

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000984-MR

CAROL HOLT

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NO. 99-CI-00846

FT. THOMAS, INDEPENDENT SCHOOL DISTRICT

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, EMBERTON, AND TACKETT, JUDGES.

BUCKINGHAM, JUDGE: Carol Holt appeals from a summary judgment entered by the Campbell Circuit Court in favor of Ft. Thomas Independent School District. The issue is whether Holt, a former teacher in the school district who is now on disability retirement, may recover compensation at her full daily rate for her accrued sick leave benefits. The trial court concluded that she may not, and we affirm.

Holt was hired by the school district as a certified teacher in 1981. She subsequently qualified as a tenured teacher. On June 30, 1997, Holt sent a letter to the principal at Highlands High School requesting a leave of absence for the

1997-98 school year due to medical reasons. She was granted an unpaid leave of absence by the school district in accordance with its Policy 03.1234 (Extended Disability Leave). On April 22, 1998, Holt forwarded a letter to the school superintendent requesting a second leave of absence due to medical reasons for the 1998-99 school year. The school district again granted Holt an unpaid leave of absence in accordance with the same policy.

On January 14, 1999, Holt submitted her application for retirement due to disability to the Kentucky Teacher's Retirement System (KTRS). Holt claims that during the application process she was advised by a KTRS employee that she should have received payment for her unused sick days. Her request for disability retirement was granted on March 15, 1999, with an effective date of February 1, 1999.¹

While her request for disability retirement was pending, Holt sent a letter to the school superintendent concerning her sixty-one unused sick days. In her letter she asked that she be paid full salary for these days because she believed she should have been allowed to use them prior to her unpaid leave of absence from the 1997-98 school year. In a

¹ Kentucky Revised Statute (KRS) 161.661 governs disability retirement. Under this statute a member of the KTRS earns one year of eligibility for each four years of service, except that any member who has completed five years of service receives a minimum of five years of eligibility. KRS 161.660(3). During her five-year eligibility period, Holt will receive a disability allowance equal to sixty percent of her final average salary. Id. If she remains disabled at the conclusion of her eligibility period, Holt's disability retirement benefits will be recalculated using the service retirement formula. This recalculation is significant because Holt will earn additional service credit of one year for each year she is retired for disability.

letter dated March 4, 1999, the school superintendent informed Holt that, under the applicable laws² and the school district's policies, she would be entitled to compensation for the sixty-one sick days at ten percent of her daily salary rate. He also advised her that she failed to qualify under the sick days policy and thus was not eligible for pay at her normal salary level.

Holt's situation was brought to the attention of the school board at its meeting on March 10, 1999. Order # 121 addresses the board's action on Holt's case. The order reads as follows:

Retirement Request

Request was submitted for an individual wishing to permanently retire because of medical disability needs. Dr. Stinson reviewed our current retirement policy. Mrs. Morris moved that the policy be waived in this particular situation pending review by our attorney. Mr. Kimball seconded the motion and all voted in favor.

The effect of this action was to allow Holt to be paid for her unused sick days (at ten percent of her daily salary rate) even though she had failed to ask for it in a timely manner in accordance with the school district's retirement policy (Policy 03.175).

On July 19, 1999, Holt filed a petition for declaratory judgment and a complaint against the school district in the Campbell Circuit Court. In the complaint, Holt sought a

² All references to the Kentucky Revised Statutes in this opinion are to those statutes in effect during this controversy. The statutes regarding the subject matter of this controversy were amended in part effective July 14, 2000.

declaration of rights that she was entitled to one hundred percent payment of all sick days accumulated during her employment with the school district. She also argued that the board's policy on retirement and KRS 161.155 were not applicable because she had not "retired." She further argued that the school district had breached its contract of employment with her by failing to pay for her accumulated sick days and had also wrongly converted funds belonging to her.

The trial court entered an order on March 16, 2000, denying Holt's motion for summary judgment and granting the school district's motion. Although Holt had requested a judgment in the amount of \$10,864.59 for full payment of her sixty-one days of accrued sick leave and a hearing on damages for her contract and tort claims, the court held that Holt was only entitled to payment at ten percent of her last daily salary rate, an amount equal to slightly more than \$1,000. The court's decision was based on Policy 03.175 (Retirement) and KRS 161.155. This appeal by Holt followed.

KRS 161.155(2) requires that each school district allow each teacher in its school system at least ten days of paid sick leave during each school year. The statute also allows sick leave to accumulate "without limitation." KRS 161.155(3). KRS 161.155(4) addresses using accumulated sick leave at the first of a school year. That statute states:

Accumulated days of sick leave shall be granted to a teacher if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher is unable to commence his duties

on the opening day of the school year, but will be able to assume his duties within a period of time that the board determines to be reasonable.

KRS 161.155(4).

KRS 161.155(9) addresses compensation to employees or teachers for unused sick leave at the time of retirement. That statute states:

After July 1, 1982, a district board of education may compensate, at the time of retirement, an employee or a teacher for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.

KRS 161.155(9). In essence, this statute allows a school district to compensate a teacher for each unused sick leave day at the time of retirement but limits the rate of compensation to no more than thirty percent of the teacher's last daily salary rate.

The local school board also had several written policies. Policy 03.1232 (Sick Leave) stated that full-time certified employees were entitled to ten days of sick leave with pay each school year. The policy also stated that the sick leave days that were not taken during the school year "shall accumulate without limitation." Further, the policy allowed accumulated days of sick leave to be used by an employee or teacher at the

beginning of a school year if, prior to the opening day of the school year, the employee or teacher presented a physician's affidavit or statement to the school board, stating that the employee was unable to assume his or her duties at the beginning of the year but would be able to assume the duties within a reasonable period of time.

Policy 03.1234 sets forth the school district's policy regarding extended disability leave. That policy allows unpaid leave for the remainder of the school year upon written request being made to the school board. The policy also states that the leave may be extended by the board in increments of no more than one year.

Finally, Policy 03.175 addresses the treatment of unused sick days at the time of retirement. That policy states in pertinent part that:

Subject to the limitations herein, the Board shall compensate a certified employee at the time of retirement for each unused sick leave day an amount equal to ten percent (10%) of the daily rate of the employee's last annual salary. However, the total compensation received under this provision shall not exceed \$5,000. In order to receive this compensation, the employee must have informed the Superintendent of the pending retirement by April 15 of the year preceding the final year of employment (e.g. - notice by April 15, 1996 for retirement at the end of the 1996-97 school year).

The trial court essentially held that Holt had "retired" and that compensation for her unused sick days was limited by Policy 03.175 to ten percent of the daily rate of her last annual salary. On the other hand, Holt argues that she has not "retired" and that the school district's policy on

compensation for unused sick days at the time of retirement is not applicable to her situation. She also asserts that KRS 161.155(9), which limits compensation for unused sick leave at the time of retirement to an amount not to exceed thirty percent of her last daily salary rate, is not applicable. Rather, she notes the differences in the Kentucky statutes between "retirement" and "disability retirement" and argues that the trial court erred in determining that she was "retired." She maintains that she has taken advantage of "an employer-sponsored welfare plan" similar to that at issue in McBarron v. S & T Industries, Inc., 771 F.2d 94(6th Cir. 1995).

We agree with the trial court that Holt had "retired." As the school board noted, "[a]s stated by Respondent, assuming for the sake of argument that Petitioner is not retired, the question must be asked as to why she is receiving retirement benefits." Therefore, the school district's policy on compensation for unused sick days at the time of retirement was applicable. Pursuant to that policy, Holt may be compensated for the sixty-one days of unused sick leave at ten percent of her last daily salary rate.

Holt nevertheless contends that she should have been allowed to use the sixty-one days of unused sick leave at the beginning of her first unpaid leave of absence. In accordance with KRS 161.155(4) and Policy 03.1232, she could have done so had she presented the required physician's affidavit or statement to the school board. Because she did not meet this requirement, she may not now be compensated in that manner.

In this regard, she also asserts that the school board should have advised her of that right. In support of this argument, she cites OAG 80-151. That opinion involves maternity leave for teachers and the associated use of accumulated sick days. The opinion states in relevant part that "[a]ny sick leave accrued that is desired to be taken should be used before the teacher commences the leave of absence without pay status, authorized by KRS 161.770. We believe a local board of education should advise teachers of this application of the law." OAG 80-151.

We disagree with Holt's argument that the board should have advised her on this matter when she first submitted her request for a leave of absence for the 1997-98 school year. First, an attorney general's opinion has no binding effect. Second, we do not believe that the school board was required further to advise Holt of her options. This additional requirement would have been redundant in this case since the school district had already put into effect policies explaining the options available to Holt and the requirements necessary to qualify for each. Third, there is no indication the board knew that Holt may have wanted to use her sick days at that time rather than at a later date.³ In short, we conclude that Holt may not now be compensated in full for her unused sick days even

³ As a tenured teacher, Holt had the option to return to active status at the conclusion of an approved leave of absence. Nothing in the record supports the conclusion that the school district had notice of Holt's intent to apply for disability retirement until she submitted her application to the Kentucky Teacher's Retirement System during her leave of absence in the 1998-99 school year.

though she may have had the option to use them at the beginning of her unpaid leave of absence had she met the requirements of the statute and the policy.

Holt also argues that she is entitled to full payment for her unused sick leave days because the board waived its retirement policy with regard to her situation at its meeting on March 10, 1999. In support of this argument, she cites to the school board's Order # 121 which indicated that the school board waived the policy in her case. Citing Lewis v. Board of Education of Johnson County, Ky., 348 S.W.2d 921 (1961), she accurately cites the rule of law that "a board of education can speak only through its records" and that "[s]uch records cannot be enlarged or restricted by parol evidence." Id. at 923.

Assuming the school board did waive its policy concerning compensation for unused sick days at the time of retirement, it does not follow that Holt is entitled to full compensation for those sick days.⁴ KRS 161.155(9) states that a school district "may compensate" for unused sick leave days at the time of retirement. (Emphasis added.) The statute does not require school districts to grant such compensation. Thus, if there is no school district policy in effect to compensate

⁴ The school district claims that the school board did not waive its retirement policy concerning compensation for unused sick days. Rather, it claims that it waived the requirement in its policy that the employee must give notice to the school superintendent of his or her pending retirement by no later than April 15 of the year preceding the final year of employment in order to receive compensation for unused sick leave at the time of retirement. Holt had not given such timely notice, and it appears that Holt would have received no compensation whatsoever had the board not waived this portion of the policy.

teachers for unused sick leave days at the time of retirement, then Holt is not entitled to any compensation for such days. We find no merit to her argument that "the sixty-one (61) days of accrued sick leave are a constitutionally protected and recognized contractual right that cannot be denied without due process of law."

Finally, Holt argues that the trial court erred in granting summary judgment on her claims for breach of contract and conversion. She asserts in her brief that the trial court failed to address these issues. However, we agree with the school district that the court decided these issues implicitly in its ruling. Because Holt was not entitled to further compensation for unused sick leave at the time of her retirement, there could be no breach of contract or conversion as a matter of law.

The judgment of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven R. Dowell
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BRIEF FOR APPELLEE:

Donald J. Ruberg
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