STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

(FILED: November 8, 2013)

PATRICIA DICENSO	:	
	:	
V.	:	
	:	
NEWPORT SCHOOL COMMITTEE	:	
and RHODE ISLAND DEPARTMENT	:	**C.A. No. NC 2012-0435**
OF LABOR and TRAINING	:	

DECISION

GALLO, J. Before this Court is an appeal from the decision of the Rhode Island Department of Labor and Training (DLT), which denied Plaintiff's request for payment from her former employer of her unused, accrued vacation time. Jurisdiction over this timely appeal is pursuant to G.L. 1956 § 42-35-15.

I

Facts and Travel

Plaintiff Patricia DiCenso (Plaintiff or Ms. DiCenso) was employed as Principal of Rogers High School in Newport, Rhode Island from July 1, 2005 until her resignation on November 4, 2011. Following Ms. DiCenso's resignation, a dispute arose over her entitlement to payment of unused vacation time.

Ms. DiCenso's tenure with the Newport School Committee (Defendant or Newport Schools) was governed by seven successive annual contracts; each contract governed one school year (July 1st – June 30th). Each contract contained a provision granting her a specified number of vacation days and granting her the right to payment for unused vacation days upon termination up to a specified maximum number of days. The maximum number of days she was

entitled to be paid for upon termination was progressively reduced over the years.[1] The last two contracts, beginning with the contract commencing July 1, 2010, amended the vacation pay provisions of Ms. DiCenso's contract to read as follows:

> "Upon termination of employment from the Newport Public Schools, the administrator shall be entitled to:
>
> ". . .
>
> "Payment for all unused vacation days at the rate in effect at the date of termination up to a maximum of twenty-five (25) days, *provided that ten (10) years of service have been completed with Newport Public Schools*."[2] (Emphasis added.)

It is undisputed that at the time of her resignation on November 4 2011, Ms. DiCenso, during her seven year tenure with Newport Schools, had not used fifty-five and one-half of her allotted vacation days. (Hrg. Tr. at 131, June 28, 2012.) Ms. DiCenso requested payment for those unused vacation days. Id. Her request was denied based on her failure to have completed ten years of service. Id. at 78. Ms. DiCenso filed a complaint with the DLT's Division of Labor Standards pursuant to G.L. 1956 § 28-14-4(b).

On June 28, 2012, the DLT conducted a hearing. At that hearing, both parties were represented by counsel, gave testimony, and presented documentary evidence. Ms. DiCenso, Superintendent, Dr. Ambrogi, and Newport Schools' Payroll Processor, Ida Levasseur, testified. Ms. DiCenso gave testimony regarding her understanding of Newport Schools' vacation time

[1] The first contract placed a cap on payable unused vacation days at fifty. The second contract set the cap at forty. The third cap was thirty, which remained until the sixth contract. The last two contracts limited payable vacation days upon termination to twenty-five.

[2] There was some debate over which of the last two contracts was controlling at the time of Ms. DiCenso's resignation. Newport Schools had given notice that the 2010-2011 contract would not be automatically renewed, yet Ms. DiCenso never signed the 2011-2012 contract. Because the provisions in controversy are identical in both contracts, the Court need not decide which was operative at the time of resignation and will proceed under the assumption that Ms. DiCenso was working under a contract that contained the controversial terms.

policy. She testified that as she understood the policy, administrators received a set number of vacation days per year, and if they did not use them, they carried over from year to year. Id. at 25. According to both Ms. DiCenso's and Dr. Ambrogi's testimony, they understood that Ms. DiCenso could have used all of her accrued vacation days had she remained with Newport Schools. Id. at 46-7; 82-4. Ida Levasseur testified generally about the school district's vacation time policy, and she described the mathematical method she employed to determine that Ms. DiCenso had accumulated fifty-five and one-half days of vacation time at the time she tendered her resignation. See id. at 110-30. Additionally, all seven contracts were submitted into evidence, along with Ms. DiCenso's last two paystubs and payroll records.

The DLT hearing officer found that the last contract signed by Ms. DiCenso was controlling at the time of her resignation, and that contract should govern the terms of her payable unused vacation days. (Decision at 8.) Therefore, the hearing officer held that Ms. DiCenso was not entitled to any compensation for her unused vacation days because she had not served the requisite ten years. Id. According to the hearing officer, "[i]f [Ms. DiCenso] was not pleased or in agreement with the proposed terms and conditions presented, she could have refused to sign the annual contract." Id.

Ms. DiCenso filed a timely appeal requesting that this Court reverse the DLT's decision. On appeal, she requests that she be awarded payment for all fifty-five and one-half of her unused vacation days.

II

Standard of Review

A Superior Court's review of a Department of Labor and Training's decision is guided by § 42-35-15(g), which provides:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> "(1) In violation of constitutional or statutory provisions;
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> "(2) In excess of the statutory authority of the agency;
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> "(3) Made upon unlawful procedure;
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> "(4) Affected by other error or law;
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> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

"'The Superior Court's review of an administrative decision is limited to a determination of whether or not legally competent evidence exists in the record to support the agency's decision.'" Town of Burrillville v. Rhode Island State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007) (quoting Johnson Ambulatory Surgical Assocs., Ltd. v. Nolan, 755 A.2d 299, 804-05 (R.I. 2000)). Legally competent evidence has often been defined as "'relevant evidence that a reasonable mind might accept as adequate to support a conclusion[; it] means an amount more than a scintilla but less than a preponderance.'" Id. (quoting Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 684 (R.I. 1998)). Though this Court must give deference to the agency's factual determinations, questions of statutory construction are analyzed de novo. Id.; Unitrust Corp. v. State Dept. of Labor and Training, 922 A.2d 93, 98 (R.I. 1007). A state agency's interpretation of a statute is owed deference, unless the statute is clear and

unambiguous. If the statute is unambiguous, this Court "is not required to give any deference to the agency's reading of the statute." Unitrust, 922 A.2d at 99.

III

Analysis

It is undisputed that Ms. DiCenso, at the date of her resignation, had accumulated fifty-five and one-half unused vacation days. Her contract, however, limited accumulation of vacation—at least for purposes of cash payment on termination—to a maximum of twenty-five days. As mentioned above, the sole reason her request for payment was refused was that she had not completed ten years of service with Newport Schools.

Ms. DiCenso urges this Court find that the provision in the contract requiring that she be employed for ten years before being eligible for any vacation time pay-out is violative of § 28-14-4(b). That section provides:

> "Whenever an employee separates or is separated from the payroll of an employer *after completing at least one year of service*, any vacation pay accrued or awarded by collective bargaining, written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee." (Emphasis added.)

Newport Schools argues that the service requirement in Ms. DiCenso's contract is consistent with § 28-14-4(b). Newport Schools contends—and the DLT hearing officer agreed—that the statute contemplates reference to the employment agreement to determine what, if anything, is owed to the employee as accrued vacation pay.

The statute, posits Newport Schools, simply requires that whatever is owed be paid as wages on the "next regular payday" following the employee's separation. In Ms. DiCenso's case, Newport Schools argues, nothing is due her under her contract for unused vacation pay

because she did not complete ten years of service and, thus, nothing was owed her under § 28-14-4(b).

However, Newport Schools and the DLT selectively read § 28-14-4(b) and, in doing so, ignored its intent. While the statute may require reference to the employment contract for the amount of vacation pay owed an employee upon separation, it is clear in its mandate that whatever is owed be paid when the "employee separates or is separated from the payroll . . . ." The only proviso is that the employee have completed one year of service.

When statutory language is clear, the court should apply the "plain and ordinary meaning of the words set forth in the statute." Retirement Bd. of Employees' Retirement System of State v. DiPrete, 845 A.2d 270, 297 (R.I. 2004). The intent of the legislature in enacting § 28-14-4(b) is evident from the language of the statute: that is, to safeguard employees from the loss of earned vacation time. The statutory protection extends to employees who complete "at least one year of service." See § 28-14-4(b). To the extent that Ms. DiCenso's employment contract required her to have ten years of service to be eligible for payment of earned, unused vacation time, it contravenes the letter and spirit of § 28-14-4(b). Newport Schools may not avoid its obligation to compensate Ms. DiCenso for her twenty-five days of accumulated vacation time because she did not work for Newport Schools for ten years. See State v. Rhode Island Alliance of Social Services Employees, Local 580 SEIU, 747 A.2d 465, 469 (R.I. 2000) (Reaffirming the "old and venerable rule that contracts that contravene applicable state statutes are illegal.")

Ms. DiCenso further argues that the provision in the contract limiting the number of unused vacation days for which she is eligible to be paid upon termination of her employment is also violative of the statute. This argument is without merit. Vacation rights are created by contract, and not statute. "Rhode Island law does not require an employer to provide paid

vacation benefits." Japonica Partners v. State of Rhode Island, et al., No. Civ. A. 00-1393, Civ. A. 00-1603, 2004 WL 1067937, *10, n.3 (citing and quoting with approval Hirsh and Farrel Labor and Employment in Rhode Island § 2-(2)(i) (2003) ("'no statute requires employers to provide paid vacation benefits to employees'")). Section 28-14-4(b) requires that the amount of vacation pay to which an employee is contractually entitled must be paid to the employee as wages upon termination. Under the terms of Ms. DiCenso's contract, she was entitled to payment for vacation days up to a maximum of twenty-five days; this limitation is clearly designed to cap the number of days the employee may accumulate over the term of his/her employment and does not run afoul of the statute. The statute simply directs an employer to pay, as wages, "any vacation pay accrued or awarded by . . . written or verbal agreement." The written agreement between the parties entitled Ms. DiCenso to twenty-five days of vacation pay. Because the statute allows the parties to determine via contract how much vacation pay an employee is entitled to upon separation, Ms. DiCenso's contract properly contained a cap on that amount.

Ms. DiCenso further asserts that she is entitled to payment for at least thirty days of unused vacation time representing vacation time earned under prior annual contracts and unused. However, the contract that controlled the terms of Ms. DiCenso's employment at the time of her resignation did expressly limit the amount of days for which Ms. DiCenso could be paid upon termination. The contract specifically stated that upon termination of her employment, Ms. DiCenso would be entitled to "[p]ayment for all unused vacation days at the rate in effect at the date of termination *up to a maximum of twenty-five (25) days*." When Ms. DiCenso signed that contract, she expressly agreed to limit her right to payment for unused vacation days to a maximum of twenty-five. See Drans v. Providence College, 383 A.2d 1033, 119 R.I. 845, 852

(1978) (Professor was not bound by new mandatory retirement policy because there was "nothing on the face of the renewal contract" that notified the professor that by signing the contract he was embracing the new policy); see generally Young v. Warwick Rollermagic Skating Center, Inc., 973 A.2d 553 (R.I. 2009) (holding generally that unambiguous contractual language must be applied at face value); Gorman v. Gorman, 833 A.2d 732, 739 n.11 (R.I. 2005) ("Under established contract law principles, when there is an unambiguous contract and no proof of duress or the like, the terms of the contract are to be applied as written.")

The statute's mandate only applies to vacation payment an employee is contractually entitled to; according to the express terms of Ms. DiCenso's contract, she was entitled to payment for a maximum of twenty-five days. Thus, the statute requires Newport Schools pay Ms. DiCenso for twenty-five days of her accrued and unused vacation time.

IV

Conclusion

After a review of the entire record, this Court finds that the Plaintiff's substantial rights were prejudiced because the hearing officer's decision was in violation of statutory provisions and affected by an error of law. Therefore, the decision of the Department of Labor and Training is reversed. The Defendant is ordered to pay Ms. DiCenso for twenty-five days of vacation time at the rate that was in effect at the time of her resignation, pursuant to their contract. Counsel shall submit an appropriate judgment for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Patricia DiCenso v. Newport School Committee and Rhode Island Department of Labor and Training
CASE NO:	NC 2012-0435
COURT:	Newport County Superior Court
DATE DECISION FILED:	November 8, 2013
JUSTICE/MAGISTRATE:	Gallo, J.
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