

Cases of Defacto Tenure Won Upon Appeal

A. Case 1 – 1971

Individual was given notice of terminal appointment by Dean. Individual, refused to sign terminal contract, and wrote to Vice President for Academic Affairs Lewis Cochran, citing Board's Governing Regulations, and stating "Since I have been continuously employed by the University of Kentucky for a period of seven years and was not notified in June of 1970 that my appointment was to be terminated in June of 1971, it is my understanding that beginning with the 1971-1972 academic year I will hold the rank of Assistant Professor (Special Title Series) with tenure." Vice President Cochran did not accept individual's claim of de facto tenure, and advised individual to contact Senate Advisory Committee for Privilege and Tenure. The SACPT recommended to the President the individual "be given tenure. We reached this conclusion after reviewing the nature of the _____ position she held from 1964 to 1966. Since she was later given a position with academic rank for essentially the same duties we feel that the probationary period should have been set to include the time spent as a _____. President wrote "I have made a decision to accept the recommendation of the Senate Advisory Committee on Privilege and Tenure ... with the understanding that this case does not establish a precedent and is completely unrelated to other cases that are pending that involve the title of "Lecturer."

B. Case 2 – 1972

Vice President Lewis Cochran writes to President "I have learned that there is another faculty member, Assistant Professor _____, who is in substantially the same employment status as _____ [case 1 individual].... Having accepted the recommendation of the Committee on Privilege and Tenure that [case 1 individual] be granted tenure as a consequence of excessive probationary period, I recommend that _____ also be granted tenure at the rank of Assistant Professor...." President gave his "concurrence."

C. Case 3 – 1973

Upon appeal to Senate Advisory Committee on Privilege and Tenure, the CPT made the findings of fact that "According to the Governing Regulations of the University in force in 1966, the term of an Instructor was limited to five years, at the end of which time the individual either was to be promoted to a higher rank or have his employment terminated. However, neither alternative was chosen but instead, in 1966, _____ was appointed as a Lecturer (full-time) in the same Department. In this new position she continued to perform the same duties that she performed as an Instructor... We believe that the fact that her title was changed from Instructor to Lecturer cannot be construed as tantamount to removing _____ from the 'tenure track'... In her seventh year (1967) and in subsequent years, _____ was reappointed as Lecturer (part-time)... The designation, 'part-time' would appear to be, at least in part, erroneous, and perhaps even construed as a subterfuge, since _____ teaching loads and duties remained essentially unchanged.... Furthermore, in this apparent attempt to remove _____ from 'tenure track', Section III of the Governing Regulations, i.e., 'Notification of termination of appointment after more than two years of service shall be given at least twelve months before expiration of the appointment' was not adhered to before the end of the seven year probationary period.' In view of the foregoing, it is the opinion of the undersigned members of the committee [all but the dissenting committee chair] that _____ should be awarded tenure on a de facto basis." Vice President Cochran subsequently notifies the committee chair "_____ was granted tenure as an Assistant Professor and that we consider the case closed. This action constituted in effect an acceptance of the majority report of the Committee on Privilege and Tenure... I do believe that we will be inclined to consider all full-time teaching assignments to be included in the probationary period regardless of the academic title of the individual."

D. Case 4 – 1974 and 1977

Vice President Cochran writes note to file "This is to record the fact that I have studied the employment record of _____ and have made a judgment that, on the basis of his personnel record and the precedent established in earlier cases taken to the Committee on Privilege and Tenure, _____ is in fact in excessive probation and eligible for de facto tenure at the rank of Assistant Professor." Later in 1977 Vice President Cochran wrote to the President "I have known since 1974 that _____ had exceeded our probationary period limits, in fact, she has been on full-time employment on one title or another since 1964.... You may recall that we have had at least four similar cases since you have been here. I believe that two of these went to the Committee on Privilege and Tenure which found that they did indeed have de facto tenure, and we initiated Trustee action to award them tenure at the Assistant Professor rank. I recommend to you that you approve the same action for _____. We have been over our records rather carefully, and I do not know of another similar case. These arose from the fact that the departments used the Lecturer title in earlier years to carry people on longer terms of employment without facing the tenure issue, but following the interpretive statement of the 1940 statement of the AAUP, this option was no longer possible." The President responded "Approved."