

SHOULD SUBSTITUTE TEACHERS RECEIVE PROPORTIONAL VACATION SALARY?

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PHILIPPINE PUBLIC SCHOOL TEACHERS ASSOCIATION
3 Bulusan Street, Sta. Mesa Heights, Q.C.

August 13, 1951

The Honorable, the Auditor-General
(Through the Director of Public Schools and the
Honorable, the Commissioner of Civil Service)
M a n i l a

S i r :

For and on behalf of Mrs. Milagros Z. Parayno, a member of the Philippine Public School Teachers Association, I have the honor to request a reconsideration of her case. Mrs. Parayno served as a substitute teacher from July 1 to November 17, 1948, vice a teacher who went on leave due to maternity. The case of Mrs. Parayno is treated in the following set of correspondence (copies enclosed): 1st Indorsement of the Acting Administrative Officer of the Bureau of Public Schools dated Dec. 12, 1950; 4th Indorsement of the Acting Commissioner of Civil Service dated July 27, 1950; and a concurring 5th Indorsement by the Honorable, the Auditor-General, dated August 5, 1950.

This set of correspondence contains a decision to the effect that Mrs. Parayno cannot be paid proportional vacation salary for the following reasons and provisions or alleged interpretations of law:

1. Section 414 of the Bureau of Public Schools Service Manual which prohibits paying proportional vacation pay to teachers who resign or are dismissed prior to the end of the school year;

2. Section 1171 of the Bureau of Public Schools Service Manual (Civil Service Rule XVI) which provides, among other things, that, as a rule, the resignation of a teacher will not be accepted prior to the termination of the school year;

3. The opinion of the Acting Administrative Officer of the Bureau of Public Schools to the effect that "the separation from the service... of an emergency teacher...partakes of the nature of a forced separation..." The concurrence of the Acting Commissioner of the Civil Service referred to in the first paragraph of this letter;

4. "...a situation would be created wherein two persons (the regular incumbent and the substitute) would be paid salary from the same item in the plantilla for the same period of time." (Opinion of the Acting Commissioner of the Civil Service expressed in the 4th Indorsement referred to in the first paragraph of this letter.)

The effect of the foregoing decision has the following implications:

1. A substitute teacher who serves during the first semester of the school year and is replaced by the regular incumbent at the beginning of the second semester does not receive proportional vacation pay.

2. A substitute teacher who serves only a few days at the end of the school year receives a proportional vacation pay.

3. Substitute teachers who serve as such off and on during the school year but do not serve until the end of the school year do not receive proportional vacation salary.

This request for reconsideration is based on the following reasons:

1. Section 414 of the Bureau of Public Schools Service Manual comprehends only those teachers who *resign* or *are dismissed* from the service. It is respectfully submitted that the case of Mrs. Parayno is not one of resignation or dismissal. It will be noted that there are only two cases of teachers who may not receive proportional vacation pay: those who resign and those who are dismissed from the service. It will also be noted that nowhere in this regulation or in any other regulation now subsisting is there mention of the term "forced resignation." Dismissal from service is obviously a "forced resignation," but in this regulation there is no mention of other forms of forced resignation such as the case of Mrs. Parayno and such other cases as are mentioned at the top of this page of this letter.

The provision of Section 414 of the Service Manual does not mention "forced resignation" as a cause for the denial of proportional vacation pay. If the original intention of those who framed this regulation had been to include any and all cases of forced separation, that regulation should have been so worded. When a statute makes specific provisions in regard to several enumerated cases or objects, but omits to make any provision for a case or object which is analogous to those enumerated, or which stand upon the same reason, and it appears that such a case or object is omitted by inadvertence or because it was overlooked or unforeseen, it is *cassus omissus*, and the courts cannot supply the omission. "(1) *Cassus omissus* pro emissio habendus est. A case omitted is to be held as intentionally omitted." Statutory Construction, by Black, p. 80-83.

It is here maintained that the language of Section 414 of the Service Manual is plain and free from ambiguity and expresses a single, definite, and sensible meaning and the meaning should be presumed to be the meaning which those who adopted the Service Manual desired to convey. In the interpretation of law, the courts of justice seek the original intent of the framers of the law. The real purpose and intent of the legislature will prevail over literal import of words, if the true intention, though obvious, is not expressed by the language employed. "*Verba intentioni non e centra debent inservire. Words ought to be more subservient to the intent, and not the intent to the words.*" Black, p. 150; 25 R. C. L. p. 967.

The intention to give proportional vacation pay (Section 412 of the Service Manual) is to reward those who have rendered faithful service. It is for this reason that the teacher who resigns from the service before the end of the school year is denied proportional vacation pay, for by his resignation he has indicated a lack of devotion to the service. The teacher who is dismissed from the service likewise does not deserve to be rewarded because his proven lack of devotion to duty deprives him of that reward. But the same cannot be said of the substitute teacher who is replaced by a regular incumbent. If she had her own way, she would like to stay longer in the service. But she cannot do so because the regular incumbent is returning to duty and she must give way. The negation of the privilege to receive a reward for faithful service is justified only in the case of those who have not proven their loyalty and faithfulness to the service.

It is here submitted that those who penned the decision on the instant case have read meaning into the regulation which was not intended by the regulation. It is obvious that those who promulgate regulations have all the intention in the world not to negate justice to whom justice is due. The negation of the privilege to receive proportional vacation pay to those who do not deserve that negation is certainly a height of human injustice. It is therefore submitted that the teacher who serves only a portion of the school year but cannot continue serving until the end of the school year through no fault of hers is not comprehended within the meaning of the phrases "resign from the service" and "dismissed from the service."

2. Those authorities who penned the decision contained in this set of correspondence have interpreted the regulation literally. As cited above, a literal interpretation of a statute is not sanctioned by the courts of justice, especially so, as in the instant case, when justice is denied to a teacher because of the literal interpretation of a regulation. There is no equity and justice to interpret regulations so that a teacher who has served for a long period before the end of the school year should be deprived of proportional vacation pay, while a teacher who has served a relatively shorter period "toward the end of the school year" should be entitled to proportional vacation pay. It would seem the height of injustice to reward shorter service merely on the literal ininterpretation of that portion of the regulation—"prior to the close of the school year."

3. The reference to Section 1171 of the Service Manual (Civil Service Rule XVI, 7 (b) to the effect that no resignation shall be accepted prior to the termination of the school year has no pertinence in the instant case, for it has been amply proven that this teacher did not resign from the service. She was separated as a result of circumstances beyond her control. But even if she is considered as having resigned from the service, the case of Mrs. Parayno could be considered as one involving resignation upon the termination of contract. It was understood by both herself and the appointing authority that her services would be terminated at the end of the first semester *when the regular incumbent returns to duty*. "A contract is a meeting of minds between

two persons whereby one binds himself, with respect to the other, to give something or to render some service.”—Article 1305, Civil Code of the Philippines. A contract exists if the following requisites concur: “(1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established.”—Article 1318, New Civil Code. In the instant case, the appointing authority and the teacher had a meeting of minds: the teacher served the period stipulated in the appointment paper. The object is certain: that of having the teacher substitute for the teacher on maternity leave. The cause of the obligation is that of teaching a class or subjects on the school program until the regular incumbent returns to the service, and the payment to the teacher of the stipulated salary.

4. It is not true, as claimed by the Honorable, the Commissioner of Civil Service in his 4th Indorsement that in the instant case two persons would be getting the same pay from one item for the same period. Department Order No. 21, s. 1945 requires in Section 4 thereof that “provision should be made for additional funds to pay the salaries of substitutes for provincial and chartered city school employees who are granted maternity leave with full or half pay under this Act (Commonwealth Act 647). Salaries of substitutes for National (Insular and Municipal school employees who are granted maternity leave with full or half pay will be paid from salary savings of this Department.” The intention of this regulation is precisely to make funds available so that in case of maternity leave, the regular incumbent will receive maternity leave pay and the substitute teacher will receive proportional vacation pay. In the case of the emergency teacher who is forced to leave the service at the end of the first semester, no additional funds are necessary to cover his salary and that of the better qualified teacher. Since the emergency teacher serves one semester and the better qualified teacher also serves one semester, the vacation salary provided for the item they occupy may be shared equally by them.

In view of the foregoing considerations, it is respectfully requested that the decision of the authorities in the instant case be so revised that proportional vacation pay shall be paid to Mrs. Parayno and all other teachers under the following categories:

1. Those who substitute for teachers who are on leave of absence, whether or not they serve until the close of the school year.

2. Emergency teachers and other teachers who are replaced by qualified teachers sometime before the close of the school year.

Very respectfully,

MARCELINO BAUTISTA
Executive Secretary-Treasurer

Encl.: As stated