

THE REVEREND THOMAS B. HOOVER,
Appellant

vs.

THE PRESBYTERY OF GRAFTON,
Appellee

Opinion

This is an appeal from a decision of the Synod of the Trinity (herein "Trinity") in a remedial case initiated by the Rev. Thomas B. Hoover (herein "Appellant") against the Presbytery of Grafton (herein "Grafton"), the Appellee.

Notice of this appeal, the record, and the briefs of the parties were timely filed, and the Appellant had standing to complain. (Book of Church Discipline, Chapter VI, Sections 3 and 5 (86.03 and 86.05).) The case involves a question of doctrine or of interpretation of the Constitution and the General Assembly Permanent Judicial Commission (herein "Commission") has jurisdiction. (Form of Government, Chapter XIV, Section 9 (44.09).)

Inasmuch as the parties waived oral argument, the case was submitted to the Commission for hearing on the basis of the record on appeal and the briefs of the parties.

The case arises out of a previous case initiated by Appellant against Grafton, which was adjudicated by the Commission on January 26, 1981, *The Rev. Thomas B. Hoover v. the Presbytery of Grafton*, Minutes, 1981, Part I, p. 112, et. seq. In the former case, a decision by Trinity in dismissing a complaint by Appellant against Grafton was affirmed by this Commission. The substance of a previous complaint was that Grafton erred in failing to make available for Appellant supplemental retirement benefits upon his resignation and retirement from the First Presbyterian Church of Kingswood, West Virginia, and in not dismissing him to the presbytery of Grace Union (hereinafter sometimes referred to as "Grace Union") in response to his written request.

In its order dismissing Appellant's complaint in the previous action, Trinity directed the Presbytery of Grafton to "proceed forthwith to grant his (Appellant's) request for dismissal (to the Presbytery of Grace Union), without condition on Grafton Presbytery."

The thrust of the complaint in this action, as amended by the Appellant, is that Grafton failed to carry out in a timely manner the mandate of Trinity in directing the dismissal of Appellant to the Presbytery of Grace Union once that mandate was approved by this Commission and that as a result of Grafton's failure, Appellant suffered consequential damages for which Grafton should be held responsible.

The Appellant did not appear in person or by counsel at the time and place fixed by Trinity for the trial of his complaint. Grafton appeared by its Committee of Counsel. The matter was submitted for trial on the complaint, upon the written record as approved by Appellant, and upon the testimony, written records, and oral argument of Grafton. After due deliberation, Trinity concluded "that the Presbytery of Grafton failed to comply with the Judicial Commission order to dismiss Dr. Hoover unconditionally and...that Dr. Hoover has suffered no damages as a result thereof...." Therefore, "it's ordered that the complaint seeking damages be and the same is hereby dismissed," and "the Presbytery of Grafton be directed to comply forthwith with the order

of this Commission of June 30, 1980." (Transcript, pp. 153 and 168.) From that decision this appeal was initiated.

The Appellant cites three specifications of error in his brief on appeal, which will be addressed seriatim:

1. The Synod of the Trinity erred in receiving improper evidence and testimony at the hearing of the complaint.

Specifically, Appellant complains that letters written by him on February 4, 1981, to the Presbytery of Grafton and on October 16, 1981, to the stated clerk of the Presbytery of Grafton and correspondence and a supporting telegram from a member of the Ministerial Relations Committee of the Presbytery of Grace Union addressed to the Presbytery of Grafton and dated respectively November 3, 1981, and November 9, 1981, were improperly admitted into evidence. The record reveals, and we find, that the Appellant either received notice that the documents of which he complains would become a part of the record or they became a part of the record because of his failure to appear at the hearing and make timely objection to their admission. For these reasons, this specification of error is not sustained.

2. The Synod of the Trinity erred in a manifestation of prejudice in the conduct of the case.

As to this specification of error, Appellant urges that Trinity's admission into evidence of the documents identified in his first specification of error "manifested prejudice in the conduct of the case." Evidence properly offered and made a part of the record without objection cannot be said to be "prejudicial." Its sole function is to aid the triers of fact in determining whether allegations made have been proven or disproven. Appellant also cites portions of the transcript from Trinity as evidence of that judicatory's prejudice. The portions of the transcript cited are in actuality the deliberations of the Trinity Commission subsequent to presentation of the evidence in the case. While the Trinity Commission deliberations evidence a certain impatience and frustration with the nature of the proceeding with which the commission was confronted, there is no suggestion from the record during that trial that the Commission conducted the proceedings in a manner prejudicial to the interests of Appellant. The second specification of error is not sustained.

3. The Synod of the Trinity erred in making a mistaken and unjust decision--numbered (2) in its hearing minutes--in the case.

In support of this specification, Appellant urges that Trinity's decision denying compensatory damages was based upon evidence improperly admitted and that, even though admitted, did not support that finding. This Commission does not agree with Appellant's arguments.

Appellant also suggests that Trinity's negative finding on damages was "unjust" on the basis of "Grafton's false statement," citing page 25 of the Trinity record (p. 129 of the record in this appeal). This argument relates to whether or not the Appellant, as a part of his amended complaint, was seeking as a part of his damages the cost of moving from Grafton to the Presbytery of Grace Union, or vice versa.

Grafton interpreted it to mean his moving expenses for the original move from Grafton to Grace Union. Appellant meant he was seeking as a part of his damages the cost of a move back to Grafton from Grace Union, a move allegedly necessitated by Grafton's inaction in dismissing him to Grace Union. Because we do not believe Trinity erred in its finding generally that Grafton's failure to dismiss Appellant to Grace Union did not cause the Appellant to suffer damages for which Grafton was responsible, we cannot support Appellant's view that moving

expenses were a part of those damages. The third specification of error is not sustained.

For the reasons given, it is the judgment of the Permanent Judicial Commission of the General Assembly that the Synod of the Trinity did not err in its decision, and its judgment is affirmed.

The Reverend Robert N. Oerter, Jr., and the Reverend Roberto E. Velez were absent and did not participate in the decision. (Book of Church Discipline, Chapter VIII, Section 13, (88.13).) The Rev. Herman B. Eschen participated in the deliberation of this case but, due to his death, did not vote upon the specifications of error or on the adoption of this opinion.