

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: May 25, 2016)

GENEXION, INC.

V.

RHODE ISLAND DEPARTMENT OF
LABOR AND TRAINING, DIVISION
OF LABOR STANDARDS, and CAROL
A. LEWIS-CULLINAN

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C.A. No. PC-2011-1625

DECISION

MCGUIRL, J. Before the Court is a Motion for Assessment of Attorney’s Fees, Prejudgment Interest, and Costs filed by Carol A. Lewis-Cullinan (Ms. Lewis-Cullinan), following this Court’s denial of an appeal taken by Genexion, Inc. (Genexion) from a decision of the Rhode Island Department of Labor and Training (the DLT).¹ Jurisdiction is pursuant to G.L. 1956 § 42-35-15 and chapter 14 of title 28 of the Rhode Island General Laws, entitled “Payment of Wages” (Wages Act).

I

Facts & Travel

This case involves a successful claim for unpaid vacation wages filed by Ms. Lewis-Cullinan against Genexion, her former employer, with the DLT. A detailed recitation of the underlying facts may be found in Genexion, Inc. v. R.I. Dep’t of Labor & Training, C.A. No.

¹ Ms. Lewis-Cullinan, who submitted her Motion in open court, also sought entry of judgment on the Decision and Order. Genexion raised an issue as to whether this Court has either jurisdiction or authority to enter final judgment in an appeal under the Administrative Procedures Act that affirms a decision of the DLT. Genexion since withdrew its objection; thus, said issue is now moot.

PC-2011-1625 (R.I. Super. Ct., filed Sept. 3, 2014); accordingly, this Court will provide only a brief narration of the pertinent facts.

Ms. Lewis-Cullinan worked for Genexion as Senior Executive Director of North America Operations from October 1, 2006 until October 9, 2009. An Employment Agreement governing her employment during that period provided, inter alia, that she was entitled to a maximum of five weeks of vacation time per year, and that she could carry over four weeks of vacation time from year to year. The Employment Agreement also provided that she would be paid a lump sum for any accrued vacation time within thirty days of termination.

Upon her leaving the company, Ms. Lewis-Cullinan requested a payout of 225.06 hours of vacation wages accrued. Genexion made a one-time payment of \$5000 on November 16, 2009, and requested that Ms. Lewis-Cullinan accept periodic payments for the balance of the amount owed.

On November 30, 2009, Ms. Lewis-Cullinan filed a complaint with the DLT in which she alleged that Genexion owed her \$14,637.89 in accrued vacation wages. On January 13, 2011, the DLT conducted a hearing on the matter. At the hearing, Genexion's principal, Yves Grumser, M.D., represented the corporation and also testified on its behalf. The only other witness to testify was Ms. Lewis-Cullinan.

After considering the evidence and Ms. Lewis-Cullinan's request for attorney's fees, the DLT hearing officer issued a decision on February 23, 2011. In said decision, the hearing officer awarded \$14,637.89 to Ms. Lewis-Cullinan, ordered Genexion to pay a twenty-five percent penalty (\$3659.47) to the DLT, and denied Ms. Lewis-Cullinan's request for attorney's fees on the grounds that he did not have authority to do so under the Wages Act.

Genexion filed a timely appeal from the hearing officer's decision to this Court. As grounds for its appeal, Genexion alleged that the hearing officer erred by not expressly informing Dr. Grumser of his right to cross-examine Ms. Lewis-Cullinan and by refusing to consider arguments regarding Ms. Lewis-Cullinan's alleged misappropriation of corporate property. Genexion also argued that the decision was substantively deficient because the hearing officer's determinations were not supported by the competent evidence in the record. After carefully reviewing the record evidence and testimony, this Court issued a written decision affirming the decision of the hearing officer.

Having prevailed against Genexion in its appeal, Ms. Lewis-Cullinan now contends that she is entitled to prejudgment interest pursuant to G.L. 1956 § 9-21-10. She also asks for attorney's fees and costs on a variety of statutory grounds: §§ 42-92-3; 9-1-45; or 28-14-19. In the alternative, Ms. Lewis-Cullinan requests the Court to award attorney's fees, costs, and interest under its inherent equitable powers. In support of her Motion, Ms. Lewis-Cullinan has submitted an affidavit from counsel and a sworn accounting report indicating that, in defending the appeal, she has incurred litigation expenses in the amount of \$17,647.20.

Although Genexion initially objected to the Motion, it since has withdrawn its objection and, instead, has elected to defer to the Court's judgment on the matter. The DLT has objected to Ms. Lewis-Cullinan's request for attorney's fees, but has declined to take a position on the issue of interest.

II

Analysis

A

Prejudgment Interest

Ms. Lewis-Cullinan contends that she is entitled to prejudgment interest pursuant to § 9-21-10, entitled “Interest in civil actions.” According to Ms. Lewis-Cullinan’s calculations, she is owed approximately \$9138.86 in prejudgment interest on her award of \$14,637.89. However, before addressing the amount, if any, of prejudgment interest to which Ms. Lewis-Cullinan might be entitled, the Court must address whether she is entitled to prejudgment interest under § 9-21-10 in the first instance.

It is well established 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.” Shine v. Moreau, 119 A.3d 1, 9 (R.I. 2015) (quoting State v. Diamante, 83 A.3d 546, 548 (R.I. 2014)). It also is well established “that, ‘because the right to receive interest on judgments was unknown at common law as it is a right created by statute, the court will strictly construe any statute that awards interest on judgments so as not to extend unduly the changes enacted by the legislature.’” Imperial Cas. & Indem. Co. v. Bellini, 947 A.2d 886, 894 (R.I. 2008) (quoting Clark-Fitzpatrick, Inc./Franki Found. Co. v. Gill, 652 A.2d 440, 451 (R.I. 1994)); see also Gott v. Norberg, 417 A.2d 1352, 1357 (R.I. 1980) (“We construe statutes that award interest on judgments strictly.”).

Section 9-21-10 provides in pertinent part:

“[i]n any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action

accrued, which shall be included in the judgment entered therein.”
Sec. 9-21-10 (emphasis added).

Section 9-21-10 clearly and unambiguously states that prejudgment interest is available in civil actions. Sec. 9-21-10. Our Supreme Court has declared that “[t]he term civil action, as used in statutes, has been held to be a proceeding in a court of justice by one party against another for the enforcement or protection of a private right or the redress of a private wrong.” Thrift v. Thrift, 30 R.I. 357, 75 A. 484, 487 (1910) (internal quotations omitted). As such, “the words ‘civil action’ in [§] 9-21-10 do not encompass appeals to the Superior Court from decisions of [an] administrator.” Gott, 417 A.2d at 1357; see also id. at 1357 n.6 (“administrative appeals are not civil actions within the meaning of the Rules of Civil Procedure”); McAninch v. State of R.I. Dep’t of Labor & Training, 64 A.3d 84, 86-90 (R.I. 2013) (recognizing that administrative appeals are appellate in nature and not civil actions, but applying Superior Court rules of time computation to administrative appeals because Super. R. Civ. P. 6(a) applies to computation of time for “any applicable statute”); Notre Dame Cemetery v. R.I. State Labor Relations Bd., 118 R.I. 336, 338, 373 A.2d 1194, 1196 (1977) (stating “[a] judicial review of the administrative action . . . is essentially an appellate proceeding and not a civil action”). See generally In re Estate of Cantore, 814 A.2d 331, 335 (R.I. 2003) (trial justice properly refused to award prejudgment interest under § 9-21-10 because an action in the Probate Court for an accounting “is an action for reimbursement, which is not the equivalent of a civil action for pecuniary damages”); Carbone v. Planning Bd. of Appeal of S. Kingstown, 702 A.2d 386, 388 (R.I. 1997) (declaring “[a]n appeal from a zoning board or other similar agency while not a civil action is a civil procedure as contemplated in Rule 1 of the Superior Court Rules of Civil Procedure”).

At the time Ms. Lewis-Cullinan filed her complaint with DLT, she could have filed a civil action in this Court pursuant to then-existing § 28-14-18.1(a). See § 28-14-18.1(a) (repealed) (“A person who alleges a violation of this chapter may bring a civil action for appropriate injunctive relief or actual damages or both within one year after the occurrence of the alleged violation of this chapter.”) (emphasis added).² However, Ms. Lewis-Cullinan chose not to file a civil action; instead, she filed a complaint with DLT which resulted in the instant administrative proceeding under § 28-14-19(a). See § 28-14-19(a) (“It shall be the duty of the director to insure compliance with the provisions of this chapter” and, if appropriate, “institute or cause to be instituted actions for the collection of wages . . .”).³

Although Ms. Lewis-Cullinan concedes that this case involves an administrative appeal, she nevertheless contends that she is entitled to prejudgment interest because “[t]he claims have always been civil in nature and sounding in contract.” (Def., Carol A. Lewis-Cullinan’s, Second Supplemental Mem. of Law in Supp. of Mot. for Attorney’s Fees, Interest, and Costs at 5). However, regardless of whether her claims are “civil in nature and sounding in contract,” the fact remains that Ms. Lewis-Cullinan elected to file an administrative complaint with DLT rather than file a civil action under § 28-14-18.1(a); as a result, § 9-21-10 does not apply. See e.g., Martone v. Johnston Sch. Comm., 824 A.2d 426, 429 (R.I. 2003) (“This Court long has adhered

² Although the General Assembly has since repealed § 28-14-18.1, it was the operative provision for the filing of a civil action when Ms. Lewis-Cullinan filed her complaint with DLT.

³ It should be noted that when the Legislature repealed § 28-14-18.1, it simultaneously enacted § 28-14-19.2, entitled “Private right of action to collect wages or benefits and for equitable relief.” See P.L. 2012, ch. 306, § 2 and P.L. 2012, ch. 344, § 2. Said provision, although not controlling, lends support to this Court’s conclusion that the Legislature distinguished civil actions for unpaid wages from administrative actions for unpaid wages. See § 28-14-19.2(e) (“A civil action filed under this section may be instituted instead of, but not in addition to, the director of labor and training enforcement procedures . . . , provided the civil action is filed prior to the date the director of labor and training issues notice of an administrative hearing.”).

to the election of remedies doctrine to ‘mitigate unfairness to both parties by preventing double redress for a single wrong.’”) (quoting State Dep’t of Env’tl. Mgmt. v. State Labor Relations Bd., 799 A.2d 274, 277 (R.I. 2002)). Consequently, the Court concludes that Ms. Lewis-Cullinan is not entitled to prejudgment interest under § 9-21-10.

B

Litigation Expenses

Ms. Lewis-Cullinan contends that Genexion’s appeal to this Court completely lacked any justiciable issues and that, as a result, she is entitled to recover the substantial litigation expenses she has incurred in defending the appeal. Specifically, Ms. Lewis-Cullinan first alleges that this Court’s September 3, 2014 Decision demonstrated that the procedural issues raised by Genexion—that the hearing officer prevented Dr. Grumser from cross-examining Ms. Lewis-Cullinan and failed to address her alleged misappropriation of property—clearly had no merit. She next maintains that by improperly and unsuccessfully attempting to introduce new evidence on appeal, Genexion demonstrated the frivolity of its allegation that the DLT decision was not supported by the evidence in the record. Ms. Lewis-Cullinan cites to three independent statutes for support of her claim for attorney’s fees and costs: §§ 42-92-3; 9-1-45; and 28-14-19. Alternatively, she seeks this Court to exercise its inherent equitable power to fashion an appropriate remedy in the interest of justice.

It is axiomatic that “[t]he right to recover attorney’s fees did not exist at common law.” Newport Yacht Mgmt., Inc. v. Clark, 567 A.2d 364, 366 (R.I. 1989). In Rhode Island, the courts have “‘staunch[ly] adhere[d] to the ‘American rule’ that requires each litigant to pay its own attorney’s fees absent statutory authority or contractual liability.’” Danforth v. More, 129 A.3d 63, 72 (R.I. 2016) (quoting Shine, 119 A.3d at 8); see also Mello v. DaLomba, 798 A.2d 405,

410 (R.I. 2002) (“It is well settled that attorneys’ fees may not be appropriately awarded to the prevailing party absent contractual or statutory authorization.”) (quoting Ins. Co. of N. Am. v. Kayser–Roth Corp., 770 A.2d 403, 419 (R.I. 2001)); Newport Yacht Mgmt., Inc., 567 A.2d at 366 (“The general rule is that one may not recover such fees in the absence of statutory or contractual liability therefor.”) (internal quotations omitted.) Thus, it is only “in certain circumstances, the Legislature has determined that attorney’s fees should be available to the prevailing litigant.” Danforth, 129 A.3d at 72.

In addition, it must be remembered that “when reviewing a statute under which a party seeks attorneys’ fees, ‘this [C]ourt may not imply statutory authority through judicial construction in situations in which the statutes are unequivocal and unambiguous.’” Shine, 119 A.3d at 8 (quoting Eleazer v. Ted Reed Thermal Inc., 576 A.2d 1217, 1221 (R.I. 1990)). Nevertheless, under certain limited circumstances, this Court may award attorney’s fees under its “inherent power to fashion an appropriate remedy that would serve the ends of justice * * *.” Shine, 119 A.3d at 8 (quoting Moore v. Ballard, 914 A.2d 487, 489 (R.I. 2007)).

1

Section 9-1-45

Ms. Lewis-Cullinan contends that she is entitled to recover attorney’s fees and court costs under § 9-1-45, entitled “Attorney’s fees in breach of contract actions,” because (1) the matter arises out of a civil action for breach of contract; (2) Genexion failed to raise a justiciable issue of law or fact upon appeal; and (3) she was the prevailing party.

Section 9-1-45 provides:

“The court may award a reasonable attorney’s fee to the prevailing party in any civil action arising from a breach of contract in which the court:

(1) Finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party[.]” Sec. 9-1-45 (emphasis added).

Similar to the prejudgment interest statute, § 9-1-45 clearly and unambiguously limits any award of attorney’s fees under this provision to civil actions for breach of contract. Sec. 9-1-45. As this Court previously stated, “[a] judicial review of the administrative action . . . is essentially an appellate proceeding and not a civil action.” Notre Dame Cemetery, 118 R.I. at 338, 373 A.2d at 1196. Consequently, this Court will not construe § 9-1-45, which is limited to civil actions for breach of contract, to permit an award of attorney’s fees in the instant administrative appeal. See Shine, 119 A.3d at 8 (prohibiting Courts from granting attorney’s fees by “imply[ing] statutory authority through judicial construction in situations in which the statutes are unequivocal and unambiguous”) (quoting Eleazer, 576 A.2d at 1221). Therefore, the Court finds that Ms. Lewis-Cullinan is not entitled to reasonable attorney’s fees under § 9-1-45.

2

Equal Access to Justice Act

Ms. Lewis-Cullinan alleges that she is entitled to reasonable litigation expenses pursuant to chapter 92 of title 42 of the Rhode Island General Laws, the Equal Access to Justice Act (EAJA), because she was the prevailing party in the underlying action. However, her reliance on this statute is misplaced.

Section 42-92-1 provides in pertinent part:

“in order to encourage individuals and small businesses to contest unjust actions by the state and/or municipal agencies, the legislature hereby declares that the financial burden borne by these individuals and small businesses should be, in all fairness, subject to state and/or municipal reimbursement of reasonable litigation expenses when the individual or small business prevails in

contesting an agency action, which was without substantial justification.” Sec. 42-92-1(b).

To fulfill this purpose, the Legislature enacted the following provision:

“Whenever the agency conducts an adjudicatory proceeding subject to this chapter, the adjudicative officer shall award to a prevailing party reasonable litigation expenses incurred by the party in connection with that proceeding. The adjudicative officer will not award fees or expenses if he or she finds that the agency was substantially justified in actions leading to the proceedings and in the proceeding itself. . . .” Sec. 42-92-3(a).

The EAJA “was propounded to mitigate the burden placed upon individuals and small businesses by the arbitrary and capricious decisions of administrative agencies made during adjudicatory proceedings.” Tarbox v. Zoning Bd. of Review of Jamestown, No. 2014-188-Appeal, slip op. at 13 (Mar. 15, 2016) (emphasis added) (quoting Krikorian v. R.I. Dep’t of Human Servs., 606 A.2d 671, 673 (R.I. 1992)). The purpose of the act is “to address government abuse and agency decisions made without substantial justification . . . [by] ‘encourag[ing] individuals and small businesses to contest unjust actions by the state and/or municipal agencies’” Tarbox, No. 2014-188-Appeal, slip op. at 14 (emphasis added) (quoting § 42-92-1(b)); see also Gutierrez v. Barnhart, 274 F.3d 1255, 1262 (9th Cir. 2001) (reiterating that “a clearly stated objective of [the EAJA] is to eliminate financial disincentives for those who would defend against unjustified governmental action and thereby [] deter the unreasonable exercise of Government authority”) (quoting Ardestani v. INS, 502 U.S. 129, 138 (1991)) (emphases added).

In essence,

“The provisions of the EAJA . . . are designed to compensate victims of unjustified litigation by the Government from some of the burdensome expenses and costs to which they were subjected by the Government’s taking of unreasonable positions The Act essentially recognizes that abusive litigation tactics by the . . . government, whether the Government appears in the role of plaintiff or defendant, can inflict great unjustifiable cost and expense. It is designed to furnish relief from such governmental

litigation abuse.” Vacchio v. Ashcroft, 404 F.3d 663, 670 (2d Cir. 2005) (quoting SEC v. Price Waterhouse, 41 F.3d 805, 809 (2d Cir. 1994) (Leval, J., dissenting in part) (emphases added).

The term “substantial justification” means that “the initial position of the agency, as well as the agency’s position in the proceedings, has a reasonable basis in law and fact.” Sec. 42–92–2(7). In defending a claim under the EAJA, “the government bears the burden of proving its position was substantially justified.” Advanced Gov’t Solutions, Inc. v. United States, 123 Fed. Cl. 610, 612 (2015) (quoting Libas, Ltd. v. United States, 314 F.3d 1362, 1365 (Fed. Cir. 2003)). Thus, the governmental agency “must show ‘not merely that its position was marginally reasonable; its position must be clearly reasonable, well founded in law and fact, solid though not necessarily correct.’” Krikorian, 606 A.2d at 671 (quoting Taft v. Pare, 536 A.2d 888, 893 (R.I. 1988)); see also Stewart v. Astrue, 561 F.3d 679, 683 (7th Cir. 2009) (stating the agency “bears the burden of proving that both [its] pre-litigation conduct, including the [underlying] decision itself, and [its] litigation position were substantially justified”). In the event that a governmental agency is unable to prove substantial justification, then any “fees and other expenses awarded under this chapter shall be paid by the agency from any sums available to the agency.” Sec. 42-92-6 (emphasis added).

In the instant matter, Ms. Lewis-Cullinan claims that she is entitled to reasonable litigation expenses under the EAJA because Genexion engaged in abusive litigation tactics when it filed a meritless appeal of the DLT decision to this Court. However, the EAJA was designed to mitigate governmental abuse—not an opposing party’s abuse—by requiring the abusive governmental agency to pay reasonable litigation expenses.

Not only has Ms. Lewis-Cullinan failed to allege any wrongdoing on the part of DLT, she also consistently has taken the position that DLT properly ruled in her favor. However, should

the Court grant Ms. Lewis-Cullinan’s Motion under the EAJA, it would lead to the absurd result of requiring the DLT to pay for Ms. Lewis-Cullinan’s reasonable litigation expenses as a result of Genexion’s alleged abusive litigation tactics. See W. Reserve Life Assur. Co. of Ohio v. ADM Assocs., LLC, 116 A.3d 794, 798 (R.I. 2015) (declaring “under no circumstances will this Court construe a statute to reach an absurd result”) (quoting Nat’l Refrigeration, Inc. v. Capital Props., Inc., 88 A.3d 1150, 1156 (R.I. 2014)). This Court will not construe the statute to lead to such an absurd result.

In view of the foregoing, the Court concludes that the EAJA does not apply to the instant matter. Accordingly, Ms. Lewis-Cullinan is not entitled to reasonable litigation expenses under the EAJA.

3

The Wages Act

Ms. Lewis-Cullinan next asserts that she is entitled to recover reasonable attorney’s fees, costs and interest under the Wages Act. Specifically, she contends § 28-14-19(c), authorizing hearing officers to award litigation expenses and interest, should apply, even though such authority did not exist when the hearing officer issued his decision in this case.

It is well settled that “[a]s a general rule[,] a statute is presumed to operate prospectively and not retrospectively, unless it appears by clear, strong language or by necessary implication that the Legislature intended to give the statute retroactive force and effect.” Ret. Bd. of Emps.’ Ret. Sys. of Providence v. Corrente, 111 A.3d 301, 309 (R.I. 2015) (quoting State v. Healy, 122 R.I. 602, 606, 410 A.2d 432, 434 (1980)). Thus, when the language of a statute “is silent on the issue of retroactivity, and the public law states that the act ‘shall take effect upon passage . . . [,] [such] language does not suggest intent to give the statute retroactive effect; rather, it states

clearly that the statute was to become effective upon passage” Ret. Bd. of Emps.’ Ret. Sys. of Providence, 111 A.3d at 309 (emphasis in original).

In his decision, the hearing officer properly recognized that the Wages Act did not grant him the authority to award litigation expenses and interest; thus, he declined Ms. Lewis-Cullinan’s request for reasonable attorney’s fees. See Mello, 798 A.2d at 410 (declaring “[i]t is well settled that attorneys’ fees may not be appropriately awarded to the prevailing party absent contractual or statutory authorization”) (quoting Ins. Co. of N. Am., 770 A.2d at 419. The hearing officer specifically stated:

“Pursuant to Chapter 14 of Title 28, which authorizes this department to determine and obtain for employees unpaid wages from employers, there is nothing contained in the statute nor is there any applicable case law, which would allowed [sic] the Director to entertain or act upon a claim for reasonable attorney’s fees.” (DLT Decision, dated Feb. 23, 2011, at 5.)

On March 24, 2011, Genexion filed its timely appeal of the DLT decision to this Court.

On June 20, 2012, over one year after Genexion filed its appeal, the Legislature amended the Wages Act. See P.L. 2012, ch. 306, § 2 and P.L. 2012, ch. 344, § 2. In doing so, the Legislature amended § 28-14-19(c) to grant DLT hearing officers the authority to issue an order that “direct[s] payment of reasonable attorneys’ fees and costs to the complaining party.” Sec. 28-14-19(c); P.L. 2012, ch. 306, § 2 and P.L. 2012, ch. 344, § 2. The amendment also mandated hearing officers to award “[i]nterest at the rate of twelve percent (12%) per annum . . . from the date of the nonpayment to the date of payment.” Id. However, the statute specifically provided: “This act shall take effect upon passage.” P.L. 2012, ch. 306, § 6 and P.L. 2012, ch. 344, § 6.

Considering that a statute generally is presumed to operate prospectively unless it is clear that the Legislature intended it to have retroactive effect, and considering the Legislature clearly intended the amendments to the Wages Act to take effect upon passage, the Court concludes that

the recent authorization of attorney's fees and interest in § 28-14-19(c) does not apply to the instant matter. Consequently, Ms. Lewis-Cullinan is not entitled to litigation expenses and interest pursuant to § 28-14-19(c). However, the Court's analysis of the Wages Act does not end at this juncture.

As previously stated, when Ms. Lewis-Cullinan filed her Complaint with DLT, she instead could have, but did not, file a "civil action" pursuant to then-existing § 28-14-18.1. See § 28-14-18.1(a) (repealed) ("A person who alleges a violation of this chapter may bring a civil action . . .") (emphasis added). Another provision that existed during that period of time was § 28-14-18.2, entitled "Reinstatement." See § 28-14-18.2 (repealed). Section 28-14-18.2 provided:

"A court, in rendering a judgment in an action brought under this chapter, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages, or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, if the court determines that the award is appropriate." Sec. 28-14-18.2 (repealed) (emphasis added).

It is clear from the foregoing that § 28-14-18.2 permits the Court to award litigation costs "in an action brought under this chapter" Sec. 28-14-18.2 (repealed). Noticeably, this language does not limit such awards only to civil actions; rather, it applies to all actions brought under the chapter. See DePasquale v. Cwiek, 129 A.3d 72, 76 (R.I. 2016) ("[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."). Presumably, the reason the Legislature did not limit § 28-14-18.2 to civil actions is that the Wages Act also contemplates administrative and criminal actions under the statute. See § 28-14-19 (declaring it the duty of the director to "institute or cause to be instituted actions for the collection of wages . . .") (emphasis

added); § 28-14-22 (requiring the Attorney General “to prosecute all civil and criminal cases which shall be referred by the director to the attorney general”).⁴ Section 28-14-18.2 applies to the instant matter because it was in effect when the hearing officer rendered his decision. See e.g., R.I. Dairy Queen, Inc. v. Burke, 101 R.I. 644, 646, 226 A.2d 420, 421 (1967) (“Since the decree was entered after the enactment of the original statute but before the enactment of the amendment, the statute in its original form applies.”). Thus, pursuant to § 28-14-18.2, the Court has the authority to award Ms. Lewis-Cullinan “all or a portion of the costs of litigation, if the court determines that the award is appropriate.” Sec. 28-14-18.2 (repealed).

In support of the instant Motion, Ms. Lewis-Cullinan submitted an affidavit from Attorney Brian N. Goldberg and a sworn accounting report from bookkeeper Michele Baron attesting to the accuracy of all of the firm’s billings on the case between June 16, 2011 and December 2, 2014. The Court has reviewed these documents and finds the figures to be reasonable. The accounting report indicates that during the relevant period, Ms. Lewis-Cullinan incurred litigation costs in the amount of \$17,647.20 to defend Genexion’s appeal from the hearing officer’s decision. This figure is based upon a reasonable hourly rate of \$350 multiplied by the time spent on the case. Thus, in defending the appeal, Ms. Lewis-Cullinan has incurred litigation expenses that actually exceeded by \$3009.31 the hearing officer’s \$14,637.89 award for vacation wages. Considering that Ms. Lewis-Cullinan otherwise would suffer a negative financial consequence for defending Genexion’s unsuccessful appeal, the Court concludes that an award of litigation costs in the amount of \$17,647.20 is appropriate in this case.

⁴ It is important to note that the term “civil case” should not be confused with the term “civil action” because in the Wages Act, the Legislature simply uses the term civil case “in contradistinction to the expression ‘criminal case.’” Woolfson v. Doyle, 180 F. Supp. 86, 89 (S.D.N.Y. 1960) (recognizing that although “a bankruptcy proceeding is not a civil action[,]” it nevertheless is “a civil case in the sense that the words are used in [the Bankruptcy Code]”).

Accordingly, the Court grants Ms. Lewis-Cullinan's request for litigation costs pursuant to the Wages Act.

4

Inherent Equitable Powers of the Court

As an alternative to her statutory grounds for attorney's fees, costs, and interest, Ms. Lewis-Cullinan asks the Court to invoke its inherent equitable powers to award same. She maintains that such relief would be appropriate because Genexion acted in bad faith when it set forth appellate arguments that were not supported by law or fact.

Although the "American rule" prohibits recovery of attorney's fees unless authorized by statute or contract, Danforth, 129 A.3d at 72, it is well established that a "court may use its inherent powers to assess attorneys' fees against a party" Whitney Bros. Co. v. Sprafkin, 60 F.3d 8, 13 (1st Cir. 1995) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991)); see also Vincent v. Musone, 574 A.2d 1234, 1235 (R.I. 1990) (recognizing that an award of counsel fees is included within the court's "inherent power to fashion an appropriate remedy that would serve the ends of justice . . ."). However, "[b]ecause of their very potency, inherent powers must be exercised with restraint and discretion." Whitney Bros. Co., 60 F.3d at 13 (quoting Chambers, 501 U.S. at 44). As a result,

“[t]his remedy * * * is available only in one of three narrowly defined circumstances: (1) pursuant to the ‘common fund exception’ that ‘allows a court to award attorney’s fees to a party whose litigation efforts directly benefit others[,]’ * * *; (2) ‘as a sanction for the willful disobedience of a court order[,]’ * * *; or (3) when a party has ‘acted in bad faith, vexatiously, wantonly, or for oppressive reasons.’” McCulloch v. McCulloch, 69 A.3d 810, 826 (R.I. 2013) (quoting Blue Cross & Blue Shield of R.I. v. Najarian, 911 A.2d 706, 711 n.5 (R.I. 2006)).

Nevertheless, “a court’s inherent power to shift attorneys’ fees ‘should be used sparingly and reserved for egregious circumstances.’” Whitney Bros. Co., 60 F.3d at 13 (quoting Jones v. Winnepesaukee Realty, 990 F.2d 1, 3 (1st Cir. 1993)).

On the question of bad faith, a “court acts within its authority in finding bad faith where a party maintains an unfounded action or defense without any reasonable hope of prevailing on [the] merits.” Universal Truck & Equip. Co. v. Southworth-Milton, Inc., 765 F.3d 103, 111 (1st Cir. 2014) (internal quotations omitted) (likening the standard for finding bad faith in such cases to that of § 9-1-45(1), which requires a “complete absence of a justiciable issue of either law or fact raised by the losing party”). Furthermore, in exercising “its inherent power to award attorneys’ fees, [the Court] must describe the losing parties’ bad faith conduct with ‘sufficient specificity’ and accompany this description with a ‘detailed explanation of reasons justifying the award.’” Universal Truck & Equip. Co., 765 F.3d at 111 (quoting Whitney Bros. Co., 60 F.3d at 13).

As grounds for its administrative appeal to this Court, Genexion alleged that the hearing officer (1) essentially denied Dr. Grumser’s right to cross-examine Ms. Lewis-Cullinan; (2) refused to consider Ms. Lewis-Cullinan’s alleged misappropriation of corporate property; and (3) issued a decision that was not supported by the competent evidence in the record. Ms. Lewis-Cullinan contends that these arguments were frivolous, lacked merit, and amounted to bad faith on the part of Genexion, such that an award of attorney’s fees under the Court’s inherent powers would be appropriate.⁵

⁵ Ms. Lewis-Cullinan does not appear to be asserting an entitlement to attorney’s fees under the Court’s inherent powers with respect to the underlying proceedings. Presumably, the reason for not making any such assertion is that she acknowledges that Genexion had a right to respond to her claims before the DLT.

Although Genexion did attempt to introduce exhibits to this Court that previously were not presented to the hearing officer, the Court cannot conclude that Genexion engaged in bad faith, or that its appeal was unfounded and “without any reasonable hope of prevailing on [the] merits.” Universal Truck & Equip. Co., 765 F.3d at 111-12 (holding claim frivolous as a matter of law “where, even on appeal, plaintiffs point to nothing in the record that supports their assertion that their claim had merit”). The record reveals that Genexion repeatedly cited to record exhibits and the transcript in support of its appellate contentions. Furthermore, although this Court ultimately affirmed the hearing officer’s decision, it does not consider Genexion’s appellate issues to be completely unfounded or so lacking merit that they amounted to bad faith on the part of Genexion.

For example, when Genexion asserted on appeal that the record lacked competent evidence to support the hearing officer’s award of \$14,637.89, this Court reviewed the conflicting evidence that had been presented to the hearing officer and concluded that “[a] reasonable mind would accept the evidence on the record to support the conclusion that Ms. Lewis-Cullinan is entitled to a payout of the accrued vacation time reflected on the documents submitted at the hearing.” Genexion, Inc., C.A. No. PC-2011-1625, * 14 (R.I. Super. Ct., filed Sept. 3, 2014). Such a conclusion hardly could be construed as supporting Ms. Lewis-Cullinan’s contention that Genexion’s appeal was so lacking in merit as to justify an award of attorney’s fees under the Court’s inherent powers. Similarly, Genexion’s misplaced reliance upon Lombardi v. Scott Brass, Inc., 627 A.2d 330, 331 (R.I. 1993) in support of its contention that the hearing officer erred in failing to consider its allegations of misappropriation of property does not amount to conduct so egregious as to warrant an award of attorney’s fees under the Court’s

inherent equitable powers. Consequently, the Court declines Ms. Lewis-Cullinan's request that this Court invoke its inherent equitable powers to award attorney's fees, costs, and interest.

III

Conclusion

For the foregoing reasons, this Court denies Ms. Lewis-Cullinan's request for prejudgment interest pursuant to § 9-21-10. The Court further denies her request for litigation expenses and/or interest pursuant to §§ 42-92-3; 9-1-45; and 28-14-19, and under the Court's inherent equitable powers. However, litigation costs in the amount of \$17,647.20 are appropriate and hereby awarded under § 28-14-8.2.

Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Genexion, Inc. v. Rhode Island Department of Labor and Training, et al.**

CASE NO: **PC-2011-1625**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **May 25, 2016**

JUSTICE/MAGISTRATE: **McGuirl, J.**

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