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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5570-14T2

IN THE MATTER OF THE TENURE
CHARGES AGAINST JOSE ORTIZ-BATISTA,
PROFESSOR, COUNTY COLLEGE OF MORRIS

Argued May 24, 2017 – Decided June 27, 2017

Before Judges Accurso, Manahan and Lisa.

On appeal from the Board of Trustees of the
County of Morris.

Stephen B. Hunter argued the cause for
appellant Jose Ortiz-Batista (Detzky, Hunter
& DeFillippo, LLC, attorneys; Mr. Hunter, of
counsel and on the brief).

David H. Soloway argued the cause for
respondent County College of Morris (Vogel,
Chait, Collins and Schneider, PC, attorneys;
Mr. Soloway, of counsel and on the brief;
Craig A. Long, on the brief).

PER CURIAM

Petitioner Jose Ortiz-Batista appeals from a July 7, 2015
final decision of the Board of Trustees of the County College of
Morris adopting the Initial Decision of Administrative Law
Judge, Ellen S. Bass, finding petitioner guilty of conduct

unbecoming, warranting his dismissal as a tenured faculty member of the College. We affirm.

The facts are set forth at length in ALJ Bass's Initial Decision. Professor Ortiz-Batista was a respected and well-regarded member of the faculty of the College for fourteen years. He served as a professor of World Languages and chaired the College's Languages and ESL Department for ten of those years. In the 2014 spring semester, however, the Dean advised petitioner the College would appoint a new Chair to lead the Department. Judge Bass noted that decision "apparently angered Ortiz-Batista enough to file suit in Superior Court and to file a discrimination claim before the Equal Employment Opportunity Commission (EEOC) where he alleged that his demotion was unfair and constituted harassment."

When the fall term began, petitioner, described as "hard-working," "enthusiastic," and "highly effective" in earlier evaluations, passionate about his subject matter and devoted to his students, began to miss class and fail to appear for office hours without notice to his students and colleagues. Despite efforts by the new Chair of his Department and other administrators and colleagues, the situation did not improve as the term wore on. Students lodged repeated complaints, and the administration referred petitioner to the Employee Assistance

Program. ALJ Bass concluded from the uncontroverted testimony that during that fall semester, petitioner "was frequently absent from his classroom and office hour duties, often without advance notice, and often without following proper protocols for requesting leave." She found that members of the administration "all made efforts to communicate with Ortiz-Batista relative to their concerns about his performance, but that their efforts were met with vague excuses or no response at all."

On October 30, 2014, the College suspended petitioner with pay and took steps to try and cover his six Italian classes. The College retained adjunct professors to teach four of the classes, but determined so little progress had been made by students in the remaining two classes that they were deemed "unsalvageable." Students enrolled in those classes were prevented from fulfilling their language requirement and, for some, their graduations may have been delayed as a result. ALJ Bass found the class cancellations cost the College \$20,477 in refunded tuition.

Even after his suspension, the College continued to try and work with petitioner. Recounting the testimony of the Department Chair, the judge found "nothing about his demeanor or testimony that led [her] to question that [the Chair] would have offered assistance instead of discipline if he could have done

so." The Human Resources Director, the administrator who had earlier referred petitioner to the Employee Assistance Program, testified the administrators and faculty members present at the October 30 meeting expressed concerns about petitioner's health and well-being. According to the Director, he specifically told petitioner that sick leave might be an option with proper documentation, but petitioner never followed up or provided him with the necessary information. ALJ Bass concluded "no medical documentation was provided either to [the College] or [the ALJ] that would allow [her] to view Ortiz-Batista's aberrant behavior as health or disability related."

After hearing the testimony of the witnesses and reviewing the evidence submitted, ALJ Bass concluded the College had met its burden of proving the tenure charges against petitioner by a preponderance of the credible evidence. See N.J.S.A. 18A:6-18; In re Polk, 90 N.J. 550, 560-61 (1982). Specifically, the judge found:

Ortiz-Batista failed to meet his professional obligations in the fall of 2014, and in a manner that did not permit [the College] to assist either him or many of his students in salvaging the semester of instruction. His assertion that he was absent just a little bit, after years of good attendance, is inconsistent with the facts on record. He was consistently absent; he was unreliable; and he was unwilling to discuss whatever issues or

problems were preventing him from properly attending to his duties. Notwithstanding his history of satisfactory performance, Ortiz-Batista's unwillingness to explain this change in his conduct and demeanor portends a continued inability or unwillingness by him to properly discharge his professional responsibilities. Finally, the negative effect created by his absences and non-communicativeness is readily borne out by the record.

ALJ Bass concluded based on the evidence in the record that petitioner's termination was indeed the appropriate remedy. She wrote:

For all these reasons, I likewise agree with [the College] that no lesser form of discipline could have put an end to the disruption to the language department and its students. As it is, two classes were cancelled. Had the [C]ollege not acted when it did to remove Ortiz-Batista from the classroom, it is likely that it would have had to cancel several more. I am thus compelled to reject Ortiz-Batista's contention that he should not be dismissed because the [C]ollege failed to employ progressive discipline. As our Supreme Court stated in West New York v. Bock, 38 N.J. 500, 523 (1962), "numerous occurrences over a reasonably short space of time, even though sporadic, may evidence an attitude of indifference amounting to a neglect of duty and, thus, constitutes sufficient grounds for termination."

Finally, Counsel's argument that [the College] failed to accommodate Ortiz-Batista's disability is flawed for a fundamental reason; nowhere on the record is there any competent proof that a disabling condition caused Ortiz-Batista's aberrant


behavior. Ortiz-Batista was asked for medical documentation before the charges were filed, and was offered an opportunity to supply such documentation after his suspension. He could have supplied such documentation to me, or appeared at the hearing and explained his problems to me. But throughout, he has persisted in failing to offer any explanation, medical or otherwise, for the dereliction of his duties. I agree with [the College] that I cannot ask it to grant an extended sick leave to a professor who will not explain the nature of his disability, and relied at hearing only on the testimony of a colleague who, with no medical background whatsoever, shared that in September 2014 he noticed a change in Ortiz-Batista's affect. Nor am I able to accept counsel's claim that [the College] personnel did not try hard enough to talk to Ortiz-Batista or give him an opportunity to explain why he was unable to meet his professional responsibilities. This record reveals that Ortiz-Batista's supervisors tried to have a productive conversation with him repeatedly, but to no avail.

On appeal, petitioner argues the College failed to prove the charges against him, that the penalty was excessive and disproportionate, that the College "received sufficient information to conclude that [petitioner] was suffering from a significant physical and/or psychiatric impairment and yet . . . failed to reasonably accommodate [his] disabilities" and that there were "numerous alternatives to termination that were never proposed by the College that would have avoided the certification of tenure charges."

In light of the comprehensive record established in the Office of Administrative Law, we reject those arguments as without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(D) and (E). Accordingly, we affirm the decision of the Board of Trustees, substantially for the reasons expressed in Judge Bass's thorough and thoughtful Initial Decision of June 10, 2015.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


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