

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC.

SUPERIOR COURT

(FILED: May 10, 2013)

BRAD R. WARD

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v.

C.A. No. WC-2007-0052

TOWN OF NARRAGANSETT
PENSION BOARD

DECISION

K. RODGERS, J. This matter is presently before this Court on Plaintiff Brad Ward’s Complaint for declaratory relief concerning the manner in which the Town of Narragansett Pension Board (Pension Board) calculated the amount due from Plaintiff to purchase certain credit toward retirement pursuant to Narragansett Code ch. 58, art. II § 58-32(4). The parties submitted the matter to this Court on an Agreed Statement of Facts and memoranda addressing their respective positions on Plaintiff’s request for declaratory judgment.

This Court has jurisdiction pursuant to G.L. 1956 § 9-30-1 and renders its decision in accordance with Rule 52 of the Rhode Island Superior Court Rules of Civil Procedure. For the reasons that follow, this Court finds that the Pension Board overcharged Plaintiff in the amount of \$13,757.46 for a credit of 2.12 years toward his total service time as a municipal employee. Accordingly, judgment shall enter for Plaintiff.

I

Facts and Travel

Plaintiff began his employment with the Town of Narragansett (Town) on July 10, 1989 as a part-time employee. He later became a full-time employee in February 1992. He worked continuously for the Town from July 10, 1989 until his retirement in 2007.

From July 1989 until his full-time employment began in February 1992, Plaintiff was not eligible to participate in the Town's pension plan because he was not an "employee," which is defined as a person who works at least twenty hours per week during the Town's usual business hours. Narragansett Code ch. 58, art. II § 58-21. Once he became a full-time employee, Plaintiff was required to participate in the pension plan as a condition of his continued employment. Id. § 58-23(c). He was thereafter required to pay eight percent (8%) of his annual base pay, exclusive of longevity pay, incentive pay, and holiday pay, into the Town's pension plan. Id. § 58-24(b).

By Town Ordinance, municipal employees are permitted to retire "upon the completion of ten years of credited service" if the employee has reached the age of fifty-eight "or at any age after the completion of 20 years of credited service." Id. § 58-25(a). "Credited service" is defined in § 58-21, and applies to "members," or employees eligible to participate in the Town's pension plan. Id. § 58-21. However, § 58-32 provides additional mechanisms for computing creditable service in four specific and distinct situations. The four provisions within § 58-32 allow a member of the Town's pension plan to purchase credit for time to be applied towards "credited service" (1) for a leave of absence; (2) when contributions toward the Town's pension plan had previously been refunded or when credit is sought for service performed elsewhere;

(3) for veterans' active military service up to four years; and (4) for service performed for the Town but not subject to the pension plan. See id. § 58-32(1)-(4).

On July 19, 2006, Plaintiff petitioned the Pension Board pursuant to § 58-32(4) to receive credit for service performed during the time of his part-time employment, which time of service was not otherwise subject to the pension plan. Sec. 58-32(4) states, in pertinent part:

Sec. 58-32. Creditable service.

Any employee joining the plan by making the required member contributions pursuant to section 58-24(b) will receive credit for all service rendered to the town following the date of this membership for which such contributions have been made, subject to the following provisions:

...

(4) *Service performed but not subject to the pension plan.* Short[-]term, regular, full-time appointments or other service excluded from coverage under this chapter will be included as part of a member's credited service if the member-contributes [sic] the member's own member contributions, the town's share and interest on the total for the period of time the service was performed.

Id. § 58-32 (emphasis added). Thus, in order to receive credit for the period of his part-time employment, Plaintiff was required to pay his own member contributions and the Town's share of contributions, with interest on the total amount "for the period of time the service was performed." Id.

By letter dated July 21, 2006, and attached to the Agreed Statement of Facts, the Town's Finance Director, David Krugman, notified Plaintiff that Plaintiff's "buyback"¹ was approved by the Pension Board for a credit of 2.12 years toward his total service as a municipal employee. That letter further revealed that Plaintiff was required to contribute \$21,867.43 within sixty (60)

¹ Plaintiff's petition is referred to as a "buyback" of credit insofar as he was required to make certain contributions pursuant to the terms of § 58-32(4), thus effectively "buying credit" from the Town for time that would otherwise not count toward an employee's "credited service."

days of the date of the letter, which amount included Plaintiff's contributions, the Town's share,² and interest on the total for the period of time the service was performed. Further, according to the July 21, 2006 letter, the \$21,867.43 "was calculated in accordance with [] Section 58-32(4). The methodology is the same as has been used for previous buy backs, was reviewed by Town Solicitor, and approved by the Pension Board with a 7:1 vote."

Plaintiff disputed the interest calculation³ made in connection with his petition and filed a notice of appeal with the Pension Board on July 24, 2006. Plaintiff argued that interest should only be calculated for the 2.12 year period of service that was being credited, and not for the period July 10, 1989 through the date of payment in 2006. By Plaintiff's calculation, he would owe only \$833.47 in interest from July 10, 1989 until he began full-time employment in February 1992. By comparison, the Town's interest calculation from July 10, 1989 through the date of Plaintiff's payment is \$14,590.93.

By letter dated January 4, 2007, and attached to the Agreed Statement of Facts, the Pension Board considered Plaintiff's appeal on December 20, 2006. On a 5:0 vote, with two recusals, the Pension Board denied Plaintiff's appeal. That letter again instructs that Plaintiff must contribute his "contributions, the [T]own's contributions, and interest on the total for the period of time the service was performed totaling \$21,867.43," which is calculated "based on the date of [Plaintiff's] request."⁴

² Neither Plaintiff nor the Town dispute the amounts calculated as Plaintiff's contributions or the Town's share. Plaintiff's contributions and the Town's contributions total \$7,276.50.

³ Although the interest rate used by Defendant has not been identified, Plaintiff has not disputed that interest rate.

⁴ Notably, both the Town's correspondence to Plaintiff and its memorandum filed with this Court utilize the same figure: \$21,867.43. However, the Town's correspondence to Plaintiff purports to calculate this figure based on the date of Plaintiff's request on July 19, 2006, see Jan. 4, 2007 Letter, while the Town's memorandum purports to calculate the figure from July 10, 1989 through the date of Plaintiff's payment several months after his request. See Def.'s Mem. at 2.

On March 2, 2007, Plaintiff tendered a timely payment in the amount of \$21,867.43, as per the Town's calculation, in order to preserve Plaintiff's rights under the Town's pension plan. This payment was made under protest and with the agreement that, should Plaintiff prevail in the instant declaratory judgment action, the Town will reimburse him the difference in the interest calculations, with statutory interest thereon. The difference between the two interest calculations is \$13,757.46.

As the Town Ordinance does not provide a mechanism for appealing a decision of the Pension Board, Plaintiff filed a Complaint in the instant action on June 26, 2007. That Complaint contains two Counts. Count I seeks a declaratory judgment from this Court interpreting the language of § 58-32(4) of the Town's Ordinance. Count II seeks a judgment for compensatory damages based on a claim that Plaintiff achieved full-time employee status as of January 11, 1990 but was denied the ability to participate in the Town's pension plan until February 1992.⁵

II

Standard of Review

It is well-established that the interpretation of a statute is a question of law and the goal of this Court is to give effect to the intent of the Legislature. See Ryan v. City of Providence, 11 A.3d 68, 70-71 (R.I. 2011); Palazzolo v. State ex rel. Tavares, 746 A.2d 707, 711 (R.I. 2000);

While Plaintiff has not raised this issue, simple math principles dictate that the Town cannot adjust the length of time to which interest is applied and reach the same amount due unless another factor in the equation changes, *i.e.*, the Plaintiff's share, the Town's share, or the interest rate used. In other words, it is mathematically impossible to reach the same final figure—\$21,867.43—when the Plaintiff's share, the Town's share and the interest rate remain constant and when the period to which interest is applied changes.

⁵ The allegations contained in Count II of Plaintiff's Complaint were not addressed by the parties in their memoranda. Therefore, the instant Decision addresses only those allegations contained in Count I of that Complaint.

Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001). “That intent is discovered from an examination of the language, nature and object of the statute.” Ryan, 11 A.3d at 71 (quoting Berthiaume v. Sch. Comm. of Woonsocket, 121 R.I. 243, 247, 397 A.2d 889, 892 (1979)). In interpreting a statute, this Court shall not construe a statute to achieve a meaningless or absurd result, and must consider the entire statute as a whole rather than as individual sections operating independently of one another. Id. (citing Berthiaume, 121 R.I. at 247, 397, A.2d at 892; Sorenson v. Colibri Corp., 650 A.2d 125, 128 (R.I. 1994)).

“[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Id. (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996)). This Court only “engage[s] in a more elaborate statutory construction process” guided by the canons of statutory interpretation if the plain language of the statute is ambiguous. Chambers v. Ormiston, 935 A.2d 956, 960 (R.I. 2007) (citation omitted). Such ambiguity exists “when the language of [the] statute is not susceptible to literal interpretation.” New England Dev., LLC v. Berg, 913 A.2d 363, 369 (R.I. 2007) (citing Ret. Bd. of Employees’ Ret. Sys. of R.I. v. DiPrete, 845 A.2d 270, 279 (R.I. 2006)); see also LaPlante v. Honda N. Am., Inc., 697 A.2d 625, 628 (R.I. 1997) (finding a statute ambiguous where “it is subject to two completely different, although initially plausible interpretations”) (quotation omitted).

It is also “a well-settled principle in this jurisdiction that the rules of statutory construction apply equally to the construction of an ordinance.” Mongony v. Bevilacqua, 432 A.2d 661, 663 (R.I. 1981) (citing Town of Warren v. Frost, 111 R.I. 217, 222, 301 A.2d 572, 573 (1973); Nunes v. Town of Bristol, 102 R.I. 729, 737, 232 A.2d 775, 780 (1967)). Therefore, as is the case when interpreting a statute, when an ordinance “is clear and certain, there is nothing

left for interpretation and the ordinance must be interpreted literally.” Id. (citing Cranston Teachers’ Ass’n v. Cranston Sch. Comm., R.I., 424 A.2d 648, 650 (1981); Lecault v. Zoning Bd. of Cumberland, 91 R.I. 277, 280, 162 A.2d 807, 809 (1960)).

III

Analysis

The sole issue before this Court is the time period for which Plaintiff was required to pay interest when seeking to buy back credit from the Town pursuant to § 58-32(4). A member of the pension plan can purchase credit for time of service performed that is not otherwise covered by the pension plan if the member “contributes the member’s own member contributions, the town’s share and interest on the total for the period of time the service was performed.” Narragansett Code ch. 58, art. II § 58-32(4) (emphasis added). Plaintiff argues that this language clearly and unambiguously requires payment of interest for only the time period sought to be bought back by the employee—here, 2.12 years. By contrast, Defendant contends that the language clearly and unambiguously dictates that Plaintiff is required to pay interest “from the date of the service being purchased up until the date that the payment is actually made.” Def.’s Mem. at 2.

Sec. 58-32 governs what does and does not constitute creditable service under the pension plan. Narragansett Code ch. 58, art. II § 58-32. This section begins with the principle that an employee making the required contributions under § 58-24(b) will receive credit for all service rendered to the Town following the date of such membership. Id. § 58-32. Sec. 58-32 goes on to provide four distinct bases for and means by which a contributing member of the Town’s pension plan can purchase credit for additional service time. Viewing the ordinance as a

whole as this Court is required to do, see Ryan, 11 A.3d at 71, this Court considers each of those four distinct provisions in order to ascertain and effectuate the intent of the last.

Sec. 58-32(1) allows for the purchase of credit for time during a leave of absence. That section provides:

Leave of absence. Any member will receive one-half of a month of service credit for each month during which the member is absent during a period of approved leave of absence; provided, however, that the member must make the member's own contributions and the town's contributions in order to receive the service credit. Payment for the service credit must be made no later than one year after the member returns to work. An approved leave of absence for purposes of this section shall not exceed 12 months.

Narragansett Code ch. 58, art. II § 58-32. There is no payment of interest required for a member to purchase credit for time spent on leave of absence, although a member is limited to exercising his or her option within one year of returning from the leave of absence and the leave of absence is capped at twelve months.

Sec. 58-32(2) appears to include two bases by which a member can purchase credit for time served: (1) where a member leaves Town service, withdraws his or her pension contributions from the pension plan, and thereafter is re-employed by the Town, id. § 58-32(2)(a); and (2) where a member has honorably served any state, local, or federal time (excluding military service) and such time is not otherwise used for the purpose of vesting in or receiving benefits from any other pension. Id. § 58-32(2)(b). Interest payments are required to be paid under either scenario. Sec. 58-32(2) provides, in pertinent part:

Credit for service for which contributions have been refunded. If a member who has left the service of the town and upon leaving withdrew his contributions pursuant to section 58-33 later becomes reemployed by the town, the member may, after having completed one full year of reemployment service, apply for the buyback of his prior service time. The member will receive service credit for the

period of previous employment upon payment to the town of the total amount previously refunded plus the appropriate amount of interest as follows:

a. *Buyback of prior town service.*

...

2. The interest rate used for purposes of all calculations shall be the current rate determined by the last actuarial report and shall be compounded annually for computations. Such rate shall be used for the entire term of the buyback. The member's withdrawn contributions received at the time of separation shall be that total figure paid, including the interest earned and received by such employee. . . .

3. The formula for a single payment lump sum buy shall be as follows: the original refunded contribution multiplied by the interest rate multiplied by the number of years since the refunding. The interest shall be compounded and added to the amount due for each year.

4. The formula for a weekly buyback over a period not to exceed ten years would be as follows:

- i. Determine the figure for a lump sum purchase.
- ii. Determine the total interest over the term of the buyback based on a declining balance of the base amount. . . .

b. *Credit for other service performed elsewhere.* Any state, local or federal time (excluding military service) for honorable service that is not being credited to, calculated in, or otherwise in anyway used for the purpose of being vested in or receiving benefits from any other pension shall be eligible to current employees for buyback into the town plan, not to exceed four years. . . . All buybacks shall be in a lump sum payment calculated at 12 percent of the employee's current regular pay rate at the time of application times the number of years to be purchased. If purchased after four years from the date of hire, interest will be compounded annually from the date of hire at the actuarial interest rate at the time of purchase. Current employees will be eligible to buyback interest free for one year from the date of passage of the ordinance . . . ; after one year, interest will be compounded annually, from the date of passage, at the actuarial interest rate at the time of purchase.

Id. § 58-32(2) (emphasis added).

Unlike § 58-32(1), then, the Town has expressly provided for the payment of interest when a current employee and member of the Town’s pension plan buys back service time after previously withdrawing his or her contributions or purchases service time based upon time served in another federal, state, or local position. Moreover, the manner of calculating interest to be applied is specifically delineated to reflect the time period to which the interest applies. To purchase credit for service for which contributions have been refunded, that time period is “the number of years since the refunding.” Id. § 58-32(2)(a)(3). To purchase credit for service performed elsewhere, the time period for which interest is calculated depends on when the employee seeks buyback in relation to his or her date of hire with the Town, and is either calculated as starting from the date of hire—if over four years have passed—or from the date of passage of the ordinance—if the employee is a current employee exercising that right over one year since the passage of the ordinance. Id. § 58-32(2)(b).

Finally, § 58-32(3) provides veterans with the opportunity to purchase credit for active military duty up to four years, interest free. That section provides:

Service credit for veterans. Members are permitted to purchase up to four years of service credit for active military service with the armed forces prior to January 1, 1975. . . . The cost of purchasing such service shall be the percentage rate of salary specified in section 58-24(b) in effect at the time of election for each year of service which the member seeks to purchase. At the election of the member and with the approval of the pension board, the cost of purchasing such service may be spread over a period of not more than ten years.

Id. § 58-32(3).

This Court is not concerned with the means of determining the rate of interest to be applied, but rather the period to which it applies. Unlike § 58-32(2), § 58-32(4) does not specify

a start or end date from which the interest is calculated. See id. § 58-32(4); cf. id. § 58-32(2) (providing that interest calculations are to be made either based on the number of years since the refunding or compounded annually from the date of hire, depending on the circumstances). Rather, the pertinent language requires the payment of interest “for the period of time the service was performed.” Id. § 58-32(4). The plain and ordinary meaning of “service” as referenced in that clause is the “Service performed but not subject to the pension plan” delineated in the title to § 58-32(4). As such, the language found in this provision clearly and unambiguously requires the payment of interest only for the period of service for which the member seeks to purchase credit. Here, that is for the period of 2.12 years.

To read the final words of § 58-32(4) as referring to the time period from “the date of the service being purchased up until the date that the payment is actually made,” as Defendant suggests, see Def.’s Mem. at 2, would improperly require this Court to read additional words into the ordinance. See Sindelar v. Lequia, 750 A.2d 967, 972 (R.I. 2000) (noting that the Court’s “assigned task is simply to interpret the [statute], not to redraft it”); see also Dodd v. United States, 545 U.S. 353, 359-60 (2005) (“It is for [the Legislature], not this Court, to amend the statute if it believes that [the statutory language leads to undesirable consequences].”). Indeed, Defendant would have this Court conclude that the effect of § 58-32(4) is the same as § 58-32(2), notwithstanding the significant differences in the express language of those two provisions. This Court is not persuaded that such an interpretation is rightfully garnered from the plain and ordinary words of § 58-32.

Likewise, for this Court to accept Defendant’s assertion—as found in its correspondence to Plaintiff dated January 4, 2007—that the \$21,867.43 calculation was based upon the “date of [Plaintiff’s] request,” would require this Court to read additional words into the ordinance. That

assertion would also fly in the face of the Town's own argument that § 58-32(4) clearly and unambiguously allows for interest to be calculated "from the date of the service being purchased up until the date that the payment is actually made." Def.'s Mem. at 2. Surely such a "clear and unambiguous" statute would not permit the Town to use two different end dates in calculating interest. Indeed, Defendant's interpretation of § 58-32(4) is simply unsupported in the language used and in its own manner of achieving the mathematically impossible—namely, reaching the same final calculation using two different end dates to which interest applies. Defendant's arguments are simply a stretch of logic, reason, and mathematics.

Finally, this Court is not persuaded by Defendant's argument that its interpretation of § 58-32(4) "is the only way that the Pension Plan is made whole for any potential loss of investment income or interest that would have been earned during the time period that the money should have been part of the Pension Plan." Def.'s Mem. at 2. Had the Town intended to ensure that its pension plan be made whole by the payment of interest running up through the time of a buyback under § 58-32(4), the Town could have included specific time periods from which interest would run as it did in § 58-32(2).

It is clear to this Court, particularly when reading the language of § 58-32(4) alongside the language of its companion provisions, that the drafters of the ordinance intended each of the subparts of § 58-32 to contain varying guidelines for the purchase of service credit. Sec. 58-32(4) could easily have been drafted to require interest payments from the date of the service up until the date of payment; however, no such language was included. Thus, it is not the role of this Court to move beyond the plain language of the ordinance because "[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Ryan, 11

A.3d at 70-71 (quoting Accent Store Design, Inc., 674 A.2d at 1226 (quotation omitted)). As such, this Court finds in favor of Plaintiff's interpretation of § 58-32(4) and declares that the clear and unambiguous language of § 58-32(4) requires that Plaintiff only pay interest on the 2.12 years of service credit that he purchased from the Town.

IV

Conclusion

For the foregoing reasons, this Court grants Plaintiff's request for declaratory judgment as to Count I of his Complaint and finds that the unambiguous language of § 58-32(4) requires Plaintiff to pay interest only for the 2.12 year period for which he sought to receive credit. Judgment shall enter for Plaintiff in the amount of \$13,757.46, plus statutory interest running from the date of Plaintiff's payment to the Town on March 2, 2007.

Counsel for Plaintiff shall prepare a judgment consistent with this Decision.



RHODE ISLAND SUPERIOR COURT
Decision Cover Sheet

TITLE OF CASE: Brad R. Ward v. Town of Narragansett Pension Board

CASE NO: C.A. No. WC 2007-0052

COURT: Washington County Superior Court

DATE DECISION FILED: May 10, 2013

JUSTICE/MAGISTRATE: Kristin E. Rodgers, J.

ATTORNEYS:

For Plaintiff: Robert J. Rahill, Esq.

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