STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

EARL H. WEBSTER	:	
	:	
V.	:	**PC 97-1671**
	:	
LOUIS A. PERROTTA and	:	
KENNETH RICHARDSON	:	
RUTH V. BOLTON	:	
	:	
V.	:	**PC 97-5488**
	:	
NATALIE CASTELLONE and	:	
LOUIS PERROTTA	:	
STEPHEN RICCITELLI	:	
	:	
V.	:	**PC 97-2070**
	:	
NATALIE CASTELLONE and	:	
LOUIS PERROTTA	:	
VINCENT J. FERRANTE, SR.	:	
	:	
V.	:	**PC 97-3975**
	:	
TOWN OF JOHNSTON and	:	
NATALIE CASTELLONE	:	

DECISION

Silverstein, J. These cases are before the Court for decision on oral proof of claim and on defendants' motion to vacate or modify judgments.

Essentially, these four cases arise out of claims by each plaintiff that they, or in the case of plaintiff Bolton, her now deceased husband, had either been injured on duty or had contracted illness in the line of duty as a police officer in the defendant Town. Each plaintiff, following our Supreme Court's

Opinion in Chester v. a'Russo, 667 A.2d 519 (RI 1995) brought suit against the Town claiming that while they had been paid benefits pursuant to the provisions of certain special legislation enacted by the General Assembly for the Town of Johnston, it was clear that the collective bargaining agreement between the Town and the union representing the plaintiffs implicated the provisions of General Laws of Rhode Island 1956, 1999 Reenactment Title 45, Chapter 19, Section 1 (and in the case of plaintiff Bolton, Title 45, Chapter 21.3, Section 1). They further contended that the Chester opinion controlled and that each of them were entitled to receive the difference between what they had been paid pursuant to the special legislation hereinbefore referred to, and what the provisions of the General Laws hereinbefore referenced provided.

Ultimately, defendants defaulted for failure to respond to certain discovery requests. Judgments entitled "Final Judgments" were entered by Justice Thompson of this court on June 3, 1999 in the cases brought by plaintiffs Bolton, Ferrante and Webster, and by Justice Savage of this court on July 8, 1999 in the case brought by plaintiff Riccitelli. While tailored to the specific plaintiff as to dates involved and the percentage of salary and benefits used as the measure of damages to be awarded, the final judgments were essentially in the same language save only that the Riccitelli judgment spells out in detail the benefits referred to in the other judgments simply by the use of the word "benefits".

Thereafter, defendants filed, and there was denied by Justice Savage, motions in each case seeking to vacate the final judgments. The final paragraphs in each of the final judgments read as follows:

> "This matter shall be scheduled for proof of claim to determine only the amount of money the Town owes the plaintiff."

Defendants here ask this court to vacate or modify the judgments herein referred to, and/or in the alternative, urge the court to start with the proposition that it is to determine damages only without reference to the language used in the so-called final judgments quoted above. Specifically, this court is asked to interpret 45-19-1 so as in the context of these cases to determine the proper meaning of the following:

> ". . . the salary or wage and benefits to which the police officer . . .
> would be entitled had he or she not been incapacitated . . ."

Further this court is asked to determine whether, and if so from when, interest in connection with these judgments should run.

Motion to Vacate or Modify Judgments

The first issue to be taken up by this court is "should this court vacate or modify prior orders entered by other judges of this court and denominated as Final Judgments, and an order of one of those judges declining to vacate any of said Final Judgments.

Essentially, defendants here argue that because of the change in the political administration of the Town, they ought to be permitted to assert new legal grounds, meritorious defenses and public policy considerations which neither were submitted to nor considered by the other justices of this court who, heretofore, have entered the Final Judgments above referred to.

Under the circumstances it seems to this court that defendants, in fact, are the same defendants (the change of political administration is, in fact and in law, of no consequence), and to be successful in connection with this point of their pleadings, they must, of necessity, satisfy the provisions of Rule 60(b) of the Rules of Civil Procedure. This they have failed to do - there is no showing by defendants consistent with the provisions of Rule 60(b)(1)-(6). Defendants simply have failed to carry the burden

imposed upon them by said Rule and by the cases interpreting it. Furthermore, the court agrees with plaintiffs that what it here is asked to do is essentially sit as an appellate court with respect to actions taken by my colleagues. First, a judge of this court is not empowered to sit as an appellate court with respect to determinations by other judges of this court, and second, without some demonstrated change in circumstance, not here found, this court is precluded by the doctrine of the law of the case from "second guessing" other judges of this court with respect to legal determinations made by them.

Proof of Claim

"What are . . . the salary or wage and benefits to which the police officer . . . would be entitled had he or she not been incapacitated?"

The final judgment in Riccitelli spells out in detail the nature of benefits in addition to salary and/or wages contemplated by 45-19-1. They are "longevity, clothing allowances, maintenance allowances and holiday pay." Plaintiffs urge this court to calculate the sums due treating the particular plaintiff as if he were still employed and actively functioning as an officer and applying the various factors set forth in the judgments, subtracting therefrom the amounts heretofore paid pursuant to the special legislation (municipal ordinance).[1] The parties have stipulated that if plaintiffs are correct, the amount due (exclusive of interest) is as set forth in paragraphs 1(a)-(d) of a stipulation among the parties, a copy of which is annexed hereto and made a part hereof.

On the other hand, defendants urge the court to calculate the sums due by using as the base the salary or wage paid to the particular officer as of the date he retired (as alleged by them), and to apply thereto collective bargaining agreement mandated COLA increases since the date of retirement, plus

[1] Plaintiff Bolton, the widow of an IOD'd officer, asks to be treated consistent with 45-21.3-1 et seq.

50% of longevity and 50% of holiday pay since July 1, 1987, and due to the fact that plaintiffs were not on active duty, without any clothing allowances or maintenance allowances.

It is clear to this court that the determinative factor with respect to the opposing contentions of the parties is the meaning of 45-19-1. It is interesting to note as is stated in the case of Brissette v. Potter, 560 A.2d 324, 325 (RI 1989) that our Supreme Court has held "the statute is so clear and straightforward that we are unable by construction to import a different meaning into those words." Defendants have cited Palazzo v. DeLuca, City Treasurer, 694 A.2d 747, 748 (RI 1997) for the proposition that 45-19-1 provides for the payment of 100% of salary at the time of retirement. Of course that case, in fact, does not stand for that proposition, and our court, in its order therein, simply indicated that the plaintiffs were contending for that proposition. It is of interest to note the plaintiff's appeal in Palazzo was denied.

The answer to the question posed is to be found in the language of 45-19-1 which provides that during such incapacity the police officer is entitled to the salary or wage and benefits which he would have been entitled had he or she not been incapacitated. Accordingly, this court finds that plaintiffs' reading of the statute is consistent therewith, and with respect to the determination of the amount of principal, the court finds that the provisions of the aforementioned stipulation in paragraphs 1(a)-(d) are controlling.

Pre-Judgment Interest

The final dispute among the parties is as to whether or not pre-judgment interest should be awarded in connection with the judgments herein, and if so, from when.

Plaintiffs contend that 9-21-10 of our General Laws, the general interest statute, provides for interest at the rate of 12% per annum from the date the cause of action accrued in all civil actions in

which a verdict is rendered or a decision made for pecuniary damages. Plaintiffs further content that essentially the imposition and calculation of interest is a ministerial act to be performed by the clerk of the court.

On the other hand, defendants claim that under the circumstances here, there was no cause of action until the decision in Chester v. a'Russo, which was dated November 30, 1995. Defendants further argue that pronouncements by our Supreme Court in cases such as Clark - Fitzpatrick, Inc./Frankie Foundation Co. V. Gill, 652 A.2d 440, 451 (RI 1994), and Fleet Construction Co., Inc. V. North Smithfield, 713 A.2d 1241, 1245, wherein our court stated that pursuant to 9-21-10, pre-judgment interest may be awarded against a municipality on a breach of contract claim where the municipality acts in a proprietary or enterprise capacity are dispositive of this issue. The Court agrees. Here there can be no question that with respect to compensation to police officers under the provisions of 45-19-1, the Town is acting in a governmental, as opposed to enterprise or proprietary, manner.

Accordingly, this court will deny plaintiffs' request for pre-judgment interest. Had the General Assembly intended that interest would be available in cases such as this, it easily could have said so in the applicable statute.

Plaintiffs' counsel is directed, forthwith, to prepare appropriate orders consistent with the provisions hereof. Such orders shall be settled upon notice to counsel for the defendants.