

IN THE MATTER OF: AN ARBITRATION UNDER THE PUBLIC SCHOOLS ACT,
R.S.M., c.P250

AND IN THE MATTER OF THE TERMINATION OF THE AGREEMENT BETWEEN
THE ROLLING RIVER SCHOOL DIVISION NO. 39 AND BRENDA NICHOLSON

BETWEEN:

THE ROLLING RIVER TEACHERS' ASSOCIATION OF THE MANITOBA TEACHERS'
SOCIETY

(hereinafter referred to as the "Association") and

BRENDA NICHOLSON

(hereinafter referred to as "Nicholson")

- and -

THE ROLLING RIVER SCHOOL DIVISION NO. 39,
(hereinafter referred to as the "Division").

DISSENT

I have had the opportunity to review the Award of the majority in this matter and with respect I cannot agree.

The majority Award fairly recites the facts that were placed before us.

The reason given for termination by the Board of Trustees stated that the reason for termination was "your performance both as a Resource Teacher and more recently as a Remedial Teacher has not met the Division's basic expectations of our teachers which the Board believes has a detrimental effect on your students education".

The majority of this Board of Arbitration has incorrectly directed its mind to determining that the Division has not proven a lack of competency on the part of Nicholson.

However there is no question that the Division did prove an inadequate performance on the part of Nicholson. Whether that inadequate performance was due to incompetency or some other reason was not for this Board to decide.

Had the Board turned its mind to the correct question, that is the reason given, they would have correctly concluded, in accordance with the uncontradicted evidence, that the performance of Nicholson had not met the Division's basic expectations of their teachers and it had to date, a detrimental effect on the students' education.

The evidence of all witnesses was consistent that Nicholson, although given every opportunity and support to do so, did not perform adequately as a Resource Teacher in that she consistently failed to properly complete individual education plans and funding applications (her primary function).

Thereafter, the evidence was unanimous that her performance as a classroom teacher was inadequate.

We heard uncontradicted evidence from three (3) members of the Teachers' Association and the Superintendent that in every School year ending in 2003, 2004, 2005 and 2006 the performance was unsatisfactory. No witness was called to contradict those conclusions other than Nicholson herself who indeed only partially disagreed with those conclusions, preferring to blame others for her shortcomings.

With respect to the final School year, even if the issue was competence, which it was not, the majority of the Arbitration Panel has "read in" evidence that did not exist. They have created evidence that leads them to the conclusion that the evaluation would have been more properly done by a primary evaluator who did not know Ms. Nicholson. That evidence would have to come from an expert and it did not. There was no reason to make a supposition that evidence existed that an evaluation should not be done by a Principal who was familiar with the past performance of the Teacher.

Similarly we heard no evidence of any sort that could lead to the conclusion that an evaluator ought not to have previously taught in a similar or identical classroom situation. Once again the majority of the Arbitration Panel has assumed somehow that there is expert evidence before the Arbitrators that an evaluator ought not to have previously been in a similar or identical classroom situation to the person being evaluated. Indeed there was no evidence before us, expert or otherwise, to that effect and yet the fact Ms. Slashinsky was an evaluator seems to be the only reason that the majority of the Panel has concluded that incompetence has not been properly proven.

Also, of course, this ultimate finding as to whether competency had been proven or not been proven by the Panel ignores the conclusion come to by the Superintendent in his classroom evaluations.

Even if the question before the Panel was competence, the decision of the majority is not reasonable. Ms. Nicholson has been in a classroom consistently since 1987. She has a certified teacher since 1999. She has been given the assignments she requested. On the clear unbiased and uncontradicted evidence of three (3) responsible successful senior educators from her Association and the Superintendent, her performance was inadequate in various roles for four (4) consecutive School years leading to her termination.

I might note that the Division agreed to an open ended period of support and mentorship and evaluation by a person put forward by the Association, Leisha Wilson, who presumably was fit for that role in the eyes of the Association and Ms. Nicholson. Presumably Ms. Wilson over the course of the relevant period of time acquired knowledge and opinions with respect to Ms. Nicholson's performance. She was not called to testify and indeed Nicholson produced no documentation provided by Leisha Wilson of any sort even though challenged to do so by the Division. When I say the clear unbiased and consistent evidence of four (4) persons was uncontradicted, I should indeed be buttressing that statement with the adverse inference to be taken from the failure to call Leisha Wilson to testify on behalf of Nicholson. Nobody testified on behalf of Nicholson to challenge in any way the evidence of the Division.

The reason for the employment of teachers, the organizations of Divisions, the massive tax payer contribution, the commitment of Administration Trustees, teachers, local government authorities and residents is entirely in order to have a positive effect on students in their education. The detrimental effect on students' education was the concern given by the Board of Trustees as their reason for terminating Ms. Nicholson's employment. That reason has not been considered in any way shape or form by the majority of the Arbitrators in this matter.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17 day of August, 2007.



G.D. Parkinson, Board Member