

2015 IL App (1st) 133685-U  
No. 1-13-3685  
September 15, 2015

SECOND DIVISION

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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LINDA RULE,	)	Appeal from the Circuit Court
	)	Of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09 CH 21808
	)	
ILLINOIS STATE BOARD OF EDUCATION,	)	The Honorable
JESSE RUIZ, Board Chair, in his official	)	Jean Prendergast Rooney,
Capacity, DR. CHRISTOPHER KOCH,	)	Judge Presiding.
State Superintendent, in his official capacity,	)	
and ANNE L. WEILAND, Hearing Officer,	)	
BOARD OF EDUCATION OF THE CITY	)	
OF CHICAGO, a State agency, RON	)	
HUBERMAN, Chief Executive Officer, in his	)	
Official capacity,	)	
	)	
Defendants-Appellees.	)	

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

**ORDER**

¶ 1       *Held:* When a reviewing court remands a case to an administrative agency with directions, it is reversible error for the agency not to comply with the court's mandate.

¶ 2 The plaintiff, Linda Rule (Rule), worked as a second grade teacher at Kohn Elementary School (Kohn), a school with about 800 low-income students in the Roseland community on the South Side of Chicago. After charges of child abuse were filed, Rule was recommended for dismissal and a hearing was held by the Chicago Board of Education (Board). The Board adopted the recommendations of the hearing officer, and Rule was dismissed from her position as a second grade teacher.

¶ 3 Rule appealed the decision and the circuit court reversed finding that Rule was denied her due process rights when a student that accused Rule of abusing her did not appear at the hearing, leaving Rule unable to confront and cross-examine her accuser. The Board appealed the circuit court's decision and the Illinois Appellate Court affirmed in part and remanded in part. *Rule v. Board of Education of the City of Chicago*, 2012 IL App (1st) 103380-U (*Rule I*).

¶ 4 On remand, the Board issued a Supplemental Opinion and Order affirming its decision to dismiss Rule. On administrative review of the Board's decision, the circuit court affirmed the Board's supplemental order. Rule filed a timely notice of appeal in this court arguing that the Board failed to comply with *Rule I*'s mandate and that the Board failed to show that Rule violated the Board's policy on corporal punishment.

¶ 5 We find that the Board did not comply with *Rule I*'s mandate. Therefore, the Board's supplemental order and the circuit court's order are reversed and this case is remanded for proceedings consistent with *Rule I*'s mandate.

¶ 6

## BACKGROUND

¶ 7

A complete statement of the facts is found in *Rule I*. Because we are only concerned with the instructions the appellate court gave the Board in its remand order, we will limit the facts in this order to those facts that are relevant to our review of the issues in this second appeal to the appellate court.

¶ 8

In order to determine whether Rule's conduct was irremediable, *Rule I* instructed the Board to use a *Gilliland* analysis:

"While we agree that corporal punishment against students may be considered sufficient cause to discharge a teacher without prior warning, this court does not need to affirm the Board's decision based on only one incident where the Board based its decision on two incidents of corporal punishment and one incident of pressuring a student to retract her accusation. We note that a tenured teacher may be removed from employment only "for cause." [Citation.] There are two kinds of misconduct that may constitute cause for termination of a tenured teacher: (1) irremediable conduct, which is a type of conduct which causes damage to students, the faculty or the school, and could not have been corrected if warnings had been given; and (2) remediable conduct, which could ordinarily be remedied if called to the teacher's attention. *Gilliand v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977) [sic]. Before terminating a teacher for remediable conduct, the Board must provide the teacher with written notice of those "causes which, if not removed, may result in charges."

In *Gilliand*, 67 Ill. 2d at 153 [sic], our supreme court set forth a two-part analysis as to whether a teacher's conduct is irremediable: (1) whether the conduct caused significant damage to students, faculty and the school and (2) whether the teacher would not have corrected her conduct, even if she had been issued a written warning and a period of remediation. *Id.*" *Rule*, 2012 IL App (1st) 103380-U, ¶66.

¶ 9               Next, *Rule I* provided the Board with the following instructions in their remand order:

"[W]hile this court may affirm or reverse an agency's decision on any basis appearing in the record [citation], it is not precluded from remanding it back to the Board for additional consideration, [Citation.] While Rule's conduct in striking Lloyd may have provided a sufficient basis to warrant discharge, the hearing officer based her recommendations not only on that incident, but also on her findings that Rule had struck Briana and pressured Briana to retract her accusation. \*\*\* Thus, a remand would be appropriate to determine whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone. This is particularly true in light of the fact that there is little dispute that Lloyd suffered from ADHD and that his behavior was volatile and difficult to control, and given further fact that his testimony regarding his own conduct when he was allegedly struck was subject to some impeachment [Citation.]." *Rule*, 2012 IL App (1st) 103380-U, ¶69.

¶ 10 On August 22, 2012, following the remand, the Board issued a supplemental order, found that the hearing officer's findings of facts "were supported by sufficient evidence," and affirmed its decision of May 27, 2009 to dismiss Rule. In its order, the Board justified its dismissal by enumerating various facts it stated that the appellate court affirmed, including the fact that Lloyd's testimony was more credible than that of Ms. Rule, and that Ms. Rule struck Lloyd. However, the Board (1) did not conduct a *Gilliland* analysis, and (2) did not solely consider Lloyd's charge of corporal punishment and the affect his ADHD had on his behavior, and the fact that Lloyd's testimony regarding his conduct when he was allegedly struck was subject to some impeachment. On October 9, 2013, the circuit court affirmed the Board's supplemental order. Rule filed a timely notice of appeal on November 8, 2013.

¶ 11 ANALYSIS

¶ 12 Rule presents two issues for review: (1) whether the Board followed the mandate of *Rule I* on remand, and (2) whether the Board established that Rule violated its corporal punishment policy.

¶ 13 Two standards of review are presented by these issues. The first issue, whether the Board has exercised its discretion within the bounds of *Rule I*'s remand order, is a question of law which is reviewed *de novo*. *Clemons v. Mechanical Devices Company*, 202 Ill. 2d 344, 351-52 (2002). If the Board followed *Rule I*'s mandate, this court must then determine whether the Board's finding that Rule violated the Board's corporal punishment policy is against the manifest weight of the evidence. *People v. Coleman*, 183 Ill. 2d 366, 384-85 (1998).

¶ 14 Rule argues that the Board failed to properly execute the instructions of the appellate court on remand. She specifically argues that the Board: (1) did not apply the *Gilliland* analysis (*Gilliland*, 67 Ill. 2d at 153); (2) did not consider Lloyd's disabling ADHD; (3) did not consider the credibility issues regarding Lloyd's testimony; and (4) did not sufficiently consider whether it would have supported the discharge sanction if it were based solely on Lloyd's charges of corporal punishment.

¶ 15 After a remand, the circuit court must exercise its discretion within the bounds of the remand and whether it has done so is a question of law. *Clemons*, 202 Ill. 2d at 351-52. The directions of a reviewing court on remand must be followed exactly. *Stuart v. Continental Illinois National Bank & Trust Co. of Chicago*, 75 Ill. 2d 22, 28, (1979) ("Precise and unambiguous directions in a mandate must be obeyed"); *Quincy School District No. 172 v. Illinois Education Labor Relations Board.*, 366 Ill. App. 3d 1205, 1209-10 (2006). The trial court has no authority to act beyond the dictates of the mandate. *Stuart*, 75 Ill. 2d at 28; *Quincy*, 366 Ill. App. 3d at 1209-10. Therefore, the controlling question in this case is whether the Board complied with *Rule I*'s mandate. *Quincy*, 366 Ill. App. 3d at 1209.

¶ 16 First, *Rule I* directed that the Board conduct a *Gilliland* analysis to determine whether Rule's conduct was irremediable:

"While we agree that corporal punishment against students may be considered sufficient cause to discharge a teacher without prior warning, this court does not need to affirm the Board's decision based on only one incident where the Board based its decision on two incidents of corporal punishment and one incident of pressuring a student to retract her accusation. We note that a

tenured teacher may be removed from employment only "for cause." [Citation.] There are two kinds of misconduct that may constitute cause for termination of a tenured teacher: (1) irremediable conduct, which is a type of conduct which causes damage to students, the faculty or the school, and could not have been corrected if warnings had been given; and (2) remediable conduct, which could ordinarily be remedied if called to the teacher's attention. *Gilliand v. Board of Education of Pleasant View Consolidated School District No. 622*, 67 Ill. 2d 143, 153 (1977) [sic]. Before terminating a teacher for remediable conduct, the Board must provide the teacher with written notice of those "causes which, if not removed, may result in charges." In *Gilliand*, 67 Ill. 2d at 153 [sic], our supreme court set forth a two-part analysis as to whether a teacher's conduct is irremediable: (1) whether the conduct caused significant damage to students, faculty and the school and (2) whether the teacher would not have corrected her conduct, even if she had been issued a written warning and a period of remediation. *Id.*" *Rule*, 2012 IL App (1st) 103380-U, ¶ 66.

¶ 17

Second, in remanding this case, *Rule I* directed the Board as follows:

"Thus, a remand would be appropriate to determine whether the Board would support its discharge sanction if it were based solely on the charge of corporal punishment of Lloyd alone. This is particularly true in light of the fact that there is little dispute that Lloyd suffered from ADHD and that his behavior was volatile and difficult to control, and given further fact that his

testimony regarding his own conduct when he was allegedly struck was subject to some impeachment [Citation.]." *Rule*, 2012 IL App (1st) 103380-U, ¶69.

¶ 18 In its supplemental order, the Board never mentioned the *Gilliland* analysis. It merely stated that because the appellate court affirmed numerous findings of the Board that related to the sole charge of corporal punishment against Lloyd, it was enough to affirm its decision. Because the remand instructions direct the Board to consider whether it would have discharged Rule based "solely on the charge of corporal punishment of Lloyd alone," the Board must conduct a *Gilliland* analysis to determine whether Rule's conduct was irremediable and provided cause for her dismissal. *Gilliland*, 67 Ill. 2d at 153.

¶ 19 In addition, *Rule I* directed the Board to consider Lloyd's charge of corporal punishment and the affect his ADHD had on his behavior, and the fact that Lloyd's testimony regarding his conduct when he was allegedly struck was subject to some impeachment.

¶ 20 In its supplemental order, the Board states that the appellate court agreed that Lloyd's testimony was more credible than that of Ms. Rule, and that Ms. Rule struck Lloyd. The Board concluded that because the hearing officer's findings "were supported by sufficient evidence, the Board \*\*\* reaffirms its decision of May 27, 2009."

¶ 21 The Board never stated whether Rule's dismissal could be based solely on Lloyd's charge of corporal punishment. Moreover, nowhere in the supplemental order did the Board consider the affect Lloyd's behavior, as a result of his ADHD, had on its decision to dismiss Rule. *Miller v. Board of Education of School District No. 132, Cook County*, 51 Ill. App. 2d 20, 36-37 (1964) (where the court held that a teacher's use of corporal punishment could be



remediable where the students affected were unruly and difficult to control). Finally, nowhere in the supplemental order did the Board consider the fact that Lloyd's testimony regarding his conduct when he was allegedly struck was subject to some impeachment, but rather, focused on the evidence in the record which supported Lloyd's testimony regarding corporal punishment.

¶ 22 We find that the Board did not follow the mandate of *Rule I* because it failed to conduct a *Gilliland* analysis, and failed to address whether Rule's dismissal was warranted based solely on Lloyd's charge of corporal punishment when Lloyd had ADHD and when Lloyd's testimony regarding his conduct after he was allegedly struck was subject to some impeachment. *Stuart*, 75 Ill. 2d at 28. All of the aforementioned directions were specifically set out in the remand instructions in *Rule I*.

¶ 23 We note that “[w]hen an appellate court reverses and remands the cause with a specific mandate, the only proper issue on a second appeal is whether the trial court's order is in accord with the mandate.” *Quincy*, 366 Ill. App. 3d at 1209-10. We hold that the Board's decision was not in accord with Rule I's mandate. Therefore, we reverse the Board's supplemental order and the circuit court's order and remand this case with directions that the Board comply with *Rule I*'s mandate. Finally, because this case will be remanded for proceedings consistent with *Rule I*'s mandate, we do not need to address the remaining arguments on appeal.

¶ 24 CONCLUSION

¶ 25 When a reviewing court remands a case to an administrative agency with directions, it is reversible error for the agency not to follow the directions of the mandate. Accordingly,

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the Board's supplemental order and the circuit court's order must be reversed, and this case is remanded with directions to comply with *Rule I's* mandate.

¶ 26                   Reversed and remanded.