

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of

BENJAMIN DUKE

Under the Grievance Procedure of

MILWAUKEE PUBLIC SCHOOLS

Case ID: 22.0032

Case Type: IHO

DECISION NO. 37766

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**Appearances:**

Antonique C. Williams, Attorney, 4242 North 19th Place, Milwaukee, Wisconsin, appearing on behalf of Benjamin Duke.

Eloisa De Leon, Employment Relations Specialist III, Milwaukee Public Schools, 5225 West Vliet Street, P.O. Box 2181, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Public Schools.

**DECISION OF THE IMPARTIAL HEARING OFFICER**

I am employed by the Wisconsin Employment Relations Commission and am serving as the Impartial Hearing Officer (IHO) as to Benjamin Duke's termination by the Milwaukee Public Schools. A hearing was held on September 13, 2018, in the offices of the Milwaukee Public Schools. The hearing was transcribed, and the parties made oral argument on the record at the hearing's conclusion. The hearing transcript was received on September 28, 2018.

Having considered the evidence and the arguments of the parties, I issue the following decision.

**ISSUE**

Did the Milwaukee Public Schools (MPS) have just cause to terminate Benjamin Duke?

**DISCUSSION**

Duke's employment with MPS ended when he failed to report to his full-time assignment at the start of the 2016-2017 school year. In this regard, he received a notice from MPS advising him that his employment would be terminated if he did not provide an explanation for his absence. Duke timely replied referencing a complaint he had filed with the Department of Labor and the

absence of an “agreeable assignment to report to.” MPS advised Duke in writing that his explanation was not sufficient and terminated his employment for “job abandonment.”

Duke’s testimony reflects that he believed a settlement agreement was in place that guaranteed him a job assignment acceptable to him and that he did not have to report to work until his Department of Labor complaint was resolved. The record reflects that no such settlement agreement exists and that no one ever advised Duke that he need not report to work. Nevertheless, because Duke believed these matters in good faith and because he is a long-time MPS employee with a good work record, I am modifying the termination by reinstating him without back pay.

Dated at Madison, Wisconsin, this 16th day of October, 2018.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Impartial Hearing Officer