1974 WL 333
United States District Court, N.D. Mississippi, Eastern Division.

Bettye Joe Baker et al., Plaintiffs
v.
Columbus Municipal Separate School District et al., Defendants.

No. EC 70-52-S
|
November 4, 1974

Opinion

SMITH, D.J. (Orally).

***1** The Court: The Court has before it this afternoon for decision on the merits the Supplemental Complaint for Declaratory and Injunctive Relief filed in this action by Mrs. F. Esther Harrison, the plaintiff, against the Columbus Municipal Separate School District.

This case originated, I believe, in 1973, or thereabouts. It may have been before that time.

When was the first Complaint filed in this action?

Mr. Sharp: In June of 1970.

The Court: June of 1970. That was about the time the order was rendered in the companion case, *United States of America v. The Columbus Municipal Separate School District*, which was entered in August 1970, directing the school authorities to implement a unitary system of schools and cease to operate a segregated school system.

This case was originally brought by eight black teachers seeking injunctive and declaratory relief under 42 U.S.C. 1983. The supplemental complaint seeks injunctive and declaratory relief under 42 U.S.C. § 1983; 42 U.S.C. § 1981; 42 U.S.C. § 2000(e); Title VII, Civil Rights Act of 1964; and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

The plaintiff in this case at the present time, Esther Harrison, is one of the eight black teachers who brought this suit originally. Her first employment with the Columbus school began in the 1968-69 school year. During that year she failed to pass what is known as the National Teacher's Examination by a score equal to or in excess of the cutoff score established by the School District, and as a result of that examination and her failure to pass the same by a score which was acceptable to the School District, under its regulations, she was not employed for the 1970-71 school year.

That NTE test was voided by this Court in that action, that is, *Baker v. Columbus Municipal Separate School District*, by an order entered on January 23rd, 1971.[1] The case was appealed to the United States Court of Appeals for the Fifth Circuit and was affirmed in [4 EPD P 7889] 462 F.2d 1112. (5th Cir. 1972).

The teachers, this plaintiff and the other plaintiffs in Baker, who were affected by the suit, were awarded back pay for the 1970-71 school year.

It may be, as I have already said, that plaintiff was first employed in 1969-70. It may be that her employment was in 1968-69.

Am I incorrect in that?

Mr. Sharp: That is incorrect, Your Honor. She was first employed in 1969-70.

The Court: That is what my notes show.

Mr. Sharp: She was terminated at the close of that year.

The Court: At any rate, because of their failure to employ her and the other teachers for the subsequent year, because of the disqualification under the National Teacher's Examination, as a result of the decree of the Court and the affirmance by the Court of Appeals, this plaintiff and the other plaintiffs were awarded back pay during the year in which they were not employed as a result of the cutoff score of the NTE program.

***2** As a result of that order the other plaintiffs in the case were able to agree with the School District with reference to their damages and their claims were settled without further litigation.

However, in the interim this plaintiff had moved to Kentucky with her husband, who was in the Service, and a controversy arose between the School District and the plaintiff as to the amount of damages to which she was entitled, growing out of, I think, possibly because of the fact that she had moved to Kentucky with her husband. It

was necessary, therefore, to have that matter settled by the Court upon proper pleadings and evidence.

The Court held that plaintiff had made a reasonable effort to obtain employment during the period involved, that she was unable to do so, and that she was entitled to be restored to the financial condition which she would have acquired if she had not been discharged, and full restitution was made by order of this Court.

Also, the Court ordered that the plaintiff be readmitted to the school as a teacher. And this was done in the 1971-72 school year. She moved back from where she was then residing in Kentucky and accepted employment here with the School District for that year, pursuant to the orders of the Court.

She was assigned to the Joe Cook Junior High School, at which Mr. A. W. Eaves was the Principal. It appears that Mrs. Baker, who was also a plaintiff in this suit to which I have just referred, was assigned to the school. And Mr. Eaves attempted, before he had an opportunity to personally meet and visit with the plaintiff in this case, to have her traded off to another school since, the evidence shows, he did not feel that he should have two of the plaintiffs on his faculty. However, this was not accomplished. Then she was assigned to his school.

And, after having been assigned there, she was given a room adjacent to his offices, in which she taught English and History, I believe. All students in the room were students which have been referred to in the record as "Fourth Track" students–that is, they were the slowest learners in the school. And I think the evidence bears out the fact that they were also the most difficult to control and manage, and it was difficult for plaintiff to keep order in the classroom.

She was assigned, in my opinion, to a very difficult task, with reference to this particular room and this assignment. She was the only teacher out of the thirty-five in the school who was assigned exclusively to Fourth Track students. All of the other teachers who taught some Fourth Track students in some subjects did not do so exclusively. Plaintiff was the only one that had an assignment which required her to teach exclusively all periods of the day the Fourth Track students.

Mrs. Harrison's first meeting with Principal Eaves was on September 14th, 1971. At that meeting there were several things discussed. One thing discussed was the failure of Mrs. Harrison to send a runner to notify Principal Eaves that her class had evacuated the school building during a fire drill.

***3** I think the proof shows here that this was not intentional on the part of Mrs. Harrison. She was one of six teachers who did not send a runner to notify the Principal of the fact that their grade had evacuated the building. The other five, like Mrs. Harrison, were first year teachers at that school. And the record is silent as to any disciplinary action being taken by the Principal against the other five who did not send runners.

Also, at that time there was conversation between Mrs. Harrison and the Principal in which the Principal took the position that she was antagonistic, was on the defensive, and he wanted to know if she didn't have a chip on her shoulder.

He acted surprised when he found out, or when she told him that she was a plaintiff in the Baker case, although the record shows that he wanted to trade her off to the other principal because he had learned then that she was a plaintiff in that case.

[Files]

During the period in which Mrs. Harrison taught in the school with Mr. Eaves, Mr. Eaves requested other teachers of the school, who came in contact with her, to make written reports as to anything which they might observe with reference to Mrs. Harrison's conduct or the way in which she conducted herself or her classes. These reports were placed in Mrs. Harrison's file.

There were other files, also, that were kept on other teachers, but the Court is without information as to that which was contained in those files for the reason that they are not available. And, this was through no fault of plaintiff in this case, because demand was made for the production of the files at the appropriate time and the demand was denied. The files were later destroyed. So, they are no longer available for the Court's inspection. The Court must conclude from such a circumstance that the files on the other teachers would not show that the same procedure was followed with them as it was with Mrs. Harrison.

The record is replete with controversies existing between Mrs. Harrison and Mr. Eaves during the time she was employed in his school, during the period of about two months, or two and a half months–September and

October. She was relieved of her responsibilities in November. And there are several instances which occurred which seem a little strange to the Court.

On one occasion Mr. Eaves, the Court finds, addressed the entire school, all classes in the school, over the intercom, and said that he had an announcement to make but could not make the announcement until after Mrs. Harrison had quieted the children in her classroom. The record shows that he could have communicated this fact to Mrs. Harrison's room alone, and if such was a matter of concern to him at the time he could have readily corrected it by talking over the intercom to her alone without making it a matter of knowledge to each and every person within the school building.

Another incident which is shown by the record to have occurred in the incident of Houston Pattman in the school which occurred on September 30th, 1971. The record shows, I think without conflict, that Mr. Pattman was an unruly student, he was hard to control; gave considerable trouble to the school authorities.

***4** The record, as I recall it, shows that on at least twelve or thirteen occasions from the time school opened until the latter part of January, he was sent to the office, or at least he was the subject of disciplinary measures on twelve or thirteen different occasions.

At any rate, the facts with reference to that matter, as the Court finds them to be, are that Houston Pattman became unruly in the classroom of Mrs. Harrison and she asked him to stand outside the door. After standing outside the door, he left and the next morning he didn't return to his classroom but returned to the auditorium where he was seen by several of the teachers. This matter was reported to Mr. Eaves. Mr. Eaves took Mr. Pattman, went to Mrs. Harrison's room where he proceeded to reprimand her in the presence of the class and Mr. Pattman for the way in which she handled the matter.

Mr. Eaves requested the other teachers who were involved, and who had reported this matter to him to make written statements about the incident so that he might place them in Mrs. Harrison's file. He also placed a written statement or memorandum in her file.

On October 22nd, or about that date, Mrs. Harrison kept her class about five minutes after the time the class was due to have been dismissed, for the reasons that the students had been noisy and unruly and she was trying to discipline the class. This made it impossible for at least one of the students to catch the bus home. Because of the failure of the student to catch the bus the parents contacted the school authorities with regard to this matter. Mr. Eaves discussed this matter with Mrs. Harrison, and listed it as one of his charges against her to support his conclusion that she was an incompetent and msubordinate teacher.

On October 25th and 26th Mrs. Harrison's child was sick and under the care of a doctor, and she did not attend school those two days. On her return, on October 27th, she was summoned to Mr. Eaves office, and the conference that he had with her at that time was secretly taped.

There is some evidence in the case that at the meeting of the faculty preceding the school year 1971-72–I believe that is the year in question–Mr. Eaves made the announcement to the teachers that teacher conferences would be taped. Mr. Eaves testified to this and so did Mrs. Jones, who was School Counselor, and one of his assistants. The other teachers do not support this fact. Several of them testified that this was only made known to them at a later date, and after the occurrence involved in this action. However, it is without dispute that Mrs. Harrison did not know of the taping of this conversation. She was not furnished with a copy of a transcript of the tape, or furnished with the tape, nor was she ever given the opportunity of listening to the tape prior to the Board's decision of November 9, 1971.

At that conference the evidence is that the afterschool incident was discussed. The need for discipline in Mrs. Harrison's classroom was discussed, and she was asked whether or not she was teaching a subject on "Black Revolution", which she denied.

***5** Later that day, Mrs. Jones, the person to whom I have just referred, was in Mrs. Harrison's classroom. She noticed there were two words on the blackboard which were misspelled. This was brought to the attention of Mr. Eaves, who in turn requested a substitute teacher to prepare a note evidencing the existence of the two misspelled words.

The following day, on October 28th, there was another conference with Mrs. Harrison called by Mr. Eaves. The subjects discussed were classroom discipline, the Houston Pattman affair, and other incidents which had occurred in Mrs. Harrison's classroom. At this time, Mrs. Harrison requested permission to bring a representative with her. This request was denied. Mrs. Harrison was then dismissed from Mr. Eaves office, and the conference was not held.

Mrs. Eaves reported this matter to the Superintendent, Mr.

Goolsby, and he was told to document his complaint against Mrs. Harrison and file it with him for his consideration.

Also, on October the 28th, it appears that Mrs. Harrison did not report for cafeteria duty. It appears that one or more of the school teachers were required to be on duty at the cafeteria during the lunch hour. Mrs. Harrison did not report for that duty. She contended that she had forgotten about it because of the incidents which had been taking place the previous days.

On October 29th, the next day, Mr. Eaves secretly monitored Mrs. Harrison's second period class. Upon the basis of this monitoring Mr. Eaves made a note for the file. On November the 1st, Mr. Eaves prepared a written note summoning Mrs. Harrison to his office for a third time in four days for a principal-teacher conference.

Mrs. Harrison contacted Dr. Stringer, a member of the Biracial Committee, and asked him to attend the meeting with her. Dr. Stringer could not come at that time but could come at 3:15. This was not a time convenient to Mr. Eaves. The conference was not held. After this, or about this time, Mr. Eaves took this matter to the Superintendent and recommended Mrs. Harrison's dismissal.

Also on November 1, Mr. Eaves sent a written letter or notice to Mrs. Harrison with reference to this meeting. He prepared a separate piece of paper for her signature to indicate she had received the letter. Mrs. Harrison refused to sign the paper. This is one of the matters submitted to Mr. Goolsby by Mr. Eaves for his consideration. It was under these circumstances that Mr. Eaves' written complaints and documentation of Mrs. Harrison's conduct during this period of time was referred to the Board, which convened on November the 9th, to consider the matter.

At that meeting, and without any notice, formal or otherwise, to Mrs. Harrison, and without considering anything with reference to the matter other than the report made by Mr. Eaves, his recommendations that Mrs. Harrison should be dismissed and the concurrence therein by Mr. Goolsby, the Board decided to suspend Mrs. Harrison and temporarily relieve her of her duties at the school, with pay, until the matter could be heard before the Board at a hearing which the Board contemplated having after given [sic] Mrs. Harrison notice of the charges against her and an opportunity to be heard. She was notified of this action on November 10th. And, on November 10th her duties at the school ceased.

***6** This was the first and only time that any such action had been taken against a teacher in a school in the Columbus Municipal Separate School District in the many, many years of service there of Mr. Goolsby, who is the Superintendent of Schools. I believe the record shows a period of twenty-one years. But never before had any such action been taken by school authorities against a teacher, summarily, like these were taken when she was relieved of her duties.

Although not fired or discharged at that time, she was removed from the classroom, and her teacher books and other things were taken up. Although she was not discharged or fired at the time, she was suspended until a hearing could be held in the matter.

Now, it appears to the Court, on the record made before the Board at that time on the report by Mr. Eaves and the recommendations of Mr. Eaves and Mr. Goolsby, that due process required that any termination of Mrs. Harrison's employment by the school await a time when Mrs. Harrison would have the opportunity to present her side of this case and a time when she could be notified of the charges and afforded the opportunity to question the witnesses against her.

I understand her pay was not stopped at that time, yet, on the other hand, she was suspended. And that, to a professional person such as Mrs. Harrison, a teacher, bears some public stigma which she should not have been subjected to without a hearing before the Board.

She was given notice by Mr. Goolsby, the Superintendent, on November the 10th. This was a written notice which outlined in detail the different charges which had been made against her, being eleven in number. She was advised that she would be afforded a hearing on Monday, November the 22nd, 1971, at the school building, at which time she could be represented by counsel, call witnesses, cross-examine any witnesses produced against her, and have a full adversary hearing.

This hearing was not held, however, until December 13th, because of the fact that the attorneys were not able to get to the hearing until that time. And, at the hearing on December 13th, Mrs. Harrison was represented by her attorney. The School Board's attorney, Mr. Sims, was there. The School Board proceeded to take evidence with reference to the matter, with Mr. Sims acting in the role of prosecutor as well as adviser to the Board.

No reflection is justified against Mr. Sims for that reason. I am sure, certainly, that he attempted to act only as a questioner in order to bring out the information which

was necessary for the Board to find the facts in the case. And, of course, he had the duty, as the Board's attorney, to advise the Board on legal matters. Still, the hearing did not have the appearance of a full, fair and complete hearing before an impartial board.

An objection was made to the procedure at the time. In view of the long history of racial discrimination practiced in the Columbus Municipal Separate School District by this Board, as documented by all of the cases which are on record in this court, and in view of the fact that the Board had already accepted the recommendations of the Superintendent of Schools and the Principal that Mrs. Harrison be relieved of her duties and dismissed from further service until such time as a hearing could be held, I don't believe under the existing circumstances that she was afforded a hearing before a fair and impartial tribunal.

***7** The hearing was continued until a later date. On February 1st, 1972, Mr. Bearden, a member of the Columbus Bar, appeared and presided at the hearing and passed upon the admissibility of evidence and things of that nature presented to the Board. A transcript of the proceedings was completed on May the 8th, 1972.

On June the 9th, at a meeting of the Board, out of the presence of Mr. Goolsby and Mr. Sims, the Board decided, on the basis of the transcript, to discharge Mrs. Harrison. Mr. Sims prepared the findings from the transcript. The findings were signed by the Chairman without having been previously submitted to the entire Board for its approval.

It is to be presumed by the Court that Mr. Sims was instructed by the Board as to the grounds upon which the Board relied to discharge Mrs. Harrison and that the Chairman of the Board, in approving the Findings of Fact and Conclusions of Law, found them to fairly represent the findings of the Board. I find no lack of due process in connection with this particular matter.

I believe you have to view this entire situation in the light of facts which surrounded the School Board and the school authorities at the time this incident occurred. Here we have a plaintiff who, during her first year of teaching in the Columbus schools, was not reemployed for the second year due to an impermissible deprivation of her constitutional rights, as later established. She, with seven others, filed a suit against the School District to protect these rights, which she and the others felt they were entitled to enjoy. Their position was confirmed and supported by the courts; not only by this Court, but also by the Court of Appeals. It was necessary for this Court to order the reemployment of this plaintiff, and it was also necessary for this Court to pass upon the amount of damages to which she was entitled.

In the meantime, the Board undertook to discharge two or three black school instructors who did not conform to the dress code which had been implemented for the student body. Two of these men were husbands of two of the plaintiffs, a Mr. Baker and a Mr. Yates. After a full hearing before Judge Keady–Judge Keady ordered them reinstated–while he did not allow back pay, since he found no loss to have been suffered, he did allow attorneys' fees. *Conard v. Goolsby*, [5 EPD P 8076] 350 F. Supp. 713 (N.D. Miss. 1972).

I believe you have to look at this matter from an overall standpoint. When the history of the School District and the Board is taken into consideration, the facts in this case shift the burden to the defendants to show that the discharge of this plaintiff was not brought about on account of racial discrimination or in retaliation for the fact that she had prosecuted these actions against them to support and maintain the constitutional rights to which she was entitled.

I do not feel the School Board has met this burden. I think the inference must be that this plaintiff was singled out for the treatment to which she was subjected by Mr. Eaves at the Joe Cook Junior High School because of the fact that she was one of the plaintiffs that brought this suit against the School District and because of her race.

***8** It is my opinion, also, that this plaintiff is protected under the *Singleton* provisions of the order of the Court entered in EC 70-45-S, *United States v. Columbus Municipal Separate School District*, directing the desegregation of the School District and the implementation of the unitary system.

[Hearing]

I want to read, for the sake of the record, a few excerpts from *Thompson v. Madison County Board of Education*, 476 F.2d 676, Fifth Circuit, 1973, starting at page 678.

"We agree with the district court that it was the Board's responsibility, in the first instance, to provide a hearing, on notice, to the plaintiffs. And we emphasize that '[t]he findings and decision of academic administrative bodies

are to be upheld by the courts when reached by correct procedures and supported by substantial evidence."'

Now, of course, there is no doubt but that this is the rule in this circuit. And it has been so stated in the very recent case of *Toups v. Authement*,[2] a June 28, 1974 decision of the Fifth Circuit, in which the Court said this:

"It is undisputed that Toups was furnished a copy of the charges well in advance of the public hearing granted by the school board, at which she appeared represented by counsel. Subsequently, she was officially notified of her dismissal by the Board. The court below carefully considered the record of the hearing before the Board, as we have. We agree that there was substantial evidence to support the school board's action; that it acted impartially and fairly. That ends the matter. 'The findings and decision of academic bodies are to be upheld by the courts when reached by correct procedures and supported by substantial evidence."'

And quoting again from the *Thompson* case, and on the same page:

"Due process mandates that a judicial proceeding give the affected parties an opportunity to be heard on the allegations asserted in the complaint and to present evidence and argument on the contested facts and legal issues framed by the answer to the complaint. Before a district court adjudges, it must determine the facts for itself on the basis of the proffered evidence. It may not simply decline to hear evidence and base its conclusions solely on the transcript of a school board's hearing. In short, a court can only render a judgment after the parties have been afforded a full and fair trial on the claims properly before the court."

Now, here, as we say, we run into the proposition of the manner in which this hearing was held before the Board. The fact that the Board took action before plaintiff was heard; the fact that the Board has a long history of racial discrimination; the fact that plaintiff sued the Board and successfully maintained the right of action and forced the Board to pay her full compensation for all of the time that she had lost. All of these things–the manner in which the hearing was held on December 13th–I think all have to be considered by the court in determining whether or not the plaintiff received a hearing before a fair, impartial, and independent body. I don't think the proof in this case shows that she did.

***9** Now, with reference to the *Singleton* case–and that is what *Thompson* is all about–in quoting from the same page, at 678, the case holds:

"However, 'just cause' in a *Singleton* situation does not refer to a teacher's lack of professional credentials, his poor performance in the classroom, his failure to abide by school regulations, his lack of cooperation, or other similar explanations. These types of reasons for discharge fall directly within the scope of *Singleton*, and accordingly such discharges must be justified on the basis of objective and reasonable standards for dismissal previously set by the school board."

Of course in this case, it is undisputed that these were no objective or reasonable standards for dismissal which had been previously set by the School Board. No written objectives or standards, or oral either, so far as that is concerned [sic]. The charges against this teacher were made solely by the Principal with reference to her conduct as he determined it to be.

And then continuing with this decision.

"If this kind of a discharge can be justified in terms of the established objective standards, it is not for 'just cause'; it is simply a discharge in compliance with *Singleton* criteria."

["Just Cause"]

"Just cause", as we term it in *Singleton*, means this, and I am quoting again from *Thompson*, from page 679.

"'Just Cause' in a *Singleton* situation means types of conduct that are repulsive to the minimum standards of decency–such as honesty and integrity–required by virtually all employers of their employees, and especially required of public servants such as school teachers."

And, quoting again.

"In sum, it is essential to any appraisal of the propriety of a school board's dismissal of a teacher to determine first if desegregation is still in process, for what constitutes 'just cause' will vary greatly depending on whether or not *Singleton* is applicable."

Here we have a school district in the throes of desegregation. The school district cannot come from under the *Singleton* requirements until the unitary system has been completely established. And in this case, the

proof doesn't show an accomplished unitary system, neither does the record show in the desegregation case that there was at this time a complete desegregation of the school district. It was in the throes then of being completed. And, I think there is no question but that this teacher is a *Singleton* teacher, and she is entitled to the protection of the *Singleton* orders.

There was one thing brought out in the testimony to which I have not referred and which defendants attack as a dishonest act on the part of this plaintiff, and that has to do with an incident which occurred on November 2nd or 3rd–one of these being an election day. The proof shows Mrs. Harrison attended the election, acted as an election watcher, or some kind of an election official; that she did not report that fact to the school district, although she called in and said she didn't feel like coming to school that day, according to her testimony. At the end of the month she received a check from which some deductions were made.

***10** It is not clear to the Court whether there was some way in which the plaintiff might have been informed of the nature of the deductions. At any rate, when it was brought out or brought to her attention that she had received more pay than she was entitled to, she offered to reimburse the School Board for the overpayment.

I can't find that that would be such dishonesty on her part as to bring her within the "just cause" provisions of *Singleton*. It may be that she was not quite as frank with the school as she should have been, by not being frank with them and saying, "I want to take the day off and go to the polls and work at the polls", which would have meant that she would have had to pay for a substitute teacher.

It is unfortunate that we have these cases. The Court doesn't like to have them and to decide them and cast this extra expense upon the school district, because I know school districts need what money they have to educate the children. But I think that everyone must accept the orders of the courts, the circumstances under which public schools operate this day and time, and that everyone must try to comply with the orders of the courts and not single out anyone for retaliation or punishment for the assertion of constitutional rights to which he or she is entitled under the Constitution of the United States.

[Conclusion]

So, it is my judgment in this case, and I do so find, that the discharge of Mrs. Harrison by the Columbus Municipal Separate School District was not authorized by law, that it was occasioned by the discriminatory practice of the Principal and the school authorities to which she was subjected, and other members of her race are subjected.

And, in addition to that, that the discharge was punitive and retaliatory in nature. Consequently, she is entitled to a decree directing the School District to reinstate her into the school program as a teacher at the same salary and with the same fringe benefits that she would have received had she not been unlawfully discharged.

I do not know that it would be proper to direct that this be done during this school year because we are well into the school year now. And, it is apparent from what Mr. Sharp has said that the plaintiff is now employed and earning more money than she would earn in the School District as a teacher. But she is entitled to be returned to the school system to teach in the grade in which she is qualified to teach, and she is entitled to reimbursement for such loss as she has sustained because of her wrongful discharge, and to attorney fees for prosecuting the cause of action.

Now, gentlemen, you indicated to the Court that you might agree as to the damages and attorney fees. You might also agree as to the time for the reemployment to commence. If you would like to do this before presenting to the Court a decree or order for entry I will be glad to await the coming in of the decree or order before I consider entering a final judgment in the case.

What is your response to that?

***11** Mr. Sims: Your Honor, I believe–I don't believe I would be in a position to agreeing to anything without talking to my client.

The Court: Well, I understand that. I mean, I know you will have to go talk with them about it, of course. If you can't get together, I think it would be easier for me to enter the decree. However, under the circumstances, I will permit plaintiff to tender to the Court a decree in line with my holding with reference to the unlawfulness of the discharge and direct that the parties confer with reference to damages and attorney fees and report back to the Court within twenty days, if such cannot be determined. Then, I will hold an additional hearing to determine the amount.

Mr. Sharp: Am I correct, Your Honor, that it is the

holding of the Court that Mrs. Harrison is entitled to back pay, barring any mitigation, or out of earnings she has to offset the back pay, and that we are entitled to attorneys' fees, in an amount that could be settled by the parties, if they can settle it, as to the amount?

The Court: You are entitled to attorney fees. If the amount can be agreed upon between the parties, well and good. If not, I will set the fee upon presentation of proper proof.

She is to be made whole. She is not to gain anything out of the situation.

Mr. Sharp: Yes, sir.

The Court: She has to account for everything that she has made during the period of time that she has not been employed by the school.

Mr. Sims: He will have to tell me how much she has made, because I don't know.

(Counsel conferring off the record.)

The Court: Well, it is easy to determine what she would have made had she been employed by the School District.

Mr. Sims: We can determine that.

The Court: It is easy to determine that. It also ought to be easy for you to discover from her what she made.

Mr. Sharp: Yes, sir.

The Court: The difference would be the amount of the judgment.

Mr. Sharp: Your Honor, I think we could submit to Mr. Sims by the end of the week, at least by telephone, a statement for all the years that relate to the damages and attorney fees.

The Court: All right. I will withhold the entry. You submit me a decree and order as soon as you can come to an agreement with the defendants in the case, if you can. If you can't, then you can submit me an order making the holdings as to liability and providing that the parties may submit affidavits with reference to these matters, with reference to earnings on both sides, and with reference to the amount of the attorney fee. And upon those affidavits, then I will make a decision as to the amount.

Mr. Sharp: Yes, Your Honor.

The Court: Gentlemen, do you want me to make any more findings of fact or conclusions of law with reference to the matter?

Mr. Sims: No, sir.

All Citations

Not Reported in F.Supp., 1974 WL 333, 9 Empl. Prac. Dec. P 10,165

Footnotes

1 [3 EPD P 8308] 329 F. Supp. 706 (N.D. Miss. 1971).

2 [8 EPD P 9485] 496 F. 2d 700 (5th Cir. 1974).

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