

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 10, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

<p>ROBERT ROYBAL,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TOPPENISH SCHOOL DISTRICT; JOHN CERNA,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 1:14-CV-03092-SMJ</p> <p>ORDER DENYING MOTION TO DISMISS</p>
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Before the Court, without oral argument,¹ is Defendants Toppenish School District and John Cerna’s (collectively, “Toppenish”) Motion to Dismiss for Failure to State a Claim, ECF No. 77. Toppenish moves to dismiss Roybal’s claim for wrongful withholding of wages under Wash. Rev. Code (RCW) § 49.52, which provides double damages when an employer willfully withholds wages due an employee. The statute applies only where an employee was owed wages under a specific contract or statute. Roybal alleges that he was a tenured principal who was entitled to his salary under RCW § 28A.405.230, which provides that principals

¹ The parties requested oral argument on this matter. However, after reviewing the pleadings and the file in this matter, the Court has determined that oral argument is unnecessary.

1 with three or more years' experience may not be transferred to a lower-paying
2 position without a due process hearing. Accordingly, Roybal has alleged facts
3 sufficient to state a claim under § 49.52, and Toppenish's motion to dismiss is
4 denied.

5 **BACKGROUND**

6 Plaintiff Robert Roybal served as a principal in Toppenish School District (the
7 "School District") for seven years, from 2005–2012. ECF No. 35-1. In 2012, he was
8 transferred to Toppenish Middle School, where he worked as Vice Principal. *Id.* That
9 year he received a raise in base pay from \$90,296 to \$92,021. ECF No. 51-1. During
10 the 2013–2014 school year, Roybal's base pay was raised to \$96,526. *Id.*

11 In August 2013, Roybal received a negative performance evaluation. *Id.*
12 Believing the evaluation did not comply with the Teacher Principal Evaluation
13 Project standards, Roybal complained to Superintendent John Cerna. *Id.* Cerna did
14 not acknowledge any violations. *Id.* A few weeks later, Roybal's attorney, Kevin
15 Montoya, sent a letter to Cerna requesting specific support for Roybal's evaluation
16 under the applicable Washington Administrative Codes. *Id.* Roybal was then
17 confronted by Cerna and Human Resources Director Larry Davison, who criticized
18 Roybal for "going outside" the District. *Id.*

19 On May 2, 2014, the District served Roybal a letter indicating he would be
20 reassigned for the 2014–2015 school year to a part-time social studies teaching

1 position and a part-time EAGLE/CATS recruiter position. *Id.* Due to the
2 reassignment, Roybal’s base pay was reduced from \$96,526 to \$56,599. ECF No.
3 35-1. On May 15, 2014, the District sent a letter stating the reasons for the transfer.
4 *Id.*

5 On May 22, 2014, Roybal and his counsel appeared at an informal meeting
6 with the School District’s board of directors to request reconsideration of the
7 reassignment. ECF No. 54. Roybal was given a document stating the basis for the
8 reassignment, but was not permitted to respond and was denied the opportunity to
9 call witnesses. *Id.* Roybal submitted a written brief after the meeting and the District
10 issued its written response on June 2, 2014, declining Roybal’s request. ECF No. 35-
11 1.

12 **LEGAL STANDARD**

13 A claim may be dismissed pursuant to Rule 12(b)(6) either for lack of a
14 cognizable legal theory or failure to allege sufficient facts to support a cognizable
15 legal theory. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015). “Threadbare recitals
16 of the elements of a cause of action, supported by mere conclusory statements, do
17 not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to
18 dismiss under Rule 12(b)(6), a complaint must allege “enough facts to state a claim
19 to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
20 (2007). A claim is plausible on its face when “the plaintiff pleads factual content

1 that allows the court to draw the reasonable inference that the defendant is liable for
2 the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

3 **DISCUSSION**

4 RCW § 49.52.050(2) provides that an employer shall be guilty of a
5 misdemeanor if the employer “willfully and with intent to deprive the employee of
6 any part of his or her wages, shall pay any employee a lower wage than the wage
7 such employer is obligated to pay such employee by any statute, ordinance, or
8 contract.” An employer is “obligated” to pay wages within the meaning of the
9 statute only if the employer had a “pre-existing duty imposed by contract or statute
10 to pay specific compensation.” *Hemmings v. Tidyman’s, Inc.*, 285 F.3d 1174, 1203
11 (9th Cir. 2002). Thus, it applies only to wages that legally accrued prior to a jury
12 verdict. The statute does not apply where the damages accrued from a retrospective
13 jury verdict.

14 Toppenish argues that Roybal’s claim for damages should be dismissed
15 because the specific amount owed to him cannot be determined before a jury verdict
16 in his favor. In support of its argument, Toppenish cites *Hemmings v. Tidyman’s,*
17 *Inc.* In that case, a jury awarded plaintiffs \$120,000 in lost wages and benefits after
18 finding the employers violated anti-discrimination laws by failing to promote
19 plaintiffs on the basis of their sex. 285 F.3d at 1182. On appeal, the Ninth Circuit
20 held that the plaintiffs were not eligible to receive double damages under RCW

1 § 49.52.020 because the employer was not obligated by statute or contract to pay
2 the wages at the time they were withheld. *Id.* at 1203. Instead, the right to the wages
3 accrued only when the jury verdict issued. *Id.* The court reasoned that a violation of
4 § 49.52.050 occurs only where “an employer consciously withholds a quantifiable
5 and undisputed amount of accrued pay.” *Id.*

6 Toppenish asserts that this case is analogous to *Hemmings* because the
7 specific amount owed to Roybal, if any, could not be determined without a jury
8 verdict in his favor. Like the plaintiffs in *Hemmings*, Toppenish argues, Roybal was
9 paid all wages to which he was entitled at the time. Under his new assignment as a
10 part-time teacher, Roybal was entitled to receive \$56,599 per year. Toppenish did
11 not withhold these wages. Toppenish therefore argues that any other wages cannot
12 be determined without a jury verdict, and that Roybal is therefore not entitled to
13 double damages under the wage withholding statute.

14 Toppenish cites a number of district court cases in which courts have
15 dismissed a claim under § 49.52.050 on the same basis. For example, a court
16 dismissed a wrongful wage withholding claim in *Dice v. City of Grand Coulee*, No.
17 11-cv-296-JLQ, 2012 WL 4793718 (E.D. Wash. Oct. 9, 2012). In that case, Dice, a
18 former police officer for the City of Grand Coulee, was terminated by the City.
19 Following his termination, Dice followed the grievance process established in the
20 applicable collective bargaining agreement. As part of the process, an arbitrator

1 determined that Dice had been terminated without just cause and was entitled to lost
2 wages. Dice then brought a federal claim under § 1983 for violation of due process
3 and a state law claim for wrongful withholding of wages under RCW § 49.52.
4 Citing *Hemmings*, the court dismissed Dice’s wrongful withholding claim because
5 “the City’s obligation to pay [Dice] wages did not accrue until the arbitrator’s
6 decision was rendered.” *Id.* at *8.

7 Toppenish’s reliance on *Hemmings* is misplaced. *Hemmings* stands for the
8 proposition that the statute does not apply unless the employer was obligated by
9 statute or contract to pay wages at the time they were withheld. This case differs
10 from *Hemmings* and the district court cases cited by Toppenish because Roybal
11 alleges that Toppenish was statutorily obligated to pay him under RCW
12 § 28A.405.230.

13 RCW § 28A.405.230 provides:

14 Any certificated employee of a school district . . . shall be subject to
15 transfer, at the expiration of the term of his or her employment
16 contract, to any subordinate certificated position within the school
17 district Provided that in the case of principals such transfer shall
18 be made at the expiration of the contract year and only during the first
19 three consecutive school years of employment as a principle by a
20 school district

The statute prohibits principals with three or more years’ experience from
being transferred to a “subordinate certificated position.” The statute defines a
“subordinate certificated position” as “any administrative or nonadministrative

1 certificated position for which the annual compensation is less than the position
2 currently held by the administrator.” RCW § 28A.405.230. In *Sneed v. Barna*, 912
3 P.2d 1035 (Wash. Ct. App. 1996), the court explained that, because a district’s
4 needs may change year to year, the district retains discretion to transfer tenured
5 principals to different positons “as long as their salaries are not reduced.” *Id.* at
6 1038.

7 In its earlier order on cross motions for summary judgment, the Court noted
8 that Roybal was employed as a principal for seven years from 2005 to 2012. Before
9 the 2012–2013 school year, he was transferred to Toppenish Middle School under
10 the title of Assistant Principal, but received a raise in base pay consistent with the
11 District’s annual salary tables for principals. The Court held that the District
12 transferred Roybal in accordance with *Sneed* and that Roybal retained his status as
13 a tenured principal under RCW § 28A.405.230. ECF No. 63 at 10.

14 Roybal argues that, because he was entitled to retain his salary as a principal
15 until removed following a due process hearing, he was statutorily entitled to his
16 salary as a principal under RCW § 28A.405.230. At the time of his transfer, Roybal
17 earned \$96,526. Following the transfer, Roybal earned \$56,599. Roybal argues that
18 the amount of wages owed accrued *until* a proper due process hearing took place
19 and that such wages are determinable independent of a jury verdict.

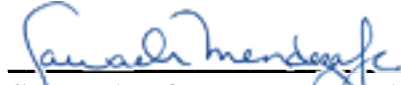
1 Roybal has alleged facts sufficient to state a plausible claim under RCW
2 28A.405.230. Unlike the plaintiffs in *Hemmings, Dice*, or any other case cited by
3 Toppenish, Roybal has alleged that Toppenish had a statutory obligation to pay him
4 certain wages. Accordingly, Roybal has stated a claim that would entitle him to
5 damages under RCW § 28A.495.230 that is sufficient to survive Toppenish's
6 motion to dismiss.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 **1.** Defendants' Motion to Dismiss for Failure to State a Claim, **ECF No.**
9 **77**, is **DENIED**.
- 10 **2.** The hearing on this matter currently set for April 23, 2018, is
11 **STRICKEN**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
13 provide copies to all counsel.

14 **DATED** this 10th day of April 2018.

15 
16 SALVADOR MENDOCZA, JR.
United States District Judge