

**ARBITRARILY TERMINATED TEACHER AIDS HAVE
NO EXPECTATION OF CONTINUED EMPLOYMENT,
NO ENTITLEMENT TO BACK PAY BEYOND CONTRACT TERM**

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The Tennessee Supreme Court recently held that non-certified, non-tenured teacher aids are not entitled to back pay and benefits beyond the expiration of their written employment contracts where they do not have a reasonable expectation of continued employment beyond the term of such contracts. Cantrell v. Knox County Board of Education, 53 S.W.3d 659 (Tenn. Aug. 23, 2001). The plaintiffs were five teacher aids who had refused to attend a training session on inserting catheters into children with neurogenic bladders. Following individual conferences with the teacher aids, the school board defendants scheduled another training session for the teacher aids. The Board also advised the teacher aids that failure to attend would result in the Superintendent recommending their termination for insubordination.

The teacher aids again refused to attend the training session. The Board advised each by letter that the Superintendent would recommend termination at an upcoming hearing before the Board. Following the hearing, the Board voted to terminate the teacher aids' contracts based on insubordination.

The teacher aids filed a petition for certiorari in the circuit court. That court held that the Board's decision to terminate the contracts was "arbitrary" in light of its policy providing that teacher aids did not have to perform the catheterization procedure if they were uncomfortable doing so. The trial court awarded the teacher aids back pay and benefits for the remainder of their contract period, along with pre-judgment interest.

The Court of Appeals affirmed the trial court's decision as to "arbitrariness," but held that the teacher aids may have had a reasonable expectation of continued employment beyond

the term of their contracts. Thus, the court concluded that the teacher aids may have been entitled to back pay beyond the contractual period, and remanded the case. Both parties filed applications for permission to appeal to the supreme court.

The supreme court granted the Board's application to determine the correct measure of damages for the arbitrarily terminated contracts. The court recognized that the proper measure of damages for breach of an employment contract is "the salary that would have been earned had the contract not been breached, less any amount the employee earned or should have earned in the exercise of reasonable diligence in some other employment during the unexpired contract term." Cantrell, 53 S.W.3d at 662. The court observed that upholding an award of damages beyond the term of the contracts would place the teacher aids in a better position than they would have been in had the contracts been performed.

The court reasoned that neither Tennessee statutory law nor the Board's charter afforded the non-certified, non-tenured teacher aids a reasonable expectation or assurance of continued employment beyond the term of their contracts. Rather, the Teacher Tenure Act indicates that teacher aids do not perform the same functions as certified teachers and are thus not afforded tenure. Similarly, the charter listed several categories of school employees who may attain tenure, but conspicuously omitted teacher aids.

Accordingly, the court reversed the Court of Appeals' finding that the teacher aids may have been entitled to back pay and benefits beyond the term of their contracts. The court affirmed the trial court's holding that the teacher aids were only entitled to the salary that they would have earned but for the breach, less any amount that they earned or should have earned through other employment before the contracts expired.