

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

GLADYS D. W. MOTLEY, PH.D.,)	
)	C. A. No. 01C-12-021 WLW
Plaintiff,)	
)	
v.)	
)	
DELAWARE STATE UNIVERSITY,)	
)	
Defendant.)	
)	

Submitted: February 12, 2004
Decided: May 28, 2004

ORDER

Decision after Bench Trial.

Roy S. Shiels, Esquire, of Brown, Shiels, Beauregard & Chasanov, Dover, Delaware, for the Plaintiff.

John D. Balaguer, Esquire, and Marc S. Casarino, Esquire, of White and Williams, LLP, Wilmington, Delaware, for the Defendant.

WITHAM, J.

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This case arises from a dispute involving an employment contract entered into by Plaintiff Gladys Motley (“Dr. Motley”) and Defendant Delaware State University (“DSU” or “the University”). A bench trial was conducted in this matter from January 27, 2004 through January 29, 2004. Based upon the evidence presented at the trial, the Court finds in favor of the Defendant Delaware State University.

Background

Dr. Motley contends that DSU owes her the leave time she accrued during her tenure as Vice President of Student Affairs and Special Assistant to the President.¹ Dr. Motley bases her argument on the University by-laws in effect when she was hired, as well as a conversation she had on March 2, 1998, with then DSU President William DeLauder (“Dr. DeLauder”). However, DSU asserts that the controlling documents are her employment contracts and the Professional Employee Handbook promulgated in 1995 (“1995 Handbook”). As such, DSU contends that Dr. Motley must sufficiently prove that the alleged oral modification of the written contract was intended by both parties.

Beginning on July 1, 1983, Dr. Motley entered into a series of one-year employment contracts with DSU to serve as the Vice President of Student Affairs.²

¹ Upon exiting DSU, Dr. Motley received payment totaling \$6,303.61 for the leave time she had accrued in the 12 months prior to her departure (22 days) plus 10 days.

² Dr. Motley was employed from 1983 through 1992 by one-year employment contracts. However, from 1993 through 1998, her employment was by letters of appointment. The contract beginning on July 1, 1997, hired Dr. Motley as Special Assistant to the President. Her final contract began on July 1, 1998, and provided that she was to serve as Special Assistant to the

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Dr. Motley signed each contract and did not dispute the terms of the agreements. The contracts were entitled, “Professional Employee’s Contract” and stated that she would observe the rules and regulations of the Board of Trustees.³ When Dr. Motley began working at DSU, the Non Bargaining Employee Handbook (Unclassified) (“1982 Handbook”) controlled the employment arrangement between administrators and the University. The 1982 Handbook provided that upon leaving employment, each non bargaining employee would be entitled to a maximum of 22 days paid leave. In addition, the by-laws of the Board of Trustees of DSU in effect in 1983 provided for DSU Administrators to have one month of paid leave each year.⁴ However, the by-laws did not expressly address the issue of the payment of leave days upon exiting the University.

In 1995 the Board of Trustees adopted the 1995 Handbook to govern the terms of employment for professional employees at the University. The 1995 Handbook provides, “Employees whose employment ceased, will be paid for accumulated and unused annual leave at their current rate of pay up to a maximum of those days earned

President until October 31, 1998. From July 1, 1998 until October 31, 1998, Dr. Motley was placed on administrative leave.

³ It is undisputed that Dr. Motley was a Senior Level Administrator, however she contends that as an Administrator she was not a professional employee.

⁴ Testimony by Clifford Coleman and the March 22, 1999 letter from Dr. DeLauder to Dr. Motley indicated that the term “ one-month” in the by-laws had been interpreted by the University as 22 days, the number of work days in a month.

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in the preceding twelve months plus ten (10).”⁵ According to this handbook, Dr. Motley, as a school administrator, would earn 22 days of paid leave annually. Therefore, according to the 1995 Handbook, upon leaving her employment Dr. Motley would be entitled to payment for a maximum of 32 leave days.

At trial, Dr. Motley testified that she did not believe she was a professional employee and thus did not think she was governed by the 1995 Handbook. She stated that she was not aware of the adoption of the 1995 Handbook and did not believe that it governed the terms of her employment. DSU presented Sheila Davis, the current acting Director of Human Resources, who testified that she and Dr. Motley were present at the Professional Employees meeting on September 19, 1995, when the 1995 Handbook was presented and discussed with the professional employees. In addition, DSU introduced the minutes of that meeting which indicated that Dr. Motley presided over the meeting and also listed her as a professional employee.⁶ Finally, Dr. Motley acknowledged, on cross examination, that she attended the Board of Trustees meeting when the Board adopted the 1995 Handbook.

Further, Dr. Motley testified that Dr. DeLauder, in a meeting with her on March 2, 1998, promised that she would be paid for all of her accumulated leave time upon ending her employment at DSU. Dr. Motley stated that she arranged the March 2, 1998, meeting with Dr. DeLauder in order to discuss her continued employment with

⁵ 1995 Handbook, p.10.

⁶ Defendant’ s Exhibit 1, Tab 10.

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DSU. According to her testimony, her main concern was continuing her employment until October 1998 so she would qualify for state pension. However, she was also concerned about being paid for her accumulated leave time, because she had learned, at some time prior to her meeting with Dr. DeLauder, that the 1995 Handbook might apply to her. Thus, she was concerned about losing her accumulated leave time. Dr. Motley testified that at the meeting she informed Dr. DeLauder of her desire to speak to the Board of Trustees regarding her non-reappointment, and, to keep her from going to the Board, Dr. DeLauder told her DSU would pay her for the annual leave she had accrued. She further stated that she did not go to the Board because, at the time, she thought she had gotten what she wanted. It was not until she received the payment from DSU on December 15, 1998, that she realized she was only being paid for 32 days of leave.

Dr. DeLauder presented a different story of the March 2, 1998, meeting when he testified before the Court. He recalled that the primary issue discussed in the meeting was the extension of Dr. Motley's employment until October 1998 in order for her to qualify for a state pension. He further testified that Dr. Motley did raise the issue of leave in the meeting, but he understood her to only be concerned about the number of leave days she earned in a year. He stated that he did not promise her that she would be paid for all of her accumulated leave time. In addition, Dr. DeLauder testified that he was not aware that Dr. Motley intended to go to the Board to discuss her continued employment. Further, Dr. DeLauder indicated that he was unaware of any problems regarding Dr. Motley's accrued leave time until he received her letter

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dated March 1, 1999. On March 22, 1999, Dr. DeLauder responded to Dr. Motley's letter stating that if he told her in the March 1998 meeting that she would be paid for unused vacation days, it would have been in the context of what the existing policy permitted. Dr. DeLauder then went on to explain DSU's policy regarding the payment of unused leave time, relying on the 1995 Handbook. In addition, his letter informed Dr. Motley that research had shown that previous Senior Level Administrators who had recently left the University were paid in accordance with the 1995 Handbook.

Discussion

Written Contract

Based upon the evidence presented, the Court finds that Dr. Motley and DSU entered into annual written employment contracts. Each of these contracts provided that Dr. Motley was a professional employee of the University. As a professional employee, Dr. Motley's employment was governed originally by the 1982 Handbook and then, after its adoption by the Board of Trustees, the 1995 Handbook. Thus, when Dr. Motley ended her tenure at DSU, her accrued leave time would be paid according to the terms of the 1995 Handbook. The unambiguous terms of that document provide that senior level administrators, including Vice Presidents like Dr. Motley, earn 22 leave days per year. Further, the handbook provides that employees who leave DSU "will be paid for accumulated and unused annual leave at their current rate of pay *up to a maximum of those days earned in the preceding twelve*

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*months plus ten.*⁷ This unambiguous statement is subject to only one interpretation - upon leaving DSU, employees would be paid for the leave time actually earned in the twelve months prior to their departure plus ten days. Thus, upon exiting the University, an employee would lose any leave time earned and accumulated prior to his or her last twelve months of employment. Therefore, on the basis of the documentary evidence, Dr. Motley was entitled to pay for a maximum of 32 leave day.

Dr. Motley has asserted that her leave time should be governed by the by-laws of the Board of Trustees, rather than the 1995 Handbook. Her assertion is that DSU unilaterally reduced her benefits by adopting the 1995 Handbook. Essentially, she claims that the by-laws provide for 30 days of paid leave, rather than the 22 days permitted under the 1995 Handbook. However, Dr. Motley's claim that the by-laws which stated that senior level administrators are entitled to one month of paid leave per year should be interpreted as 30 days of leave is without merit. All of the evidence presented indicated that this has consistently been interpreted by the University as 22 days per year because there are 22 work days in the average month. Clifford Coleman and Dr. DeLauder both testified that this provision in the by-laws always had been interpreted as 22 days, not 30 days as Dr. Motley contends. Further, the leave accrual updates Dr. Motley received while working at DSU indicated that she received 22 days of leave per year. At no time, until March 1999, did Dr. Motley

⁷ 1995 Handbook, p.10 (emphasis added).

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dispute this information. Accordingly, senior level administrators earn 22 leave days per year.

Further, Dr. Motley's claim that in adopting the 1995 Handbook, DSU reduced the benefits she received is also without merit. The by-laws provided only for the leave senior level administrators would receive each year. The testimony established that even before the 1995 Handbook had been adopted, "one month" had been interpreted as 22 days. In addition, the by-laws did not address how much leave time an employee would receive upon leaving DSU. The 1982 Handbook was in effect at the time Dr. Motley was hired and only permitted employees to be paid for a maximum of 22 leave days when resigning from the University. Therefore, the 1995 Handbook actually provided for better benefits than Dr. Motley had been receiving.

Accordingly, the Court finds that the 1995 Handbook controlled the terms of Dr. Motley's employment. That handbook clearly stated that senior level administrators received 22 days of leave each year. Therefore, the Court finds that Dr. Motley properly earned 22 days of paid leave each year. In addition, DSU properly paid Dr. Motley for 32 days of leave after her departure from the University.

Oral Modification

Dr. Motley, however, asserts that the terms of the handbook were modified by Dr. DeLauder in a conversation on March 2, 1998. The terms of a written contract

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may be modified by subsequent oral agreement of the parties.⁸ However, the party asserting such oral modification has the burden of proving the intended change with specificity and directness, but the circumstances of the parties' dealings may suffice.⁹ Dr. Motley stated in her testimony that when she met with Dr. DeLauder in March 1998, it was to discuss with him the possibility of extending her employment until at least October 1998, so she would qualify for full state pension. She further testified that in the course of the meeting, Dr. DeLauder promised that she would be paid for all of her accumulated leave time. However, Dr. Motley did not provide any documentation supporting this alleged promise. In contrast, Dr. DeLauder testified that he did not enter into any agreement with Dr. Motley with respect to paid leave. He indicated in his letter dated March 22, 1999, in response to a letter from Dr. Motley, that if he did state that she would be paid for unused vacation days, "it had to be in the context of what existing policy permits."¹⁰ Further, in that letter he restated the University policy on payment of unused annual leave found in the 1995 Handbook.

Based upon the testimony and evidence presented, the Court finds that Dr. Motley has failed to meet her burden to establish that an oral modification of the contract was intended by Dr. DeLauder. The Court was presented with two witnesses

⁸ *913 North Market Street Partnership, L.P. v. Davis*, 1998 Del. LEXIS 493, *3-4.

⁹ *Id.*

¹⁰ Letter from Dr. DeLauder to Dr. Motley, March 22, 1999.

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who had very different accounts of the meeting. Both witnesses were credible. However, the burden is on Dr. Motley to establish that Dr. DeLauder intended to modify the contract. Without any additional evidence to support her claim, the Court finds that the modification was not intended by both parties. Therefore, on this basis the Court finds in favor of the Defendant.

Conclusion

Based on the testimony and exhibits presented at trial, the Court finds that DSU did not breach its written contract with Dr. Motley when it paid her for 32 days of leave after her tenure at DSU ended. In addition, the Court finds that Dr. Motley failed to meet her burden of establishing that the March 1998 conversation with Dr. DeLauder resulted in an oral modification of the written contract. Therefore, the Court finds in favor of Defendant Delaware State University.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File