

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

WILLIAM SMITH,	)	From the Shelby County Circuit Court
	)	at Memphis, Tennessee
Plaintiff/Appellant,)	
	)	The Honorable Wyeth Chandler, Judge
vs.)	
	)	Shelby Circuit No. 65290 T.D.
MEMPHIS HOUSING AUTHORITY,	)	Appeal No. 02A01-9601-CV-00024
)	
Defendant/Appellee.	)	AFFIRMED
)	
	)	Edwin C. Lenow
	)	Memphis, Tennessee
	)	Attorney for Appellant
)	
	)	David M. Cook
	)	Karen L. Schlesinger
	)	Memphis, Tennessee
	)	Attorneys for Defendant/Appellee

FILED
December 30, 1996
Cecil Crowson, Jr. Appellate Court Clerk

MEMORANDUM OPINION¹

 HIGHERS, J.

In this action, the Plaintiff, William Smith, filed suit against the Defendant, Memphis Housing Authority, for wrongfully terminating the Plaintiff's employment. The circuit court granted summary judgment in favor of the Defendant and dismissed the Plaintiff's complaint. The Plaintiff has appealed the circuit court's order granting the Defendant's motion for summary judgment. For the reasons stated hereafter, we affirm the judgment of the court below.

FACTS

On September 17, 1993, Brenda Clark ("Clark"), a tenant of the Defendant, filed a complaint with the Defendant alleging that the Plaintiff, a security officer for the Defendant, had stolen a money order from her apartment. The Defendant alleges that Harold Israel, a friend of Clark, purchased a money order in the amount of \$105.00 from Mega Market

¹Rule 10 (Court of Appeals). Memorandum Opinion. -- (b) The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied upon for any reason in a subsequent unrelated case.

and gave it to Clark. The Defendant alleges that on August 19, 1993 Clark left the money order on a coffee table and went to work. On August 19, 1993, the Plaintiff entered Clark's apartment and began an eviction procedure. When Clark returned to her apartment from work, she noticed that the money order was missing. Thereafter, the Defendant alleged that the money order was presented and cashed at Weiss Auto Parts. The Defendant further alleged that the money order was made payable to the Plaintiff and endorsed by the Plaintiff.

On October 12, 1993, the Defendant suspended the Plaintiff's employment after the Plaintiff was accused of stealing a money order from a tenant of the Defendant. On December 10, 1993, a grievance hearing was conducted by the Defendant wherein testimony was given by the Plaintiff and two witnesses for the Plaintiff. The Defendant thereafter terminated the Plaintiff's employment.

LAW

The only issue before this court is whether the court below properly granted the Defendant's motion for summary judgment.

An essential tenet of due process is that a deprivation of life, liberty or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950). The due process clause requires "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542 (1985); Boddie v. Connecticut, 401 U.S. 371, 379 (1971). This rule requires "some kind of a hearing" prior to the discharge of an employee who has a constitutionally protected property interest in his employment. Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Wolff v. McDonnell, 418 U.S. 539, 557-558 (1974); Board of Regents of State Colleges v. Roth, 408 U.S. 564, 569-570 (1972); Perry v. Sindermann, 408 U.S. 593, 599 (1972).

The essential requirements under the due process clause are satisfied by notice and an opportunity to respond. Cleveland, 470 U.S. at 546; Mathews v. Eldridge, 424 U.S. at 348. The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Cleveland, 470 U.S. at 546.

The Plaintiff argues on appeal that the circuit court's order granting the Defendant's motion for summary judgment should be reversed because the Defendant offered no proof in the administrative hearing as to why the Plaintiff's employment should be terminated. However, due process standards do not require a definitive resolution of the propriety of the discharge. Cleveland, 470 U.S. at 545. Due process requires only that the Plaintiff receive notice of the charges against him and an opportunity to respond to those charges.

Plaintiff does not deny that he received a hearing. He testified at the hearing, was represented by counsel, and offered the testimony of two witnesses. We, therefore, agree with the circuit court's order which granted the Defendant's motion for summary judgment.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to the Appellant, for which execution may issue if necessary.

HIGHERS, J.

CONCUR:

LILLARD, J.

McLEMORE, S.J.