

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

FRED A. WHITEHEAD)
an individual,)
)
Plaintiff,)
)
v.)
)
THE UNIVERSITY OF KANSAS MEDICAL)
CENTER,)
)
and)
)
KANSAS STATE BOARD OF REGENTS,)
University of Kansas School of Medicine,)
)
and)
)
DEBORAH E. POWELL, individually)
and in her official capacity,)
)
and)
)
DONALD F. HAGEN, individually)
and in his official capacity,)
)
)
Defendants.)

Civil Action No.: 01-CV-2484

COMPLAINT

COMES NOW plaintiff, Fred Whitehead, and for his cause of action against the defendants, states and alleges as follows:

PARTIES, VENUE & JURISDICTION

1. Fred Whitehead ("Plaintiff") is an individual who was formerly employed as an

associate professor of Family Medicine at the University of Kansas.

2. The University of Kansas Medical Center ("Defendant University"), is a state-supported educational institution, and the Kansas Board of Regents ("Defendant Board"), an entity created to control state educational institutions; both are sued pursuant to K.S.A. ' 76-713.

3. Defendant Deborah E. Powell ("Defendant Powell") is an individual, and was Executive Dean of the University of Kansas School of Medicine in Kansas City, Kansas, and is being sued individually and in her official capacity until such time as the University admits that at all relevant times, defendant Powell was acting within the scope of her authority and employment.

4. Defendant Donald F. Hagen ("Defendant Hagen") is an individual, is Executive Vice Chancellor of the University of Kansas Medical Center in Kansas City, Kansas, and is being sued individually and in his official capacity until such time as the University admits that at all relevant times, defendant Hagen was acting within the scope of his authority and employment.

5. Jurisdiction is proper in this court pursuant to the Fourteenth Amendment to the United States Constitution.

6. Venue is proper in this Court pursuant because the unlawful actions practices and actions alleged in the complaint were committed within Wyandotte County, Kansas, which lies within the District of Kansas. In addition, the defendants have minimum contacts with the District of Kansas and the State of Kansas.

GENERAL ALLEGATIONS

7. Mr. Whitehead realleges and incorporates by reference the allegations contained in

paragraphs 1 through 6.

8. Plaintiff was employed by the University starting as a Teaching Assistant on May 1, 1978, and was promoted to Teaching Associate, a faculty rank, in 1979. In 1996 he was promoted to Assistant Professor of Family Medicine, and on July 1, 1999, was promoted to Associate Professor of Family Medicine.

9. On September 1, 1999 plaintiff signed a contract for employment by the University, which was on an annual basis.

10. On October 6, 1999 plaintiff met with defendant Powell at her request, and was given a letter dated September 30, 1999, stating that his contract would not be renewed after June 30, 2000. This letter incorrectly stated plaintiff's rank as "Assistant Professor," instead of "Associate Professor." At this meeting Dr. Powell stated to the Plaintiff: (1) "Your Department is in a deficit budget and I have to make cuts," and (2) "Your research does not fit the mission of the School of Medicine." Dr. Powell offered to supply a copy of the Handbook for Faculty to plaintiff, which he accepted.

11. On October 27, 1999, plaintiff wrote Defendant Hagen, seeking to initiate an appeal of his termination, and protesting both statements made by Dr. Powell on October 6, 1999.

12. On November 12, 1999, defendant Hagen wrote plaintiff, advising him to "follow administrative channels" on his appeal.

13. On November 12, 1999, defendant Hemenway wrote plaintiff, similarly advising him to "allow the process to continue."

14. On December 7, 1999, plaintiff wrote Drs. Belinda Vail and Jerry Mann, Interim Co-Chairs of the Department of Family Medicine, seeking to initiate the process of appeal, and again disputing the statements made by Dr. Powell on October 6, 1999.

15. On December 15, 1999, defendant Powell wrote plaintiff, stating that given the terms of his annual contract, no appeal would be possible.

16. On January 10, 2000, plaintiff wrote defendant Powell, asking to be given the reasons for his termination in writing.

17. On January 21, 2000, defendant Powell wrote plaintiff again stating that no appeal was possible, given the terms of his contract. No reasons were given for the termination.

18. On January 28, 2000, plaintiff met with defendant Hagen at Hagen's request, and was told by him that the administration would work with plaintiff to find employment either at the Medical Center, on the main campus in Lawrence, or at other Board of Regents institutions. Rick Robards, Director of Human Resources at the Medical Center, was delegated by Dr. Hagen to work with plaintiff.

19. On February 4, 2000, plaintiff gave to Robards a proposal that he be transferred to either the History of Medicine Department, where plaintiff had a joint appointment as Associate Professor, or to the main campus in Lawrence. Plaintiff proposed that he would work in the field of Science Education, which the Chancellor had stated would become a major project of the University.

20. Not receiving a reply to this proposal, plaintiff wrote Dr. Hagen on February 21, 2000, asking for a reply.

21. On February 22, 2000, defendant Hagen wrote plaintiff that there could be no guarantee of employment at the University, and that plaintiff should "aggressively pursue options" elsewhere.

22. On March 1, 2000, Robards wrote plaintiff there was "not any interest" in his proposal, and enclosed listings of open faculty positions at other Regents universities.

23. On March 3, 2000, plaintiff wrote defendant Hemenway, protesting that the appeal process had broken down, and repeating his proposal that he work in the field of Science Education, which was the Chancellor's own announced priority. No reply to this letter was ever received by plaintiff.

24. On May 16, 2000, plaintiff met with Robards at Robards' request, and was given a letter offering employment in the office of the Executive Dean of the Medical School, defendant Powell. The letter gave plaintiff three days to accept the offer. The position was Manager, School of Medicine Faculty Support Services, without faculty rank.

25. On May 23, 2000, plaintiff met with Associate Dean for Administration Dwayne Sackman at plaintiff's request, as the position was to be under Dean Sackman. At this meeting, plaintiff stated that he would seriously consider the offer being made, but also gave Sackman a list of "Some Professional Issues," which included retention of faculty rank, dedicated time for plaintiff's research, and adequate room for books needed for his research. Sackman declined to grant these requests, and stated that plaintiff would be given "a computer and a desk, but that books are your personal responsibility." Subsequently, plaintiff asked for a response in writing to his "Issues," but was told by Robards that the offer would not be revised.

26. On June 7, 2000 Robards wrote plaintiff stating that unless the offer was accepted by plaintiff by June 9 it would be withdrawn. Plaintiff concluded that unless he retained his faculty rank, as was the usual practice for faculty who worked in the Executive Dean's office, the offer was unfair, prejudicial and in bad faith.

27. On June 30, 2000, plaintiff's employment as an Associate Professor was terminated.

28. On December 5, 2000, plaintiff wrote members of the Kansas Board of Regents, pointing out that there had been serious problems with due process in his termination. No reply to this letter was ever received by plaintiff from any member of the Board of Regents.

29. Plaintiff discovered in February, 2001 that the policy manuals of the Board of Regents, Chapter II. F. 7, for Medical Center clinical track faculty, which was his track, mandated that the length of contracts "shall be . . . [for] Associate Professor and Professor, three to five years." Furthermore, the policy manual mandates that "the University may only terminate the contract prior to the expiration of the appointment, for cause or financial exigency." The policy manual explicitly states that the Chancellor must formally declare a state of financial exigency to the Board. No such declaration had ever been made by the Chancellor.

30. On February 27, 2001, Counsel McFadden wrote plaintiff stating that defendant Powell had given him a copy of plaintiff's letter, and stated "it would be inadvisable for the University to debate with you the circumstances underlying your separation from state service." McFadden further stated in this letter: "I would be happy to prepare an instrument which would release the state of Kansas and the University from any liability related to the non-renewal of

your contract. Following execution of such a Release, a more comprehensive response to your inquiry may be possible."

31. On March 7, 2001, plaintiff wrote McFadden, with a copy to Prewitt at the Board, stating he would be pleased to consider such a release, if simultaneously there was an appropriate monetary settlement. McFadden did not reply to this letter.

COUNT I

VIOLATION OF DUE PROCESS UNDER 42 U.S.C. ' 1983

32. The actions described above deprive plaintiff of his property interest under his employment agreement, and his legitimate expectation of continued employment, in violation of plaintiff's right to equal protection under the Fourteenth Amendment of the United States Constitution, and ' 18 of the Kansas Bill of Rights of the Kansas Constitution.

33. Defendant=s decision to deny Mr. Whitehead employment was arbitrary, and without a rational basis in fact, in violation of his right to procedural and substantive due process, in that defendant failed to follow the explicit policies of the Kansas Board of Regents.

34. In particular, defendant Powell stated that Mr. Whitehead was fired because, "I cannot justify having an English major in a Family Medicine Department".

35. An informal custom and policy of reemployment existed for Mr. Whitehead, who had been employed as a Teaching Associate since 1979, and as assistant professor since 1996.

36. Defendants denied Mr. Whitehead a hearing on his contentions that he had been wrongfully fired, and instead was only granted a hearing on the issue of the alleged violation of his academic freedom.

37. Because of the deprivation of his civil rights, plaintiff has sustained significant economic and compensatory damages, and is entitled to recover lost wages and benefits, including future lost wages and benefits, and compensatory losses.

38. Defendants were acting under the color of state law at the time of the aforementioned actions.

WHEREFORE, plaintiff prays for judgment against defendants, for injunctive relief reinstating him to his rightful position as associate professor, for his costs and attorney=s fees incurred, and for such other and further relief as to the court seems just and equitable.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b) and (c), plaintiff hereby requests a trial by jury on all counts of his Complaint so triable.

SANDERS, SIMPSON, FLETCHER & SMITH,
LC

/s/ _____
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DESIGNATION OF PLACE OF TRIAL

Plaintiff hereby designates Kansas City, Kansas as the place of trial.

Attorneys for Plaintiff