

GURULE V. ALBUQUERQUE PUBLIC SCHOOLS

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**MICHAEL J. GURULE,
Plaintiff-Appellant,
v.
ALBUQUERQUE PUBLIC SCHOOLS,
Defendants-Appellees.**

No. 34,169

COURT OF APPEALS OF NEW MEXICO

May 4, 2015

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Alan M. Malott,
District Judge

COUNSEL

Santiago E. Juarez, Albuquerque, NM, for Appellant

Modrall, Sperling, Roehl, Harris & Sisk, P.A., Jennifer G. Anderson, Barry J. Berenberg,
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JUDGES

MICHAEL D. BUSTAMANTE, Judge. WE CONCUR: JAMES J. WECHSLER, Judge,
CYNTHIA A. FRY, Judge

AUTHOR: MICHAEL D. BUSTAMANTE

MEMORANDUM OPINION

BUSTAMANTE, Judge.

{1} Plaintiff-Appellant Michael J. Gurule (“Plaintiff”) appeals the district court’s grant of Defendant-Appellee Albuquerque Public Schools’ (APS) motion to dismiss and for

summary judgment. [DS 3; RP 92] Our notice proposed to affirm. Plaintiff filed a memorandum in opposition, which we have duly considered. Unpersuaded, we affirm.

{2} In this Court's notice, we proposed to affirm the district court's grant of APS' motion to dismiss and for summary judgment for the following reasons. [CN 5] First, we explained that an employee must exhaust internal grievance procedures prior to filing suit for breach of contract based on an employer's failure to follow internal policies. *Lucero v. Bd. of Regents of Univ. of New Mexico*, 2012-NMCA-055, ¶ 12, 278 P.3d 1043. Contrary to *Lucero*, Plaintiff did not make any assertion or complaint within the fifteen days specified in the negotiated agreement. [DS 3; RP 73, 93; CN 6] Also contrary to the procedure set forth in the negotiated agreement, [RP 46] Plaintiff failed to inform Human Resources when he was originally denied leave of his position that the denial was contrary to any provision of the employee agreement. [DS 2-3; CN 6] Our notice further explained that the negotiated agreement applied to the circumstances in the present case. [CN 6-7]

{3} In response, Plaintiff's memorandum in opposition does not set forth any new arguments, but instead reiterates the standard of review, [MIO 2] and reemphasizes his position that he substantially complied with the notice requirement. [MIO 1-2] We remain unpersuaded. As explained in our notice, even though Plaintiff learned in 2012 that he may have been entitled to leave when he requested it in 2009, he did not take any action, [CN 6; RP 73] and Plaintiff's conversation with Human Resources took place when he was originally denied leave in 2009. [DS 2-3] Significantly, Plaintiff did not tell Human Resources in 2009 that there had been any particular provision of the employee agreement that had been violated, contrary to what is provided for in the negotiated agreement; [RP 46] Plaintiff merely told Human Resources that he did not agree with their decision. [DS 2-3]

{4} Finally, Plaintiff asks this Court what more he was required to do. [MIO 1] As discussed above and in our notice, Plaintiff was required to exhaust the administrative remedies available to him, as set forth in the negotiated agreement. [CN 5-7]

{5} For the reasons stated above and in this Court's notice of proposed disposition, we affirm.

{6} IT IS SO ORDERED.

MICHAEL D. BUSTAMANTE, Judge

WE CONCUR:

JAMES J. WECHSLER, Judge

CYNTHIA A. FRY, Judge