



BEFORE THE FAIR DISMISSAL APPEALS BOARD
of the
STATE OF OREGON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

In The Matter of the Appeal of
JAMEY HARDY,
Appellant,
v.
BAKER SCHOOL DISTRICT 5J,
Respondent.

Case No. FDA-12-05

FINDINGS OF FACT, CONCLUSIONS OF
LAW, DISCUSSION, AND ORDER ON
MOTION TO DISMISS FOR LACK OF
JURISDICTION

INTRODUCTION

In a letter dated June 11, 2012, Appellant Jamey Hardy filed an appeal “of her dismissal from the Baker School District 5J.” Respondent Baker School District 5J filed a motion to dismiss for lack of jurisdiction with supporting evidence, and Appellant filed an opposition brief and supporting evidence. At the request of this panel’s counsel, both parties submitted supplemental briefing and evidence. Pursuant to OAR 586-030-0025, and after reviewing both parties’ submissions, including the supplemental briefs and evidence, this Fair Dismissal Appeals Board panel decided that a limited evidentiary hearing or oral argument was not necessary in order for the panel to reach a decision.

Based on the parties’ submissions and written arguments, and for the reasons that follow, the panel decides that Appellant resigned her employment and, therefore, the Fair Dismissal

1 Appeals Board has no jurisdiction in this case. The panel further decides that because Appellant
2 resigned, it is not necessary to determine whether Appellant's appeal is timely.

3 **FINDINGS OF FACT¹**

4 1. The parties did not provide evidence that Appellant was a contract teacher employed by
5 Respondent school district, nor did any party contend that she was not a contract teacher. That
6 fact is presumed for purposes of this Order.

7 2. Respondent school district did not give Appellant a dismissal notice or letter. The parties
8 do not dispute that there is no dismissal notice or letter in this case.

9 3. On or about March 8, 2012, Appellant submitted to Walt Wegener, Superintendent of
10 Baker School District 5J, a memorandum dated March 8, 2012 in which she resigned her
11 employment with Baker School District 5J, effective June 8, 2012.²

12 4. On March 13, 2012, the Baker School District 5J school board accepted Appellant's
13 resignation. Appellant does not dispute that the school board accepted Appellant's resignation.

14 5. On or about April 4, 2012, Appellant filed a grievance with the school district under the
15 collective bargaining agreement that applies to Appellant's employment. On April 10, 2012,
16 Appellant amended her grievance to add the following statement of relief sought: "Ms. Hardy
17 shall be allowed to revoke her resignation given under duress and be reinstated to her teaching
18 position."
19
20
21
22

23 ¹ The panel makes these findings of fact based on facts and documents submitted with the parties' briefs.

24 ² Appellant does not dispute that she submitted the resignation memorandum on or about March 8, 2012.
25 Instead, Appellant contends that her resignation was "involuntary" and "procured through coercion." See
26 Appellant Hardy's Response to Baker School District's Motion to Dismiss For Lack of Jurisdiction, p. 1.
The panel concludes that it is not necessary to decide whether or not Appellant's resignation was coerced
in order to rule on Respondent's motion to dismiss.

1 6. On or about April 12, 2012, Superintendent Walt Wegener sent Appellant a letter that
2 stated, in its entirety, "Baker School District 5J has received your letter asking for withdrawal of
3 your resignation dated March 8, 2012. Your letter of resignation was acted upon by the Board
4 and the District declines to allow you to resend [sic] it."

5 7. On or about May 8, 2012, Superintendent Walt Wegener sent Appellant a letter
6 responding to Appellant's grievance. The letter states, in part, "The District accepts the
7 resignation and confirms the approval of the resignation at the public Board meeting, March 13,
8 2012. There is no evidence of wrongful application of the CBA and no desire on the part of the
9 District to withdraw or a reason to support the withdrawal of the letter of resignation."

11 8. On or about May 30, 2012, the school board denied Appellant's grievance.

12 9. On or about June 8, 2012, Appellant declined to sign a "Statement of Intent" to resign.
13 Appellant wrote on the statement the following note: "Based on a recent grievance decision, it is
14 still undetermined whether my March 8, 2012 resignation will be revoked by the Baker School
15 District and it is unclear what my employment will be next year. For all intents and purposes, I
16 wish to remain an employee of the Baker School District."
17

18 CONCLUSIONS OF LAW

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

21 2. The Fair Dismissal Appeals Board lacks jurisdiction in this case because
22 Appellant resigned her employment.
23

24 DISCUSSION

25 Appellant's resignation of her employment precludes jurisdiction in this case. ORS
26 342.905(1) provides, in relevant part, as follows:

1 If the district school board *dismisses* the teacher or *does not extend* the contract of
2 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[.]

3 ORS 324.905(1) (emphasis supplied). A teacher’s contract can be terminated by dismissal or
4 non-extension for specified statutory reasons. *See* ORS 342.865. When a Fair Dismissal
5 Appeals Board panel has jurisdiction to consider a dismissal or nonextension, the statute
6 describes the authority of the panel as follows:
7

8 The Fair Dismissal Appeals Board panel shall determine whether the facts relied upon to
9 support *the statutory grounds cited for dismissal or nonextension* are true and
10 substantiated. If the panel finds these facts true and substantiated, it shall then consider
11 whether such facts, in light of all the circumstances and additional facts developed at the
hearing that are relevant to the statutory standards in ORS 342.865(1), are adequate to
justify *the statutory grounds cited*.

12 ORS 342.905(6) (emphasis supplied). The parties in this case agree that no “statutory grounds”
13 were ever cited by the school board because Appellant resigned. Appellant contends, however,
14 that her resignation was coerced and tantamount to a constructive discharge. Appellant argues
15 that the Fair Dismissal Appeals Board should construe her alleged constructive discharge as a
16 “dismissal” within the meaning of 342.905(1).
17

18 The panel concludes that the text and context of ORS 342.905 precludes Appellant’s
19 construction. Neither party provided authority to the panel for the proposition that an alleged
20 coerced resignation or constructive discharge may be considered a dismissal by the Fair
21 Dismissal Appeals Board. The word dismissal is not defined in the statute. *See* ORS 342.815.
22 The text and context of the statute, however, do not support Appellant’s argument. *See State v.*
23 *Gaines*, 346 Or 160, 164, 206 P3d 1042 (2009) (a statute is interpreted first by examining the
24 text and context of the statute). Here, ORS 342.905(6) requires the Fair Dismissal Appeals
25 Board to determine whether the facts relied upon by the school board “to support the statutory
26

1 grounds cited for dismissal” are true and substantiated. ORS 342.905(6) uses the phrase
2 “statutory grounds cited” twice. The phrase “statutory grounds cited” is similarly used in both
3 subsection (7) and subsection (8) of ORS 342.905.

4 The panel therefore concludes that a “dismissal” sufficient to support FDAB’s
5 jurisdiction must result from some action by the school board that includes “statutory grounds
6 cited.” It is the “statutory grounds cited” that forms the basis of a Fair Dismissal Appeals
7 Board’s review at a hearing on the merits of an appeal. Given the statute’s context, a “dismissal”
8 cannot logically arise solely from an alleged constructive discharge. To illustrate, if this panel
9 were to determine that the Fair Dismissal Appeals Board does have jurisdiction in this case, it is
10 unclear what facts the panel would consider at a hearing on the merits of the case, in light of the
11 absence of any “statutory grounds cited” by the school district. Although a constructive
12 discharge may be sufficient to prove a discharge for some purposes, as Appellant points out in
13 her written argument,³ this panel concludes that an alleged constructive discharge is not
14 sufficient to support jurisdiction under ORS 342.905 in this case. Appellant may have some
15 claim to pursue in another forum (a subject on which this panel expresses no opinion), but there
16 is no dismissal to support jurisdiction in *this* forum. It is undisputed that there is no dismissal
17 notice or letter in this case.

20 The panel believes its decision is consistent with the Oregon Supreme Court’s decision in
21 *Pierce v. Douglas School District No. 4*, 297 Or 363, 686 P2d 332 (1984). In *Pierce*, the Fair
22 Dismissal Appeals Board found that the teacher resigned, and therefore had not been dismissed.
23 The Oregon Court of Appeals reversed and remanded on the basis that the school district’s
24

1 actions were a “de facto” dismissal. The Oregon Supreme Court reversed the Oregon Court of
2 Appeals and reinstated FDAB’s order. The Oregon Supreme Court held that a superintendent’s
3 acceptance of a teacher’s resignation, and decision not to allow her to rescind the resignation,
4 was not a “dismissal” over which the Fair Dismissal Appeals Board has jurisdiction. Although
5 *Pierce* did not involve an allegedly coerced resignation, the logic of the Oregon Supreme Court’s
6 decision in *Pierce* supports our conclusion in this case. A resignation is an action by the teacher,
7 not a “dismissal” by the district sufficient to establish FDAB’s jurisdiction. *See also Gilman v.*
8 *Medford School District 549C*, FDA-10-03 (2010) (FDAB does not have jurisdiction over
9 resignations).
10

11 Respondent also argues that the Fair Dismissal Appeals Board has no jurisdiction over
12 this case because Appellant did not timely file her appeal. ORS 342.905(1)(a) requires an appeal
13 of a dismissal to be filed within 10 days “after receipt of notice of the district school board’s
14 decision.” Here, Appellant submitted her appeal by facsimile and by regular and certified mail
15 on June 11, 2012. She contends that her appeal was timely because it was submitted within 10
16 days after June 8, 2012, the last day of her employment (even though she resigned on March 8,
17 2012). The panel concludes that because there was no dismissal in this case, it is not necessary
18 for the panel to determine whether Appellant’s appeal is timely.
19

20 //
21 //
22 //
23 //
24 //

25 ³ To support the proposition that the word “dismissal” in ORS 342.905(1) should be construed to mean
26 constructive discharges in addition to actual dismissals, Appellant relies on cases discussing the tort of

1 **ORDER**

2 For the reasons discussed above, Respondent's Motion to Dismiss For Lack of
3 Jurisdiction is hereby granted.

4 DATED this ____ day of August, 2012.

5
6 Kathy Miller – Panel Member

7 *Carolyn Ramey*
8 Carolyn Ramey - Panel Member

9
10 Dennis D. Ross – Panel Member

11 **NOTICE:** Under ORS 342.905(9), this Order may be appealed in the manner provided for in
12 ORS 183.480, and any appeal must be filed within 60 days from the date of service of this Order.
13

14
15
16
17
18
19
20
21
22
23
24
25
26

 wrongful discharge and on cases arising under Oregon's civil rights statutes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

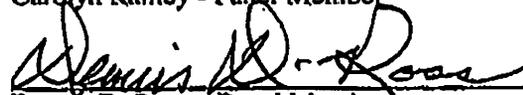
ORDER

For the reasons discussed above, Respondent's Motion to Dismiss For Lack of Jurisdiction is hereby granted.

DATED this 31ST day of August, 2012.

Kathy Miller – Panel Member

Carolyn Ramey - Panel Member



Dennis D. Ross – Panel Member

NOTICE: Under ORS 342.905(9), this Order 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.

wrongful discharge and on cases arising under Oregon's civil rights statutes.

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I served a true copy of the foregoing FINDINGS OF FACT,
3 CONCLUSIONS OF LAW, DISCUSSION, AND ORDER ON MOTION TO DISMISS on the
4 following parties, on the date set forth below, contained in a sealed envelope, deposited in the
5 United States mail at Salem, Oregon with postage paid, sent to the parties via certified mail,
6 return receipt requested, at their regular addresses as follows:

7
8 Ralph E. Wisner
9 Attorney at Law
10 1 Centerpointe Drive, Suite 570
11 Lake Oswego, OR 97035
12 ralph@wiserlaw.com
13 Attorney for Appellant

Haley Percell
Oregon School Boards Association
P.O. Box 1068
1201 Court Street NE, Suite 400
Salem, OR 97301
hpercell@osba.org
Attorney for Respondent District

12 DATED this 31 day of August, 2012.

13
14 
15 _____
16 Lisa Umscheid, OSB# 92571
17 Sr. Assistant Attorney General
18 Of Attorneys for Fair Dismissal Appeals Board
19
20
21
22
23
24
25
26