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**SUPREME COURT GRANTED DISCRETIONARY REVIEW:
APRIL 15, 2009
(FILE NO. 2009-SC-0021-DG)**

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000128-MR
AND
NO. 2007-CA-000130-MR

CARA SAJKO

APPELLANT/CROSS-APPELLEE

APPEAL AND CROSS-APPEAL
FROM JEFFERSON CIRCUIT COURT
v. HONORABLE W. DOUGLAS KEMPER, JUDGE
ACTION NOS. 05-CI-009088 & 05-CI-009091

JEFFERSON COUNTY BOARD OF
EDUCATION; JEFFERSON COUNTY
SCHOOLS; AND STEPHEN
DAESCHNER, SUPERINTENDENT APPELLEES/CROSS-APPELLANTS

OPINION MODIFYING AND REVERSING

** ** * ** * ** *

BEFORE: LAMBERT AND MOORE, JUDGES; BUCKINGHAM, SENIOR JUDGE.¹

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

BUCKINGHAM, SENIOR JUDGE: Cara Sajko appeals from an order of the Jefferson Circuit Court affirming an order of a tribunal that upheld the school superintendent's termination of Sajko's employment as a teacher in the Jefferson County school system. The school system cross appeals from a portion of the court's order, including the portion that affirmed the determination that the tribunal had jurisdiction to consider Sajko's defense to the charges. Because we conclude that the tribunal lacked jurisdiction, we agree with the school system's cross appeal and thus reverse.

Sajko had been employed as a teacher in the Jefferson County school system for a number of years. During the time in question (2003-2004 and 2004-2005 school years), she was a teacher at Louisville Male Traditional High School. Sajko's actions involving her treatment of students led to the school principal taking action in the form of reprimands and directives to Sajko in an effort to stop her inappropriate behavior. Sajko was twice suspended without pay when she failed or refused to follow the principal's directives.

In January 2005, Sajko was advised that she must submit to an occupational evaluation to determine whether she had any health problems that could affect her performance as a teacher. When Sajko refused to submit to the evaluation, the superintendent, Stephen W. Daeschner, suspended her without pay pending recommendation that her employment be terminated.

On March 28, 2005, the superintendent caused a seven-page letter from him to be hand-delivered to Sajko informing her that he was terminating her employment on the grounds of her insubordination and conduct unbecoming a teacher. *See* Kentucky Revised Statutes (KRS) 161.790(1)(a) and (b). The superintendent cited specific

instances in the letter and stated that Sajko was terminated due to “the seriousness of the violations” and Sajko’s “previous disciplinary record that includes two suspensions and numerous reprimands and warnings.”

The letter also advised Sajko that she could answer the charges and contest the termination by providing notice to him and to the commissioner of the Kentucky Department of Education within 10 days after receiving the letter. Additionally, the letter stated that the termination would be final if Sajko failed to provide the notice within that time. The applicable statute, KRS 161.790(3), was referenced.

The statute states:

Prior to notification of the board, the superintendent shall furnish the teacher with a written statement specifying in detail the charge against the teacher. The teacher may within ten (10) days after receiving the charge notify the commissioner of education and the superintendent of his intention to answer the charge, and upon failure of the teacher to give notice within ten (10) days, the dismissal shall be final.

Id.

On April 7, 2005, exactly ten days after receipt of the superintendent’s letter, Sajko’s attorney sent a facsimile letter (fax) to the office of the school board’s general counsel indicating that Sajko intended to answer the charges against her and that copies of the notice would be sent to the appropriate parties.² The fax was not sent until after regular business hours. The superintendent and the commissioner received their copies the following day, 11 days after Sajko had received the termination letter.

As provided in KRS 161.790(4), a three-member tribunal was appointed to consider Sajko’s termination. Prior to the tribunal hearing, a hearing officer considered the school system’s motion to dismiss Sajko’s appeal on the ground that her notice was

² Sajko’s appellate counsel did not represent her at this stage of the proceedings.

not delivered in a timely manner and that the termination was therefore final. *See* KRS 161.790(3) and (5). That motion was denied after the hearing officer determined the statute was ambiguous.

The tribunal heard evidence for eight days and found that Sajko was guilty of insubordination in violation of KRS 161.790(1)(a). The tribunal concluded, however, that Sajko did not engage in conduct unbecoming a teacher. In the tribunal's final order, it found that "Sajko would consider any reduction in the sanction as vindication of her inappropriate teaching methods and her unacceptable responses to Male High School officials' directives." Thus, the tribunal affirmed the superintendent's decision to terminate Sajko's teaching contract.

Both sides sought review from the Jefferson Circuit Court. *See* KRS 161.790(8); KRS 13B.140(1); *James v. Sevre-Duszynska*, 173 S.W.3d 250, 256 (Ky.App. 2005). The court affirmed the tribunal's decision to terminate Sajko's teaching contract based on insubordination. The court also affirmed the tribunal's finding that Sajko was not guilty of conduct unbecoming a teacher. In addition, the court affirmed the decision that the tribunal had jurisdiction to hear Sajko's defense.

In its cross appeal the school system again contends that the tribunal was without jurisdiction to hear Sajko's defense. It argues that Sajko failed to give notice to the superintendent and the commissioner within ten days after she received notice of the charge from the superintendent. Thus, the school system maintains that the tribunal erred in hearing the case and that the circuit court erred in affirming the tribunal's jurisdiction.

Sajko states in her reply brief that she “denies actually receiving the Schools’ termination letter on March 28, 2005.”³ She then contends that even if that date is accurate, the notice she provided was timely under the provisions of the statute.

First, Sajko argues that the facsimile transmission of her intent that was sent to the school board’s attorney on the tenth day “should constitute constructive notice” to the superintendent. We disagree. Even if the letter constitutes constructive notice to the superintendent, it does not constitute such notice to the commissioner. Furthermore, notice to the school board’s attorney does not strictly comply with the requirement of KRS 161.790(3) that the superintendent and commissioner be notified. *See Roberts v. Watts*, 258 S.W.2d 513 (Ky. 1953), wherein the court held:

The right of appeal in administrative as well as other proceedings does not exist as a matter of right. When the right is conferred by statute, a strict compliance with its terms is required.

Id.

Sajko next maintains that “KRS 161.790(3) is satisfied when the notice is *placed in the mail.*” In other words, she contends that by mailing certified letters to the superintendent and the commissioner on the tenth day after she received notice of the charge, she satisfied the statutory requirement even though those letters were not received until the following day. Sajko asserts that it would be a “very harsh result” to bar a teacher’s right to challenge his or her termination “where the teacher certified and mailed the required notice within the statutory window, but the required notice was not actually

³ In her briefs Sajko does not cite to the record or make further argument in this regard. The circuit court noted, however, that Sajko received the termination letter on March 28, 2005. That Sajko received the letter on that date is supported by the affidavits of two school employees and by the testimony of Sajko’s union representative.

received until one day after that period ended.” She contends that the mailing of the letters, not their receipt, satisfies the notice requirement of the statute. We disagree.

In *Energy Regulatory Commission v. Kentucky Power Co.*, 605 S.W.2d 46, 51 (Ky.App. 1980), this court stated that “[w]e believe that it is not the sending but the receipt of a letter that constitutes true notice.” In *Baldwin v. Fidelity Phenix Fire Ins. Co. of New York*, 260 F.2d 951, 953-54 (6th Cir. 1958), the court stated that “[i]t is not, therefore the sending, but the receipt, of a letter that will constitute notice.”

As neither the superintendent nor the commissioner received Sajko’s letter notifying them of her intent within ten days of her receipt of the superintendent’s letter, Sajko failed to strictly comply with the notice requirements of the statute.⁴ Sajko’s failure to meet the timely notice requirement denied the tribunal jurisdiction to consider her defense to the charges.

The order of the Jefferson Circuit Court is reversed, and this case is remanded for the entry of an order upholding Sajko’s termination, pursuant to KRS 161.790(3), based upon the tribunal’s lack of jurisdiction to consider the matter.

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS
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BRIEF FOR APPELLEE/CROSS
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⁴ We do not imply that there must be personal service on the superintendent and the commissioner.

