

BEFORE THE FAIR DISMISSAL APPEALS BOARD
OF THE
STATE OF OREGON

In The Matter of the Appeal of
CHUCK CALHOUN,

Appellant,

v.

VERNONIA SCHOOL DISTRICT 47J,

District.

Case No.: FDA-23-01

DISMISSAL ORDER

INTRODUCTION

In a letter sent by certified mail on March 13, 2023, Appellant Chuck Calhoun filed an appeal with the Fair Dismissal Appeals Board. In a letter dated April 21, 2023, the Executive Secretary notified both parties that the Fair Dismissal Appeals Board had received the appeal on March 22, 2023. The Executive Secretary subsequently set a contested case hearing for June 21, 2023. Respondent Vernonia School District 47J requested a 60-day postponement, and the hearing was rescheduled for August 30, 2023.

On June 27, 2023, the District filed a motion to dismiss the appeal. On June 27, 2023, the Executive Secretary notified the Appellant that his response, if any, to the motion was due on or before July 14, 2023. On July 13, 2023, Appellant left a voicemail for FDAB support staff, who was unavailable. Appellant did not file a response to the motion to dismiss by July 14, 2023. On July 15, 2023, Appellant left a second voicemail for FDAB support staff.

Because it appeared that Appellant had attempted to contact FDAB by telephone, on July 21, 2023, the Panel informed Appellant that Appellant could file a motion for an extension of time on or before July 24, 2023 if he wanted to file a response to the motion to dismiss.

Appellant did not file a motion for an extension of time. The Panel therefore took the motion to dismiss under advisement.

On July 28, 2023, pursuant to OAR 586-030-0025(3), the Panel directed the District to submit the following materials by August 4, 2023: (1) a declaration from a witness with personal knowledge (a) attaching the letters dated February 13, 2023 and February 20, 2023 from the District to Appellant, and (b) addressing whether the District issued a decision to dismiss Appellant or a written notice of non-extension of Appellant's contract; and (2) a supplemental memorandum addressing the application of ORS 342.553 to the appeal. On August 3, 2023, the District filed a supplemental legal memorandum in support of its motion to dismiss, a Declaration of Superintendent Jim Helmen, and a Declaration of the District's counsel.

On August 4, 2023, the Panel notified Appellant that his response, if any, to the District's supplemental legal memorandum and declarations was due on or before August 10, 2023. Appellant did not file a response.

Pursuant to OAR 586-030-0025, after reviewing the District's submissions, the Fair Dismissal Appeals Board Panel concludes that a limited evidentiary hearing or oral argument is not necessary to reach a decision. For the reasons described below, based on the submissions, the Panel concludes that it has no jurisdiction in this case and, in any event, the appeal is untimely. The Panel therefore grants the District's Motion to Dismiss.

FINDINGS OF FACT¹

1. The District asserts that in 2019, Appellant Chuck Calhoun was employed by the District as a contract teacher.²

2. On or about February 8 or February 9, 2023, Principal Nate Underwood met with Appellant.³ Appellant asserts that he was informed at this meeting that his contract was not being renewed "effective immediately."⁴

¹ These findings of fact are based on Appellant's statements in the appeal and in declarations submitted by the District in support of its motion to dismiss.

² District's Motion to Dismiss at 2.

³ Appellant's appeal asserts that he met with Principal Underwood on February 9, 2023. Principal Underwood's February 13, 2023 memorandum to Appellant asserts that the meeting occurred on February 8, 2023. *See* Declaration of Jim Helmen (Helmen Decl.), Exhibit 1 at 1. It is not necessary for the Panel to determine the date this meeting occurred.

⁴ Appeal at 1.

3. In response to the meeting, the same day, Appellant went to his office, cleaned it out, and left the school laptop on the desk.⁵ Appellant then went to the office to turn in his keys, but the lights to the office were out. Appellant decided that he would turn in his keys the next morning. However, later that day, Appellant ran into District employee Barb Carr. Appellant handed her his keys to District buildings.⁶

4. On February 13, 2023, Principal Underwood sent Appellant a memorandum dated February 13, 2023.⁷ The memorandum confirmed that Appellant handed his keys to District Office Administrative Assistant Barb Carr after the meeting between Appellant and Principal Underwood. In the memorandum, Principal Underwood wrote, “To clarify, did you resign from your position in the Vernonia School District when you handed in your keys? If this is the case, please send or email a signed document indicating your resignation.”⁸ The memorandum also notified Appellant of a meeting for Appellant with Principal Underwood, scheduled for 7:30 a.m. on February 16, 2023 “to discuss how best to move forward” if Appellant did not respond to the inquiry about whether he had resigned.

5. Appellant received the February 13, 2023 memorandum on February 18, 2023.⁹ Consequently, Appellant did not attend the February 16 meeting.

6. On February 18, 2023, Appellant contacted Principal Underwood. Appellant explained that he “had just received the letter for the meeting that was scheduled for the previous day.”¹⁰ In that conversation, according to Appellant, Principal Underwood told him that the District believed that Appellant “had quit.”¹¹ Rather than express any intention to continue working, Appellant explained his understanding that “the board had not renewed my contract and it was effective immediately.”¹²

⁵ Appeal at 1.

⁶ Appeal at 1.

⁷ Helman Decl., Exhibit 1.

⁸ Helman Decl., Exhibit 1 at 1.

⁹ Appeal at 1.

¹⁰ Appeal at 1.

¹¹ Appeal at 1.

¹² Appeal at 1.

7. At some point thereafter, Appellant “received a voicemail from Mr. Underwood” on Appellant’s phone requesting that Appellant contact the school.¹³ Appellant asserts that in response, “I called and talked to the secretary and since I was unsure of exactly why I was asked to call, I explained I was getting phone calls about school closures and asked her to remove me from the list. Then she patched me through to the assistant superintendent, who did not answer. Being unsure what else was required, I hung up and did not call again.”¹⁴

8. On February 20, 2023, Superintendent Jim Helmen sent Appellant a memorandum dated February 20, 2023.¹⁵

9. Appellant received Superintendent Helmen’s February 20, 2023 memorandum on February 28, 2023.¹⁶

10. Superintendent Helmen’s February 20 memorandum recounted the District’s understanding of events and stated, “This letter is to inform you that the Vernonia School District has accepted your resignation as of February 9, 2023.”¹⁷

11. The District did not issue a written notice of non-extension or communicate a decision to dismiss Appellant because Appellant turned in his keys and orally informed the District of his resignation.¹⁸

12. The District’s Policy GCPB, entitled, “Resignation of Employees,” provides, in relevant part:

“A licensed staff member who wishes to resign from his/her position with the district must give written notice of at least 60 days at or upon the time of resignation. The superintendent is authorized to accept the resignation effective the day it is received and either release the teacher immediately from further teaching or administrative obligations or inform the teacher that he/she must continue teaching for part or all of the 60-day period.

¹³ Appeal at 2.

¹⁴ Appeal at 2.

¹⁵ Helmen Decl., Exhibit 1 at 2.

¹⁶ Appeal at 1.

¹⁷ Helmen Decl., Exhibit 1 at 2.

¹⁸ Helmen Decl., paragraph 3.

“Where less than a 60-day notice is given, the Board may request the Teacher Standards and Practices Commission to discipline the licensee. Exceptions due to emergency or other extenuating circumstances may be considered by the Board.”¹⁹

13. On March 13, 2023, Appellant posted his appeal by certified mail.

CONCLUSIONS OF LAW

1. Appellant is presumed to be a contract teacher under ORS 342.815 for purposes of this order.

2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because Appellant resigned his employment. The District’s decision to accept Appellant’s resignation did not constitute a “dismissal” or “non-extension” under ORS 342.805 *et seq.*

3. The appeal is untimely.

DISCUSSION

1. The Fair Dismissal Appeals Board lacks jurisdiction in this case because Appellant resigned his employment.

In its Motion to Dismiss, the District argues that the Fair Dismissal Appeals Board lacks jurisdiction over this case because only contract teachers who have been dismissed or had their contracts nonextended may pursue an appeal before the Board. The District asserts that it never dismissed or nonextended Appellant’s contract. Rather, according to the District, Appellant voluntarily resigned and, thereafter, the District’s superintendent, as permitted by District policy, agreed to release Appellant from his contract despite the failure to provide at least 60 days’ notice of his resignation. For the reasons explained below, we agree with the District. The Fair Dismissal Appeals Board therefore lacks jurisdiction over this appeal.

The Fair Dismissal Appeals Board’s jurisdiction is defined by statute. ORS 342.905 provides:

If the district school board *dismisses* the teacher or *does not extend* the contract of the contract teacher, the teacher or the teacher’s representative may appeal that decision to the Fair Dismissal Appeals Board established under ORS 342.930[.]

¹⁹Declaration of Elizabeth L. Polay In Support of Supplemental Memorandum in Support of Defendant’s Motion to Dismiss, Exhibit 1.

ORS 342.905(1) (emphasis added). The Fair Dismissal Appeals Board lacks jurisdiction when a teacher resigns. *Pierce v. Douglas School District No. 4*, 297 Or 363, 365, 686 P2d 332 (1984); *Lynch v. Klamath County School District*, FDA-12-12 at 6 (2013) (if a teacher resigns, “it is well-established that FDAB lacks jurisdiction to hear the appeal”); *Hardy v. Baker School District 5J*, FDA-12-05 at 3 (2012) (resignation of employment “precludes jurisdiction”); *Gilman v. Medford School District 549C*, FDA-10-03 at 4 (2010) (FDAB does “not have jurisdiction over resignations”); *Zellner v. Forest Grove School District*, FDA-05-01 at 5 (2006) (FDAB “does not have jurisdiction to hear an appeal if the teacher or administrator resigned from their position or otherwise informs the school district of their intention not to return to their current position”).

Here, it is undisputed that the District did not issue a written notice of non-extension or communicate a written decision to dismiss Appellant. Further, the record demonstrates that, on or about February 8 or 9, 2023, after a conversation with the principal, Appellant cleaned out his office, left his laptop on the desk, intended to turn his keys in at the school office and, believing the office to be closed, gave his keys to a District employee. On February 18, 2023, Principal Underwood and Appellant conferred, and Principal Underwood explained the District’s understanding that Appellant “had quit.” Rather than express an intention to continue working for the District, Appellant explained his belief that he had been “terminated effective immediately.” It is also undisputed that, at some point thereafter, in response to a voicemail left by Principal Underwood, Appellant called a District secretary and asked to be removed from the list of people who receive notice of school closures. Further, when the secretary forwarded Appellant’s call to the assistant superintendent and the assistant superintendent did not answer, Appellant, in his words, “hung up and did not call again.”²⁰ After receiving confirmation from Superintendent Helmen in writing that the District understood that he had resigned, Appellant did not inform the District that it had misunderstood Appellant’s intentions. At no time after February 8, 2023 did

²⁰ Appeal at 2.

Appellant either return to work or inform the District that its belief that he had resigned was incorrect. On this record, the Panel concludes that Appellant resigned his employment.

Because the Fair Dismissal Appeals Board lacks jurisdiction when a contract teacher resigns, the Board lacks jurisdiction over this appeal.²¹

2. The appeal was not timely.

The District also argues that, even if the Superintendent’s February 20, 2023 memorandum is construed as a notice of dismissal, the appeal is untimely. For the reasons explained below, we agree with the District.

ORS 342.905 provides, in relevant part:

(1) If the district school board dismisses the teacher or does not extend the contract of the contract teacher, the teacher or the teacher’s representative may appeal that decision to the Fair Dismissal Appeals Board established under ORS 342.930 by depositing by certified mail addressed to the Superintendent of Public Instruction and a copy to the superintendent of the school district:

(a) In the case of dismissal, within 10 days, as provided in ORS 174.120, after receipt of notice of the district school board’s decision, notice of appeal with a brief statement giving the reasons for the appeal.

ORS 342.905(1)(a). Here, Appellant received Superintendent Helman’s February 20, 2023 memorandum on February 28, 2023. Even if that memorandum is somehow construed as a notice of the school board’s dismissal decision, the deadline for Appellant to appeal that action was March 10, 2023.²² Appellant did not deposit a notice of appeal by certified mail until March 13, 2023. Therefore, the appeal is untimely.

²¹ The record reflects that the District’s policy authorized the Superintendent to release Appellant from his contract even though Appellant did not provide at least 60 days’ notice of his resignation. *See* District Policy GCPB (authorizing the Superintendent to “accept the resignation effective the day it is received and either release the teacher immediately from further teaching or administrative obligations or inform the teacher that he/she must continue teaching for part or all of the 60-day period”); *see also* ORS 243.545(2) (“No board *is required* to consider any resignation not in writing.”) (emphasis added); ORS 243.553 (Teacher Standards and Practices Commission “may discipline” a teacher who “resigned the position without first providing 60 days’ written notice...to the district superintendent or the school board”).

²² It is not plausible to view either letter received by Appellant as a written notice of non-extension of Appellant’s contract because, according to Appellant, he was told he was “terminated effective immediately” on February 8 or 9, 2023—*e.g.*, he was dismissed with immediate effect, rather than merely having his contract nonextended at the end of its term.

ORDER

For the reasons discussed above, the District’s motion to dismiss is granted. This appeal is dismissed.

DATED this 28th day of August 2023.

/s/ Ron Gallinat

Ron Gallinat, Panel Member

/s/ Tory McVay

Tory McVay, Panel Member

/s/ Robert Sconce

Robert Sconce, Panel Member

Notice: Under ORS 342.905(9), this may be appealed in the manner provided for in ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2023, I served a true and correct copy of the **DISMISSAL ORDER** by the method indicated below:

| | | |
|--|---|--|
| Elizabeth Polay Attorney at Law Garrett Hemann Robertson PC 4895 Skyline Road S Salem, OR 97306 Email: epolay@ghrlawyers.com | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> | HAND DELIVERY U.S. MAIL - CERTIFIED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY |
| Chuck Calhoun 840 Jefferson Avenue, Apt. 1 Vernonia, OR 97064 Email: calhouchuck6@gmail.com | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> | HAND DELIVERY U.S. MAIL - CERTIFIED OVERNIGHT MAIL TELECOPY (FAX) ELECTRONICALLY |

Respectfully submitted,

/s/ Lisa M. Umscheid
Lisa M. Umscheid
Senior Assistant Attorney General
Labor & Employment Section