

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

PHILIP CASWELL,

Applicant

- and -

THE DIRECTOR OF EDUCATION IN AND FOR THE NORTHWEST TERRITORIES,

Respondent

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE W. G. MORROW

The Applicant seeks an order in the nature of Mandamus requiring the respondent (hereinafter called the "Director") to convene a Board of Reference and to hold a hearing to determine the validity of the grounds for dismissal of the applicant from his position as principal of William MacDonald Junior High School in the City of Yellowknife.

There appears to be no dispute on the facts.

By letter dated April 2, 1973, the applicant was told by one R. K. David, writing on behalf of Yellowknife Public Schools that the Board was pleased "to offer you the position of principal of our Junior High School at the beginning of September 1973." The letter went on to say that "Conditions of employment will be in accordance with the Teaching Agreement in effect at the present time."

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The offer was accepted and on June 8, 1973 the applicant received a certificate in writing over the signature of the Secretary Treasurer of the Yellowknife School District to the effect that he had "been engaged ... to serve as principal." The applicant has continued in this capacity until shortly after the 8th of March 1976 when he received a letter from the Chairman of the Yellowknife School District to the effect:

" At the regular Board meeting held on March 2, 1976 the Board of Trustees of Yellowknife School District #1 approved recommendations to change the administrative appointments of William McDonald Junior High School. Effective June 30, 1976 you will not be re-appointed as Principal.

The reason for this decision is that the Board feels by your previous performance you have not demonstrated the degree of leadership and administrative ability the Board requires for its future programs.

This does not preclude your continuing appointment as a teacher.

We feel it is only fair that an early notification will give you an opportunity to assess your position. If you feel your position untenable as a teacher in Yellowknife School District #1 you will be able to seek other employment."

In the affidavit filed by the applicant in support of the present application reference is made to a conditional resignation but as the conditions were not met nothing hinges on it.

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By letter dated April 9, 1976 the applicant requested a Board of Reference to hear his appeal as per Article 14 of the Collective Agreement. In refusing this request the Director of the Department of Education explained that the Department's legal division advises that the Notice served on the applicant "does not constitute a dismissal under the terms of Article 14."

In the result the issue before the Court is that simple: Was there a dismissal? If there is a dismissal then the applicant may request an appeal to a Board of Reference.

Article 14 of the Yellowknife Public School District Collective Agreement under the heading "Dismissal" contains several sections that are pertinent. The two most important are:

"14.01 Dismissal in this section refers to termination of any teacher's employment during the school year, or at the end of any school year beyond the second consecutive year of employment, in accordance with the provisions of Section 67(q) of the Northwest Territories School Ordinance."

"14.04 Any teacher receiving notice of dismissal may, within ten (10) days of receipt of such notice, apply to the Director of Education for appeal of the dismissal to a Board of Reference."

The remaining sections are devoted to the mechanics which are of no concern here. It should be observed also that Section 67(q) of the *School Ordinance*, c. 86 now Section 71(17), R.O.N.W.T. 1974, c. S-3 is devoted to misconduct and related behaviour and is of no application in the present situation.

For the School Board counsel argues that matters involving management are reserved to and vested exclusively in the Board, that the position of principal is an assignment of duties rather than a part of the applicant's position of teacher and hence any removal or re-allocation of a teacher in such position does not in any way affect his or her position *qua* teacher. That this is one of the prerogatives reserved to the Board by Section 3.02 and accordingly cannot be considered as coming within Section 14.01. That it is not a dismissal.

The Oxford Universal Dictionary defines employment as:

"The action of employing; the state of being employed; that on which one is employed; a position in the public service."

Section 14.01 of Article 14 refers to "termination of any teacher's employment." While it is quite correct that by their letter of March 8 the Chairman of the School District refers to a change of administrative appointments which might suggest his Board looked upon the position of principal as administrative rather than as a position as teacher. The last paragraph does indicate that the Board perhaps anticipated that the change would not be acceptable to the applicant where the Chairman states "it is only fair that an early notification will give you an opportunity to assess your position" and "If you feel your position untenable as a teacher ... you will be able to seek other employment." One can almost feel the writer's hope that the addressee of the letter will seek other employment. However it is not for me to speculate here.

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On the material before me there is nothing to indicate that the applicant was employed as anything other than as Principal. His letter of employment makes no specific reference to teaching but concerns itself more to his position, the number of teachers, and so on. Similarly the subsequent certificate from the School District refers to him as having been "engaged ... to serve as principal ... his duties to commence September 1, 1973." No doubt he had to be a teacher to be employed as principal but I cannot read his contract of employment in any other way. It is true that such contract states that the conditions of employment "will be in accordance with the Teaching Agreement." It would take clearer language than section 3.02 referring to management to exclude the right of appeal from dismissal afforded by section 14.04.

In the result the motion is allowed and an order shall go requiring the Director of Education to convene a Board of Reference and to hold a hearing as provided for in Article 14.

Costs may be spoken to.



W. G. Morrow.

Yellowknife, N.W.T.
17 May 1976.

Counsel:

B. Purdy, Esq., for Applicant

Miss P. Flieger for Respondent.