

BEFORE THE STATE BOARD OF PERSONNEL

Howard J. Nelson,)
Appellant,)
vs.)
C. K. Wettengel, Director)
State Bureau of Personnel,)
Respondent.)
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MEMORANDUM DECISION

This appeal was submitted to the Board by the parties on an agreed statement of the facts.

Appellant was and is employed in the classified service as a Youth Counselor 3 at Wisconsin School for Boys at Wales. In April and May of 1970 he took the written and oral promotional examination for the classification of Youth Counselor 5. He was initially accorded a composite grade of 90.69 which placed him in such rank as to entitle him to be certified for a Youth Counselor 5 vacancy at Wales. The certification was made on June 2, 1970 and he was appointed on June 12, 1970.

Seventeen days later on June 29, 1970 an audit disclosed a mathematical error in the computation of the Appellant's composite score and the correct score was 82.36, rather than 90.69. The score as corrected would place Appellant so far down on the eligible register that he would not have been certified for the position to which he was appointed.

On July 2, 1970, the Respondent's representative telephoned the Superintendent of the Wales Boys School and advised him of the error. He was instructed to notify the Appellant, give him an opportunity to respond and then terminate his probationary status as Youth Counselor 5 and return him to his permanent position as Youth Counselor 3. This the Superintendent did. Respondent on that day wrote a letter to Appellant confirming the information given him by the Superintendent.

Respondent relies on a part of s. 16.22 (1) which reads:

"The Director may remove an employe during his probationary period if he finds after notification and opportunity to be heard, that such employe was appointed as a result of fraud or error."

This is a completely clear statute that does not need interpretation.

Appellant has not contended that he was not a probationer when he was removed as a Youth Counselor 5. He does not contend that there was no mistake in the compilation of his composite score or that it was not of the magnitude or the consequence asserted by the Respondent. Appellant has simply contended that he did not make the error; that the Respondent did and should live with it.

This statute can be quite harsh under similar circumstances where the appointee has not been culpable. This would be true if one appointed in error had given up a prior position and moved his family and possessions on the strength of the appointment. However, this Board did not write the statute and regardless of any personal feelings about its fairness or unfairness will not invalidate it. That is the prerogative of the courts.

The Board wishes that the Respondent would strictly follow the statutory procedure. He should have given the notification, conducted the hearing and removed the Appellant. However, in the absence of any issue of fact, we must concede that the Respondent substantially complied with the law by his after-the-fact letter to the Appellant, the conferences with Appellant and his attorney as to what happened and the corrected certification. Appellant has not been prejudiced by the way the matter was handled. This Appeal should be dismissed.

Dated: January 8th, 1971.

STATE BOARD OF PERSONNEL

BY

John H. [Signature]
William [Signature]