

Layoffs Will Cost Clark Atlanta

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A Fulton County jury has ruled that Clark Atlanta University acted in bad faith when it laid off five professors during an "enrollment emergency" in 2009, awarding each a year's salary and accrued interest.

Because of the bad-faith ruling, the university was also ordered to pay \$290,000 of the professors' attorney fees and expenses.

Mitchell Benjamin, the professors' lead attorney, said he was gratified by the verdict.

But he planned to appeal an order by Fulton County Superior Court Judge Shawn LaGrua that barred his side from claiming the provisions of the CAU Faculty Handbook amounted to contractual obligations. That order prevented the four plaintiffs who were tenured professors from seeking everything they would have been paid since their termination.

"Even though we won, we have a very good appeal," said Benjamin, a partner at Billips & Benjamin. "[LaGrua] took an overly narrow view of what a compensation plan is. Four of our five plaintiffs were tenured, and the Faculty Handbook says they're entitled to get continuing compensation."

Four of the professors' salaries ranged from about \$40,000 to almost \$47,000, while one—Lonzy Lewis, who taught physics—earned \$66,495 annually. Benjamin said all will receive one year of salary and 7 percent annual interest since their termination in February 2009.

Clark Atlanta's lead defense attorney, Fisher & Phillips partner Burton Dodd, said he could not discuss the case.

"All I can say is that Clark Atlanta is considering all its options, and an appeal is one of those options," Dodd said.

More faculty affected

Benjamin noted that the verdict may spell further bad news for Clark Atlanta: His clients were but five of 54 faculty members terminated on the same day. Although he doesn't represent any of the others, he said some have resolved their claims with the university, and he knows of two federal suits against the university that have been dismissed.

Clark Atlanta resolutely opposed any settlement discussions and was "hell-bent on going to trial," Benjamin said.

"This was such an incredible roll of the dice for the university, which is not doing so well anyway," he said. "I can't imagine why they took it to the brink. I kept hearing, 'If we settle with you, everybody will come out of the woodwork.' I said, 'Yeah, but what if you lose?'"

According to defense filings, the groundwork for the layoffs was laid in 2008, when a decline in student enrollment led the university administration to project a \$4 million shortfall for the 2008-2009 academic year. After instituting budget-cutting measures, including a hiring freeze and delaying debt payoffs, Clark Atlanta's financial situation worsened in November 2008 when President Carlton Brown was told the university's "cash position had been misrepresented by approximately \$2 Million in unaccounted for liabilities," leaving it in even more precarious financial shape than expected.

In response, Brown declared an "enrollment emergency," defined by the Faculty Handbook as a "sudden or unexplained progressive decline in student enrollment the detrimental effects of which are too great or too rapid to be offset by normal procedures outlined in the Handbook."

The declaration was crucial to the case: By declaring an Enrollment Emergency instead of a "Financial Exigency"—a declaration that the school cannot pay its bills—Clark Atlanta was relieved of the duty to provide tenured and tenure-track faculty members with one year's severance pay when it dismissed them.

In January 2009, Brown circulated an open letter to the "CAU Family" detailing the university's financial woes and warning that layoffs were imminent.

On Feb. 5, 2009, according to the defense portion of the pretrial order, Brown released an official statement asserting that Clark Atlanta was "fiscally sound."

"This means CAU was still capable of paying its bills on time," the defense's part of the pretrial order said. "That circumstance would have changed to financial exigency, or not being able to pay its bills on time, if at all, had the University not gone forward with the layoffs. ... The University was not in financial exigency."

The next day Clark Atlanta laid off 54 faculty members. Among them were the plaintiffs: political science professors Johnny Wilson and Lisa Nealy, a tenure-track instructor; sociology professor Frank Sisya; and physics professors Lewis and Henry Neal.

In 2009, Wilson, Nealy and Lewis challenged their dismissal with the university's Grievance Committee and won, according to the complaint in the case. A university Review Committee found "no data supporting adequate cause for the terminations and that no written grounds for the terminations were provided to those terminated."

Even so, the complaint said, Brown refused to reinstate the professors.

In 2011, all five sued Clark Atlanta for breach of contract, arguing that Brown had manufactured the enrollment emergency. They said student enrollment for the spring 2009 semester exceeded the university's projections, asserting that Brown had actually ordered a cap on enrollment two weeks before the layoffs.

The enrollment emergency "was untrue and was used in bad faith by [Clark Atlanta] to enact massive layoffs without having to honor property rights of Plaintiffs and contractual due process rights afforded Plaintiffs' by the Faculty Handbook," said the complaint.

The suit sought reinstatement to the professors' prior positions, back pay, pension contributions for that period and compensation for health insurance and other benefits that the university should have been paying.

If the court determined that reinstatement were inappropriate, the suit sought "front pay" for each defendant: what they would have been paid had they continued to work until retirement.

The suit also included Nealy's claim for personal dossiers she said went missing after she was barred from campus following her termination.

During a weeklong trial, Benjamin and Charles Bridgers of Delong Caldwell & Bridgers represented the plaintiffs. Dodd led the defense, assisted by Fisher & Phillips associate Mathew Simpson. Clark Atlanta's general counsel, Lance Dunning, attended but did not participate, Benjamin said.

No expert witnesses were called, Benjamin said, although a number of fact witnesses testified.

According to the defense portion of the pretrial order, Clark Atlanta's position was that the layoffs were necessary to "maintain the viability of each and every academic unit, to avoid delaying any student's progress toward graduation, and to preserve the same course layout and parameters that CAU had before the layoffs."

The plaintiffs' emphasized the university's public statements that it was fiscally sound shortly after Brown had circulated his letter advising that the layoffs were unavoidable.

"They got rid of 54 faculty members and replaced them with part-time adjunct professors with no benefits," Benjamin said.

On Friday, Aug. 8, the racially balanced jury took about four hours to find for the plaintiffs, and to rule that Clark Atlanta had acted in bad faith. The panel then retired to consider attorney fees, awarding \$290,662 late that afternoon.

The panel also awarded Nealy \$6,500 on her personal property claim, and another \$6,705 for her attorney fees.

Benjamin said he did not have a chance to speak to jurors afterward.

"I think the jury was probably offended by having these letters to the CAU Family that were factually incorrect, and totally false," he said.

The case is *Wilson v. Clark Atlanta University*, No. 2011CV196090.