

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Roland Riviere,)	OEA Matter No. 1601-0007-19
Employee)	
)	Date of Issuance: February 14, 2019
v.)	
)	Joseph E. Lim, Esq.
D.C. Public Schools,)	Senior Administrative Judge
Agency)	
_____)	
Roland Riviere, Employee <i>pro se</i>		
Carl Turpin, Esq., Agency Representative		

INITIAL DECISION

PROCEDURAL BACKGROUND

On October 16, 2018, Employee, a Project Manager, ED 301-15/5, filed a petition for appeal from D.C. Public Schools’s (Agency or DCPS) final decision terminating him from his position effective October 16, 2018. Employee was in an Educational Service (ES) position. I informed Employee that because he was an ES employee, it appeared that this Office has no jurisdiction over his appeal. Since OEA 629.2 provides that the employee shall have the burden of proof as to issues of jurisdiction, I afforded Employee the opportunity to present his case on jurisdiction at the prehearing conference. The record is closed.

JURISDICTION

The Office lacks jurisdiction over this appeal.

ISSUE

Whether this appeal should be dismissed for lack of jurisdiction.

FINDINGS OF FACT

The following facts are undisputed:

1. Employee was a Project Manager, ED 301-15/5, in DCPS.
2. Employee was first hired on October 12, 2011, as a Family Services Specialist effective October 31, 2011. The offer letter informed him that pursuant to the Public Education Personnel Reform Act of 2008, his appointment is without tenure to the DC Public Schools.

3. As a result of a reorganization, Agency promoted Employee to another Educational Service (ED) position as a Project Manager, ED-14, with an effective date of October 4, 2015.¹ As a Project Manager, Employee was not a union member and he worked in the DCPS central office.

4. Employee's subsequent Form 50 showed that Agency promoted Employee to an Educational Service (ED) position as a Project Manager, ED-15, with an effective date of October 2, 2016. The form also reveals that Employee was informed that this was a permanent promotion.

5. On October 1, 2018, Agency terminated Employee's appointment effective October 16, 2018.

ANALYSIS AND CONCLUSIONS

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.²

Employee's employment status is pivotal to the outcome of this case. The record shows that he was an ED employee when Agency removed him from his ED-15 position. The D.C. Code Subchapter VIII-A. Educational Service, §1-608.01a. Creation of the Educational Service. (b) (1) (2)(A)(i), states:

Excluding those employees in a recognized collective bargaining unit, those employees appointed before January 1, 1980, those employees who are based at a local school or who provide direct services to individual students, and those employees required to be excluded pursuant to a court order (collectively, "Excluded Employees"), a person appointed to a position within the Educational Service **shall serve without job tenure**. (Emphasis supplied.)

(ii) Except for Excluded Employees, the provisions of this paragraph shall apply to all nonschool-based personnel, as defined in § 1-603.01(13C), including:

(I) All Educational Service employees within the District of Columbia Public Schools ("DCPS");

(II) Repealed.

(III) All Educational Service employees within the Office of the State Superintendent of Education.

Here, it is a matter of record that Employee was an Educational Service, at-will employee when Agency terminated him from his position. It is well settled that at-will

1 Agency Exhibit 5, Employee's Form 50.

2 OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

employees may be terminated for no reason or “for any reason at all.”³ Further, at-will employees may be removed with or without cause.⁴

This Office has no jurisdiction over the termination or demotion of an at-will employee. Thus, I cannot address any arguments pertaining to Employee’s termination. Therefore, I conclude that this Office has no jurisdiction over this appeal, and that it must be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge

³ *Cottman v. D.C. Public Schools*, OEA Matter No. JT-0021-92, *Opinion and Order on Petition for Review* (July 10, 1995). See *Wemhoff v. Investors Management Corp. of America*, 528 A.2d 1205 (D.C. 1987); *Adams v. George W. Cochran & Co.*, 597 A.2d 28, 30 (D.C. 1991).

⁴ See *e.g. Leonard et al. v. Office of the Chief Financial Officer*, OEA Matter Nos. 1601-0241-96 *et al.* (February 5, 1997).