse examination (Record, p. 28) is as follows:

Q. Do you recall the meeting of the Social Services Board held on January 21, 1970?

A. Yes, that meeting I do recall, and the date.

Q. At that meeting you were requested to resign?

A. Yes.

Q. At this meeting, January 21st, there was some discussion relative to the date you resigned?

A. Yes.

Q. Did you ask that the date be put in advance so you would have an opportunity to seek other employment?

A. I asked that the date be put three or six months in advance, I believe.

Q. It was agreed that you would resign within ninety days of that date?

A. Yes.

Q. Ninety days would be April 22, 1970?

A. Yes, approximately, I am not sure how it would figure out.

Sometime thereafter, Appellant wrote a letter to the Editor of the Green Bay Press-Gazette which was published in that newspaper on February 10, 1970. Record, p. 30,31.

Part of that letter (Respondent's Exhibit No. 6) reads as follows:

"The only reason I have agreed to resign is that the Board has asked me to resign.

I have been asked why I agreed to resign under the circumstances, why I do not fight the board. I have no quarrel with the people of Menominee County and I want none. If the people of the county, as represented by their elected officers, want me to resign, I feel I have no choice but to submit my resignation. If it should be that the members of the board are not representing the will of the people in requesting my resignation, the people can appropriately communicate this to their board. If the people of the county do not feel that individual board members are representing their interests in this instance and in other matters, the people can refuse to elect these individuals to public office again."

On February 10, 1970, the County Board of Menominee County accepted the resignation of Appellant effective April 22, 1970. Record, p. 32. The action, Resolution No. 70-5 (Respondent's Exhibit No. 5) is as follows:

"Resolved, that the resignation of Gilbert Sauer as Director of Menominee County Department of Social Services be and is hereby accepted effective April 22, 1970."

While the record in this case does not reveal it, the records of the State Bureau of Personnel indicate that Appellant on February 19, 1970 applied for positions of Social Services Administrator II - Community Services Specialist, County Supervisor, Social Services Unit Supervisor. The Bureau records indicate that on March 6, 1970, Appellant applied for positions of Social Services Administrator I - Standards and Procedures Specialist, Staff Development Specialist and Social Services Specialist. Records further disclose that Appellant was appointed Client Services Specialist in the Division of Family Services, Department of Health and Social Services to begin work on June 1, 1970 at Rhineland.

Appellant Changed his mind about resigning. Record, p. 32.

"Q. Mr. Sauer, would it be accurate to say on March 25th you changed your mind with regard to your earlier promise to resign?

A. Yes."

Appellant seems to think that there is something different between promising and agreeing to resign, as he undoubtedly did, and resigning. The Board believes that to make such a distinction is a torture of semantics.

He surely evidenced an intent to quit his employment by April 22.

In Shallock vs. Industrial Commission of Wis., Dane County Circuit Court, January 28, 1968, Judge Wilke said,

"It has long been established that the voluntary resignation of an employee, evidenced by the clear expression of employee's intention to quit the employment, promptly and unconditionally accepted by the employer before the resignation is withdrawn by the employee, terminates the contract of employment."

While there was pressure upon the Appellant to resign the Appellant's clear expression to quit was entirely voluntary. There was no duress or fraud. It was so much his own act that Appellant felt impelled and required to explain and justify his action in an open letter to the Editor of the Green Bay Press-Gazette.

The Social Services Board accepted his resignation on January 21, 1970, when Appellant made his commitment to them. The County Board accepted his resignation on February 10, 1970. An accepted resignation of an employee puts an end to the employment on the stipulated day. After the acceptance of a resignation has been made, the employee may not effectively reconsider his action. He may be reinstated only by mutual agreement.

The record is barren of any such mutual agreement for reinstatement.

The Board concludes that the Appellant had resigned as of April 22, 1970. The notice of termination (Board's Exhibit No. 1) is surplusage produced by the change of position taken by the Appellant on and after March 25, 1970.

This Board has always taken a strict view of its powers and authority. S. 10 (4) (a) of the County Merit System Rules authorizes the Board to hear appeals of terminated, suspended or demoted employees. These are actions of the appointing authority. Appellant was neither terminated, suspended or demoted. He resigned. This was his own act. The County Merit System Rules do not contemplate that the Board have the power to review an employees own act. This view is consistent with the Board's continuous attitude toward its authority of review of disciplinary actions taken against employees in the state's classified service. Lindow vs. Department of Public Welfare. Case No. 134, November 19, 1963.

This appeal shall be dismissed with the directive that the Appellant's termination as the Director of the Menominee County Department of Social Services be recorded as a voluntary resignation. The records of the county shall be so expunged as to remove all indication that Appellant was involuntarily terminated.

There is a facet of this case that has no bearing on the conclusion reached above but which should be discussed for purposes of precedent.

The Board should avoid jurisdiction in all discharge cases arising either under the County Merit System Rules or s. 16.24 Wis. Stats. that are moot.

That is to say, that the Board should not consider reinstating an employe, regardless of what the record might show, when there is a serious question as to whether or not the employe would resume his position in good faith if reinstated. The Board is placed in its review position as a part of the tenure guarantees that employes enjoy under a merit system of civil service. It has no role to pass on matters that are no more than matters of principle or when a disciplined employe seeks nothing more than vindication.

In many instances it is clear from the outset that the employe has no intent to return to his job; in many cases it is never clear what the employe intends. In some cases, such as the instant case, real intent is discovered in the course of the hearing.

Late in the hearing, the Chairman asked questions of the Appellant which he answered (Record, p. 103,104)

Q. Are you employed now?

A. Yes.

Q. By whom?

A. State Department of Health and Social Services,

Q. How long have you been so employed?

A. Since the first of June.

Q. If this Board should order your reinstatement would you take your old job back?

A. That is a good question.

Q. A very good question.

A. In view of what I have seen there have been some board changes but I am afraid it would be pretty much the same thing that has transpired.

Q. Are you satisfied with the position you now have?

A. This is a job I had to take at this time. I think I can continue with the job I have now but I could not go on indefinitely. I will say my employer is fully informed of my situation. When I took the position in Rhinelander I informed him fully.

Shortly thereafter Appellant's counsel pursued the matter further with him (Record, p. 106),

Q. I didn't understand the answer you made to the Chairman's question on whether you would take your job back, was that maybe you would, or maybe you wouldn't?

A. This whole thing is on a tentative basis. I could not take any irreversible action pending the outcome of this hearing.

Chairman: Sorry, I didn't understand your answer. Please answer it directly.

Mr. Cohen: Assuming the board decides in your favor, is your answer yes, or no, or I don't know?

A. I better say I don't know.

Dated this 11 day of September, 1970.

STATE BOARD OF PERSONNEL

James H. [Signature]
William [Signature]
C. J. [Signature]
John D. [Signature]