

[Cite as *Gunn-Smith v. Central State Univ.*, 2008-Ohio-4218.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

LINDA GUNN-SMITH

Plaintiff

v.

CENTRAL STATE UNIVERSITY

Defendant

Case No. 2005-08751

Judge J. Craig Wright

DECISION

{¶ 1} Plaintiff brought this action alleging breach of contract.¹ The case was submitted to the court for decision based upon trial briefs, stipulations of fact, and exhibits.

{¶ 2} The parties stipulated to the following facts:

{¶ 3} “2. Central State University is a state university under Chapter 2242 [3343 sic] of the Ohio Revised Code and a state employer under Chapter 124 of the Ohio Revised Code.

{¶ 4} “3. Ms. Gunn-Smith began working at Central State University in September 1989 in an unrestricted fund position, and she began to accrue vacation leave.

{¶ 5} “4. On July 5, 2000 Ms. Gunn-Smith signed a ‘Contract of Employment, Appointment to University Restricted Fund Staff.’

{¶ 6} “5. In the spring of 2001, Mr. Irvin E. Smith presented a proposal to resume management of Central State University Foundation investments with Wachovia Securities. As part of that proposal, Mr. Smith notified the Board of Trustees of his spousal relationship with Mrs. Gunn-Smith and of his donor activity.

{¶ 7} “6. On June 26, 2001 and October 22, 2001 Ms. Gunn-Smith signed similar contracts.

¹The court notes that in plaintiff’s complaint, under “Count I: Redemption of Accrued Vacation Leave,” she references “accumulated sick leave.” However, in her trial brief, plaintiff asserts a claim for accumulated vacation leave only. Upon review of the evidence submitted, the court construes plaintiff’s

{¶ 8} “7. Ms. Gunn-Smith was diagnosed with carpal tunnel syndrome on February 12, 2003. She had surgery on March 12, 2003 and returned to work on May 5, 2003. During the summer of 2003, she filed a claim with the Ohio Bureau of Worker’s Compensation for job related injuries to her lower back and for carpal tunnel syndrome. The claim was approved.

{¶ 9} “8. On August 6, 2003 Ms. Gunn-Smith took a leave of absence and on September 10, 2003 she had additional surgery on her hand.

{¶ 10} “9. On September 12, 2003, she received the letter appended as Ex. I. That letter, dated September 2, 2003, advised her that her employment contract would not be renewed.

{¶ 11} “10. On September 29, 2003 Ms. Gunn-Smith sent the letter appended as Ex. J to Anthony Fairbanks at Central State University. In that letter, she requested an extension of her vacation leave.

{¶ 12} “11. On October 13, 2003 Mr. Fairbanks advised her that her leave would not be extended.

{¶ 13} “12. On December 10, 2003 Joseph Hudson, Central State University’s Director of Human Resources sent Ms. Gunn-Smith the letter appended as Ex. K. In that letter, he informed Ms. Gunn-Smith that she would not be entitled to pay for accumulated sick leave or vacation leave.”

{¶ 14} Each of plaintiff’s employment contracts state that her employment was subject to the by-laws, code of regulations and other actions of the university board of trustees then in effect or as they may be amended or adopted thereafter. The contracts also state that continuation of plaintiff’s employment was subject to adequate funding by Title III: Institutional Advancement, or by the Department of Education as a grant-funding source. (See Exhibits A-C.)

complaint as asserting a claim for failure to pay accumulated vacation leave and failure to follow defendant’s own policy regarding accumulated vacation leave.

{¶ 15} On May 1, 2001, defendant adopted the following procedure regarding annual leave for restricted fund employees:

{¶ 16} “C. Full-time exempt administrators and professional staff are eligible for paid vacation leave in accordance with university Policy No. 603, ‘Annual Leave for Senior Administrators, Management, and Professionals.’ Use of vacation leave shall be in accordance with the following procedure: * * *

{¶ 17} “E. All Restricted Fund employees should exhaust their vacation leave on an annual basis during the term of the Restricted Fund program. When a Restricted Fund program is discontinued either at the university’s discretion or because of a lack of funding, or when an employee separates or is discharged from a Restricted Fund program, the employee(s) will not receive payment for any unused vacation leave, unless such payment is specifically authorized and funded by the Restricted Fund program.

{¶ 18} “F. When a Restricted Fund program is being discontinued or an employee separates from a Restricted Fund program for any reason, the employee may choose to exhaust any unused vacation leave by extending his/her separation date by an amount of time equal to the unused leave, provided the final separation date is within the funding period of the Restricted Fund program.” (Exhibit F.)

{¶ 19} On July 1, 2001, plaintiff signed an “understanding of grant-funded contract positions” which stated the following:

{¶ 20} “I have been fully briefed and understand that I am accepting a grant-funded position. I understand that grant-funded positions are for a specific period of time as outlined in the contract. I further understand that if this position is not funded beyond the time frame of the contract and additional funding is not available to continue this position, I am not entitled to further employment at Central State University, unless I go through the normal hiring procedures for another position.

{¶ 21} “I have also been briefed and fully understand that my accrued vacation leave must be used prior to the termination of my contract or I will lose the vacation

leave; and that I will not be paid for any unused leave when my contract or the program terminates.” (Exhibit G.)

{¶ 22} On November 5, 2002, defendant adopted a policy whereby “[a]ll vacation leave accrued under restricted employment must be used prior to end of the grant, or it will be lost.” (Exhibit E.)

{¶ 23} On September 2, 2003, Anthony R. Fairbanks, Vice President of Institutional Advancement, issued a letter to plaintiff that stated the following:

{¶ 24} “I wish to confirm in writing matters addressed at our meeting of Tuesday, July 21, 2003. As you know in April, the Board of Directors of the Central State University Foundation voted that it was a ‘conflict of interest’ for you to work with in the foundation, because your husband is a financial investor of significant foundation funds. As you know, once the contract with Mr. Smith was completed in June, per the Board’s directive, I transferred you from the Foundation to the office of Institutional Advancement. You were advised this would occur prior to this action.

{¶ 25} “The Office of Institutional Advancement’s budget has been significantly reduced, both from University funds and Title III, currently there are only two positions that are vacant and will have funding. Those positions are Director of Corporate and Foundation Support and Director of Public Relations. You and I both agree that you are not qualified for either of these positions. Therefore, this letter serves as the University’s thirty (30) day notice of non renewal of your Title III employment contract.” (Exhibit I.)

{¶ 26} On September 29, 2003, plaintiff sent a letter to Fairbanks wherein she stated the following:

{¶ 27} “I continue to recover from my surgery of 9/10/03 and expect to remain on workman’s compensation until my expected medical release date of November 4, 2003. As such I am currently unable to work. I have none the less been seeking employment elsewhere in the University as you are recommending and do have prospects I am pursuing. At this time I have no firm offers.

{¶ 28} “I would request that my contract be extended until I am released from my physician’s care and if not offered a position at that time be allowed to utilize my accumulated leave. This would allow me the time to solidify the opportunities I believe are forthcoming to remain part of the CSU team.

{¶ 29} “I ask this in consideration of my contributions to CSU as a productive employee for 14 years and in light of your previously stated desire and efforts to maintain my career at CSU.” (Exhibit J.)

{¶ 30} On December 10, 2003, Joseph “Mickey” Hudson, Director of Human Resources, sent plaintiff a letter wherein he stated:

{¶ 31} “The President has directed me to respond on his behalf. Reference your letter dated October 31, 2003. Our records indicate that at the time of your separation you had only five (5) hours of accumulated vacation leave. In any case, under CSU Procedure No. 613, “Annual Leave for Restricted Fund Employees” (Subpart F), an employee may choose to exhaust any unused vacation leave by extending his/her separation date by an amount of time equal to the unused leave. However, this section contemplates a voluntary retirement or resignation. You did not have the option of extending your separation date.

{¶ 32} “Subsection E of Procedure No. 613 applies to your case. It provides that: ‘All Restricted Fund employees should exhaust their vacation leave on an annual basis during the term of the Restricted Fund program. When a Restricted Fund program is discontinued either at the university’s discretion or because of a lack of funding, or when an employee separates or is discharged from a Restricted Fund program, the employee will not receive payment for any unused vacation leave, unless such payment is specifically authorized and funded by the Restricted Fund program.’

{¶ 33} “With respect to sick leave, the Ohio Revised Code provision you appear to rely on does not apply to University employees. Under Resolution 93-39, ‘Approval of Policy Change in Sick Leave Benefits,’ CSU employees are only entitled to a sick leave pay out upon retirement from active service with the University. Your separation

was not a retirement. In any case, the sick leave pay out is not extended to restricted fund employees.” (Exhibit K.)

{¶ 34} Plaintiff asserts that defendant violated R.C. 124.13(E) and its own procedure No. 613.1 when it denied her request for payment of accumulated and unused vacation leave. Plaintiff asserts that Procedure No. 613.1(F) applies to her. Defendant asserts that neither R.C. 124.13(E) nor Procedure No. 613.1(F) apply to plaintiff, but rather Procedure No. 613.1(E) applies to her and bars her claim.

{¶ 35} Upon review of the stipulations of fact, the joint exhibits, and the parties’ briefs, the court concludes that plaintiff has failed to prove by a preponderance of the evidence that she was entitled to either a cash payment for her accrued vacation leave or an extension of her employment contract. The court finds that after June 5, 2000, plaintiff was a restricted fund employee. R.C. 124.14² allows the board of trustees of a state university to make its own policy and procedure regarding employee benefits. See *Batra v. Wright State University* (1992), 84 Ohio App.3d 350, 352-3. The court further finds that as of July 1, 2001, plaintiff was aware that defendant’s policy, as set forth in Exhibit G, required her to use her accrued vacation leave prior to the termination of her contract and that she would not be paid for any unused vacation time when her contract ended. Inasmuch as plaintiff was a restricted fund employee, she was not entitled to payment for her accrued, unused vacation time.

{¶ 36} Plaintiff argues that Procedure No. 613.1, section E does not apply to her but that section F does. Upon review of the evidence submitted, the court finds that

²R.C. 124.14 states, in part:

“(F) (1) Notwithstanding any contrary provision of sections 124.01 to 124.64 of the Revised Code, the board of trustees of each state university or college, as defined in section 3345.12 of the Revised Code, shall carry out all matters of governance involving the officers and employees of the university or college, including, but not limited to, the powers, duties, and functions of the department of administrative services and the director of administrative services specified in this chapter.”

plaintiff's employment contract was in fact governed by section E. The restricted fund program that was the source of plaintiff's salary was discontinued because of a lack of funding. Plaintiff has brought forth no evidence to show that payment for her unused vacation leave was specifically authorized or funded by the restricted fund program. Furthermore, the court finds that Exhibits G and E show that plaintiff was not entitled to payment for accrued vacation leave. Therefore, the court finds that plaintiff has failed to prove any of her claims by a preponderance of the evidence, and accordingly, judgment shall be rendered in favor of defendant.



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DECISION

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JUDGMENT ENTRY

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This case was submitted to the court for decision based upon trial briefs and stipulations of fact. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. CRAIG WRIGHT
Judge

cc:

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HTS/cmd
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