

RASHIDA CHAUDRY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF ELIZABETH, UNION COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner – a teacher’s aide formerly employed by the respondent Board – alleged that sick days were improperly docked from her bank after she sustained a work-related injury, in contravention of the requirements of *N.J.S.A. 18A:30-2.1*. Petitioner sought reimbursement for those days in accordance with the Collective Bargaining Agreement between the Board and the Elizabeth Education Association. The Board contended that petitioner did not provide timely notice that she had sustained a work-related injury. Cross motions for summary decision were filed by the parties.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner fell while attempting to restrain an unruly student on March 8, 2013, sustaining a work-related injury; petitioner returned to work after the accident, but was subsequently determined to be permanently disabled by the Division of Pensions; medical evidence in the record attributes the permanent disability to the injuries she sustained on March 8, 2013; the Board had actual notice that petitioner claimed to have a compensable injury on May 10, 2013; the Board’s argument that petitioner did not provide timely notice of her work-related injury is therefore without merit; and, under the totality of the circumstances presented in this matter, the Commissioner’s jurisdiction extends to the claim that petitioner should be reimbursed for her controverted sick days. The ALJ concluded that the Board improperly docked the petitioner’s sick bank in contravention of the requirements of *N.J.S.A. 18A:30-2.1(a)*, and ordered the Board to reimburse petitioner \$480 for twenty-four sick days at the rate of \$20 per day.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter, for the reasons expressed therein.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
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January 13, 2017

OAL DKT. NO. EDU 15515-15
AGENCY DKT. NO. 214-8/15

RASHIDA CHAUDRY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF ELIZABETH, UNION COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner agrees with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that the Board improperly docked petitioner’s sick bank, in violation of *N.J.S.A.* 18A:30-2.1(a). The Commissioner is also in accord with the ALJ that petitioner is entitled to reimbursement for twenty-four sick days at the rate of \$20 per day.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the Board is ordered to reimburse petitioner in the amount of \$480.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 13, 2017

Date of Mailing: January 13, 2017

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, c. 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 15515-15

AGENCY DKT. NO. 214-8/15

RASHIDA CHAUDRY,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY
OF ELIZABETH, UNION COUNTY,**

Respondent.

Nicholas Poberezhesky, Esq., for petitioner (Caruso, Smith Picini, attorneys)

Heather Ford-Savage, Esq., for respondent

Record Closed: October 31, 2016

Decided: November 29, 2016

BEFORE **ELLEN S. BASS, ALJ:**

STATEMENT OF THE CASE

Petitioner, Rashida Chaudry, a teacher's aide formerly employed by the respondent, Elizabeth Board of Education (the Board), alleges that sick days were improperly docked from her bank after she sustained a work-related injury, in

contravention of the requirements of N.J.S.A. 18A:30-2.1. She seeks reimbursement for those days, in accordance with the Collective Bargaining Agreement (CBA) between the Board and the Elizabeth Education Association (the Association). The Board replies that Chaudry did not provide timely notice that she had sustained a work-related injury. Accordingly, the Board asks that the petition of appeal be dismissed.

PROCEDURAL HISTORY

Chaudry filed her petition of appeal on August 6, 2015. An answer was filed by the Board on September 22, 2015, and matter was transmitted to the Office of Administrative Law on September 29, 2015. Chaudry filed a motion to amend her petition on May 6, 2016, which was unopposed, and was granted via order dated June 21, 2016. The amendment added the claim for reimbursement for the controverted sick days, pursuant to the CBA between the Board and the Association.

A joint stipulation of facts was filed by the parties on September 14, 2016. Cross-motions for summary decision were filed on or about October 16, 2016. Chaudry filed a reply on or about October 31, 2016, at which time the record closed.

FINDINGS OF FACT

The parties have stipulated to the salient facts and I **FIND** as follows:

1. When the events relevant to this dispute arose, Chaudry had been employed by the Board as a teacher's assistant for about twelve years.
2. On Friday, March 8, 2013, she sustained an accident during the course of her employment. She fell while attempting to restrain an unruly student.

3. Chaudry reported the accident to her principal the next school day, Monday, March 11, 2013.²
4. As a result of the accident, Chaudry claimed to have suffered severe injuries to her back and leg, which caused her to miss twenty-four work days, beginning on April 10, 2013.
5. On April 12, 2013, the Board received a medical certificate from Chaudry's primary care physician, Dr. Pilar Tan, who stated that Chaudry was unable to return to work from April 10, 2013, through May 7, 2013, due to "low back pain, sciatica and degenerative arthritis."
6. On May 3, 2013, the Board received another medical certificate from Dr. Tan stating that Chaudry could not return to work until June 26, 2013, due to back pain.
7. Chaudry was marked "sick" for these absences, and her sick leave bank was docked twenty-four days.
8. Chaudry first reported her claim to the Board's worker's compensation carrier, Inservco Insurance Services, Inc., on June 25, 2013.
9. Inservco denied the worker's compensation claim via notice dated July 1, 2013.
10. Chaudry retired from her position with the Board effective July 1, 2013, and was granted Ordinary Disability benefits by the State of New Jersey, Division of Pensions and Benefits.
11. Chaudry filed a claim petition with the Department of Labor and Workforce Development, Division of Worker's Compensation, but her petition was

² It should be noted that the stipulation filed by the parties read as follows: "Ms. Chaudry said she reported the accident to her principal" But the Board offered nothing to counter Chaudry's statement in this regard; and I thus **FIND** that Chaudry did so notify her principal.

dismissed with prejudice on May 19, 2015, because she was already collecting ordinary disability benefits.

12. The CBA between the Board and the Association covers the terms of Chaudry's employment, and provides for payment for all unused sick days upon retirement at the rate of \$20 per day, where an employee has accumulated 16-50 days.

13. To date, the Board has not compensated Chaudry for her accumulated sick leave, to include the twenty-four sick days at issue.

14. On June 27, 2016, Chaudry was evaluated by orthopedic surgeon Arthur Becan who determined that she was permanently disabled as follows:

The work-related injury of March 8, 2013, was the competent producing factor for the claimant's subjective and objective findings of today . . . the patient's absence from work, including 24 days of absence, is reasonable and necessary to treat the claimant's work-related injuries.

The petition avers that on May 10, 2013, Chaudry, through counsel, challenged the docking of her sick days. A copy of counsel's letter to that effect accompanies the petition of appeal, and confirms that it was forwarded that day via telecopier to counsel for the Board. Although this correspondence goes unmentioned in the stipulation of fact, the Board does not dispute that the letter was sent and received, and I thus **FIND** that the Board had actual notice that Chaudry claimed to have a compensable injury as early as May 10, 2013.

ANALYSIS AND CONCLUSIONS OF LAW

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which

provides that “the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘fanciful frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, supra, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, supra, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214. I **CONCLUDE** that this matter is ripe for summary decision, and that Chaudry is entitled to judgment as a matter of law.

Chaudry’s claims spring from N.J.S.A. 18A:30-2.1(a), which provides as follows:

Whenever any employee, entitled to sick leave under this chapter, is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, his employer shall pay to such employee the full salary or wages for the period of such absence for up to one calendar year without having such absence charged to the annual sick leave or the accumulated sick leave provided in N.J.S.A. 18A:30-2 and

N.J.S.A. 18A:30-3. Salary or wage payments provided in this section shall be made for absence during the waiting period and during the period the employee received or was eligible to receive a temporary disability benefit under chapter 15 of Title 34, Labor and Workmen's Compensation, of the Revised Statutes. Any amount of salary or wages paid or payable to the employee pursuant to this section shall be reduced by the amount of any workmen's compensation award made for temporary disability.

The purpose of this statute "is to guarantee that a school employee, who is absent from work due to an injury arising out of and in the course of employment, will receive his or her full salary for periods of absence up to one calendar year without losing annual or accumulated sick leave." Outland v. Monmouth-Ocean Educ. Services Comm'n, 295 N.J. Super. 390, 395 (App. Div. 1996), rev'd, 154 N.J. 531 (1998).

Here, it is uncontroverted that Chaudry sustained an injury at work on March 8, 2013. It is likewise uncontroverted that, after a brief effort to return to work, she was unable to perform her job responsibilities and was determined to be permanently disabled by the Division of Pensions. The only medical evidence on record attributes that permanent disability to the injuries she sustained on March 8, 2013, while at work for the Elizabeth schools. I thus **CONCLUDE** that the Board improperly docked Chaudry's sick bank in contravention of the requirements of N.J.S.A. 18A:30-2.1(a).

The Board urges that Chaudry did not timely provide notice that she had sustained a work-related injury, and that accordingly her claims should be rejected. This argument lacks merit. N.J.S.A. 34:15-17 requires notice of a compensable injury "within ninety days after the occurrence of the injury, [or] no compensation shall be allowed." N.J.S.A. 34:15-18 makes it clear that such notice should be in writing. But Chaudry correctly points out that N.J.S.A. 18A:30-2.1 contains no analogous notice provision, and it is this school law statute, and not the provisions of the Worker's Compensation Law, that forms the basis of her claims before the Commissioner of Education.

But even assuming for argument's sake that the notice requirements of N.J.S.A. 34:15-17 are applicable here, Chaudry's attorney communicated with the Board, through counsel, in writing well within ninety days of March 8, 2013.³ And the Division of Worker's Compensation did not dismiss Chaudry's complaint because it was late. Rather, as is plain from the order of dismissal, the Compensation Court determined that the matter before it was moot because Chaudry was receiving compensation via her disability pension.

Chaudry asks that she be compensated for her lost sick days, in accordance with the provisions of the CBA between the Board and her employee representative. Typically, an analysis of the provisions of this agreement would exceed the Commissioner's jurisdiction, which is limited to controversies arising under the school laws. N.J.S.A. 18A:6-9. The Commissioner will not entertain claims that are purely contractual in nature. See Demikoff v. Harrington Park Board of Education, 97 N.J.A.R.2d (EDU) 16, where the claims of a non-tenured school business administrator, whose employment was terminated pursuant to a contractual sixty-day-notice provision, were dismissed for lack of jurisdiction. The Commissioner, quoting the Initial Decision, held that "the gist of the petition does not sufficiently implicate education law or statutory entitlement under education law to warrant or permit exercise of the Commissioner's dispute resolution jurisdiction over what are fundamentally contractual matters more properly cognizable in [a] judicial forum." Demikoff, supra, 97 N.J.A.R.2d (EDU) at 18; see also Paladino v. Bd. of Educ. of Lacey, 1989 S.L.D. 3063, 3065; Fanego v. State-Operated Sch. Dist. of Jersey City, EDU 10968-97, Initial Decision (April 27, 1999), adopted, Comm'r (June 14, 1999), <<http://njlaw.rutgers.edu/collections/oal/>>; Larsen v. Piscataway Bd. of Educ., OAL Dkt. No. 1445-81 (State Board, October 6, 1982).

³ See Peraino v. Forstmann Wollen Co., 57 N.J. Super. 1 (App. Div. 1959), where the court held that an employee could proceed on an untimely worker's compensation claim because the employer was aware of the injuries and the accident was witnessed by other employees. Thus, the notice contemplated by N.J.S.A. 34:15-17 need not be notice to the worker's compensation carrier. Chaudry advised her principal that she had been injured as early as March 11, 2013.

But where an incidental interpretation of a contract is necessary to resolve a school law issue the Commissioner may extend his jurisdiction. The Commissioner has “jurisdiction over contractual claims which are incidental to his obligation to resolve education claims that are the subject of litigation.” B.P. v. Bd. of Educ. of Lenape Reg'l High Sch. District., EDU 2782-02, Comm'r Decision (October 7, 2002), adopted, State Bd. (December 3, 2003), <http://njlaw.rutgers.edu/collections/oal/>; see also Sukin v. Northfield Bd. of Educ., 171 N.J. Super. 184 (App. Div. 1979). Our courts have recognized that “[w]here one aspect of a single integrated dispute is pending before an administrative agency and another aspect of the same dispute is pending before a court, logic commends that the entire matter be dealt with, at least initially, by the entity with plenary authority over the subject matter field involved.” Archway Programs v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 424-25 (App. Div. 2002). I thus **CONCLUDE** that, under the totality of the circumstances presented here, the Commissioner’s jurisdiction should extend to the claim that Chaudry receive reimbursement for her controverted sick days.

Accordingly, I **CONCLUDE** that Chaudry is entitled to reimbursement for twenty-four sick days at the rate of \$20 per day.

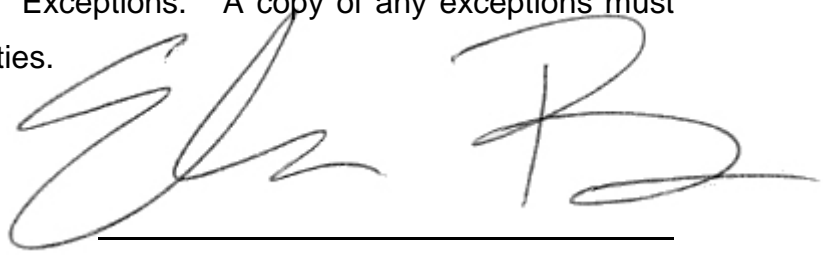
ORDER

Based on the foregoing, the Board is **ORDERED** to reimburse Chaudry in the amount of \$480.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 29, 2016

A handwritten signature in black ink, appearing to read 'Ellen S. Bass', written over a horizontal line.

DATE

ELLEN S. BASS, ALJ

Date Received at Agency:

Date Mailed to Parties:

APPENDIX

Joint Exhibits:

- J-1 Medical certificate
- J-2 Medical certificate
- J-3 Intake report
- J-4 Denial letter
- J-5 Workers Compensation Claim Dismissal
- J-6 Excerpt from Collective Bargaining Agreement
- J-7 Becan Report
- J-8 C.V.