

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

450

CA 08-01452

PRESENT: SCUDDER, P.J., SMITH, CENTRA, FAHEY, AND PINE, JJ.

IN THE MATTER OF JOANNE OUTLEY,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

UPSTATE MEDICAL UNIVERSITY,
RESPONDENT-APPELLANT.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (KATHLEEN M. ARNOLD OF
COUNSEL), FOR RESPONDENT-APPELLANT.

GEORGE S. MEHALLOW, NORTH SYRACUSE, FOR PETITIONER-RESPONDENT.

Appeal from a judgment of the Supreme Court, Onondaga County
(James P. Murphy, J.), entered April 10, 2008 in a proceeding pursuant
to CPLR article 78. The judgment granted the second amended petition.

It is hereby ORDERED that the judgment so appealed from is
unanimously reversed on the law without costs and the second amended
petition is dismissed.

Memorandum: Respondent contends that Supreme Court erred in
granting the CPLR article 78 second amended petition seeking to annul
its determination to terminate petitioner from her employment. We
agree. Following petitioner's excessive absences and disciplinary
notifications, petitioner entered into a settlement agreement pursuant
to which she was placed on probation for a specified period of time
and was allowed no unauthorized absences. The record establishes that
petitioner violated the settlement agreement with an unauthorized
absence, thus providing respondent with a legally sufficient basis for
terminating her employment that was neither arbitrary nor capricious
(see *Matter of Davis v New York State Div. of Military & Nav. Affairs*,
291 AD2d 778). Petitioner failed to establish that she " 'was
dismissed in bad faith or for an improper or impermissible reason' " *(Matter of Taylor v State Univ. of N.Y., 13 AD3d 1149, 1149)*.

Entered: March 20, 2009

JoAnn M. Wahl
Clerk of the Court