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Murphy v. Department of Civil Service, N.J.Super.A.D. 1978.

Superior Court of New Jersey, Appellate Division.

Thomas P. MURPHY, Appellant,

v.

DEPARTMENT OF CIVIL SERVICE, of the State of New Jersey, Respondent.

Argued Jan. 3, 1978.

Decided Jan. 20, 1978.

Police officer, following suspension for 60 days, a fine of \$600 and arbitration proceedings, appealed determination of appointing authority to civil service commission which dismissed the appeal, and police officer appealed. The Superior Court, Appellate Division, held that civil service commission properly dismissed appeal of police officer, filed 140 days after notification of decision of appointing authority, as untimely for failure to file within 20 days after notification, and time limitation was not tolled by arbitration proceedings or by stay of enforcement.

Affirmed.

West Headnotes

**[1] Officers and Public Employees 283**  **72.27**

**283** Officers and Public Employees

**283I** Appointment, Qualification, and Tenure

**283I(H)** Proceedings for Removal, Suspension, or Other Discipline

**283I(H)2** Administrative Review

**283k72.27** k. Time for Review, Hearing or Decision; Continuance. **Most Cited Cases**

(Formerly 283k72(2))

Civil service commission is empowered to refuse to consider matters in which notice of appeal to it was not filed within 20 days after notification. N.J.S.A. 11:22-38.

**[2] Municipal Corporations 268**  **185(12)**

**268** Municipal Corporations

**268V** Officers, Agents, and Employees

**268V(B)** Municipal Departments and Officers Thereof

**268k179** Police

**268k185** Suspension and Removal of Policemen

**268k185(12)** k. Review in General.

**Most Cited Cases**

Civil service commission properly dismissed appeal of police officer, who had been suspended for 60 days and fined \$600, filed 140 days after notification of decision of appointing authority, as untimely for failure to file within 20 days after notification, and time limitation was not tolled by arbitration proceedings or by stay of enforcement. N.J.S.A. 11:22-38.

**\*\*1161 \*492** Dennis F. Wszolek, Trenton, for appellant (William F. Curtin, Trenton, attorney).

Peter J. Calderone, Deputy Atty. Gen., for respondent (William F. Hyland, Atty. Gen., attorney; Erminie L. Conley, Deputy Atty. Gen., of counsel; Arnold Lakin, Deputy Atty. Gen., on the brief).

Michael L. Bitterman, Trenton, for City of Trenton (George T. Dougherty, Trenton, attorney).

Before Judges FRITZ, BOTTER and ARD.

PER CURIAM.

Following a hearing before the appointing authority on charges duly brought, appellant, a police officer, was suspended for 60 days and fined \$600. He moved to perfect the available contractual remedy of arbitration. He also later appealed the decision of the appointing authority to the Civil Service Commission (Commission).

The final notice of disciplinary action was served on appellant on December 30, 1975. Imposition of the penalty imposed was suspended pending arbitration. On May 7, 1976 the arbitrator upheld the decision of the appointing authority, and it was not until after that, on May 18, 1976, that appellant appealed the determination of the appointing authority to the Commission.

The Commission dismissed the appeal, filed 140 days after notification of the decision of the appointing authority, as untimely under N.J.A.C. 4:1-5.3. We affirm.

The section of the Administrative Code on which the Commission relied is an implementation of N.J.S.A. 11:22-38. This statute vests jurisdiction in the Commission to approve disciplinary orders of the appointing authority. It also provides that if review by the Commission is not sought within 20 days after notice has been given to the employee by the appointing authority of its disciplinary order, "such \*493 order may be approved, as of course, without hearing or investigation."

[1][2] Accordingly, the Commission is empowered by the plain meaning of the statute to refuse to consider matters in which the notice of appeal to it was not filed within 20 days after notification. They have chosen to exercise this right by \*\*1162 N.J.A.C. 4:1-5.3 [FN1] and in this case. Nothing in the statute or the code provides for a tolling of this time period by arbitration proceedings. See [State v. Council of State College Locals](#), 153 N.J.Super. 91, 379 A.2d 63 (App.Div.1977).

[FN1](#). N.J.A.C. 4:1-5.3 is as follows:

Time limit for filing request

A petition or request to the Commission for a hearing or other relief, unless otherwise required by law or these rules, must be received by the Commission within 20 days after date of receipt of the notice by the petitioner of the order, ruling or other action concerning which the hearing or other relief is requested.

Appellant also argues that inasmuch as there was a stay of enforcement, the time for appealing should be deemed to run from the date the stay was lifted. But neither the statute nor the Code is drafted in terms of enforcement of the order of the appointing authority. To the contrary, both expressly limit the time in terms of receipt of notification "of the order." Where a statute is precise and the meaning is clear, there is no room for interpretation, construction or discretionary treatment. The will of the Legislature is to be enforced as it has been made to appear. [Imbriacco v. State Civil Service Comm'n](#), 150 N.J.Super. 105, 109, 374 A.2d 1251 (App.Div.1977).

Indeed, there is some reason to believe that the limitation of time to appeal, as specifically stated, is jurisdictional. See [Park Ridge v. Salimone](#), 21 N.J. 28,

[46-48, 120 A.2d 721 \(1956\)](#). In such event, the express time period can be enlarged only by the Legislature. [Midland Glass Co. v. Dept. Env. Prot. N. J.](#), 136 N.J.Super. 194, 198, 345 A.2d 353 (App.Div.1975), petition and cross-petition for certification dismissed, [70 N.J. 152, 358 A.2d 199 \(1976\)](#).

Affirmed.

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155 N.J.Super. 491, 382 A.2d 1161

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