

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

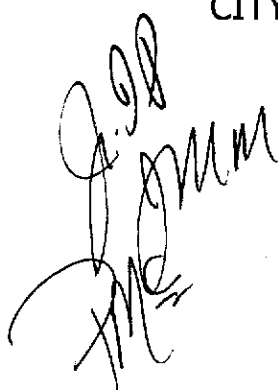
NO. 2013 CA 0502

TRUDY M. WHITE

VERSUS

CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE

Judgment rendered **NOV 01 2013**



Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. 585,984
Honorable Frank Foil, Judge Ad Hoc

TRUDY M. WHITE
BATON ROUGE, LA

IN PROPER PERSON
PLAINTIFF-APPELLANT

MARY E. ROPER
PARISH ATTORNEY
DAWN N. GUILLOT
ASSISTANT PARISH ATTORNEY
BATON ROUGE, LA

ATTORNEYS FOR
DEFENDANT-APPELLEE
CITY OF BATON ROUGE/PARISH
OF EAST BATON ROUGE

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

This is an appeal by plaintiff, Trudy M. White, of the trial court's judgment dated January 25, 2013, dismissing her petition for declaratory judgment. The trial court found no merit in her arguments that she was paid less severance pay than that to which she was entitled under the applicable law, ordinances, and rules for judges of the courts of the City of Baton Rouge, Parish of East Baton Rouge. After thoroughly reviewing the record, the applicable laws and ordinances, and considering the parties' arguments, we find no manifest or legal error in the judgment of the trial court, and affirm.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Trudy M. White (Judge White) served as a judge on the Baton Rouge City Court from November 6, 1999, through December 31, 2008. On January 1, 2009, she began sitting as a judge on the Nineteenth Judicial District Court, where she continues to serve in that capacity to date. When she left the city court, she received severance pay from the defendant, the City of Baton Rouge, in the sum of \$36,226.95. She claims she is owed additional severance pay for accrued unused vacation time in the amount of \$59,656.40, for a total of \$95,883.35. The City maintains the amount of severance paid to Judge White was proper, pursuant to City-Parish Ordinance 11212¹, discussed later herein.

On December 30, 2009, Judge White filed a Petition for Declaratory Judgment, seeking additional severance pay beyond what she had been paid, asserting she had accrued 1,168.74 hours (146 days) of unused vacation time, and maintaining she is entitled to be paid for that time, as part of her severance pay, pursuant to the relevant laws and ordinances.

ASSIGNMENTS OF ERROR/ISSUES PRESENTED FOR REVIEW

In her appeal, Judge White raises the following issues: (1) whether severance pay is "earned compensation" or "salary"; (2) whether City-Parish Ordinance 11212, effective

¹ Notwithstanding the various different citations to this ordinance found throughout the record, and in the parties' briefs, the copy of the actual ordinance contained in the record has a handwritten notation that the ordinance number is 11212. Therefore, for purposes of this opinion, that designation will be used.

January 1, 2001, limited the amount of unused vacation that accrued for severance pay purposes for city judges; (3) whether La. R.S. 13:2071 primes 11212; and, (4) whether severance pay is due and owing under the "Judges' method"².

APPLICABLE LAW

In asserting her demand, Judge White relies, in part, on La. R.S. 13:2071, which addresses the compensation of city judges, officers, and employees of city court in Baton Rouge, and provides, in pertinent part:

B. Each judge *may* be granted a vacation of thirty days during each year; however, only one may be on vacation at any given time, and during this time the other division of the court shall continue in operation.

(Emphasis added.) Applying the foregoing statute in calculating severance is referred to as the "State method". Judge White asserts that according to the "State method," she is entitled to receive compensation for unused vacation time pursuant to the statutory allocation of thirty days per year, without any limitation on the amount that can be accrued.

We note however, the statute permits (but does not mandate) an allowance of thirty days vacation time per year to city court judges. Moreover, the statute does not address the accrual of, or carry over of, such time.

Judge White also relies on City-Parish Personnel Rule IX, Section 3.4, which refers to severance pay, providing, in pertinent part:

Upon termination of employment for any reason, the employee ... shall be entitled to be paid for all accrued but unused vacation time subject to the maximum set forth in Section 3.2

Judge White asserts that prior to January 1, 2001, city court judges were paid all "unused" vacation days – the calculations presumably based on the 30 days of annual vacation permitted by La. R.S. 13:2071. Notably, Judge White refers to those thirty days

² For purposes of this litigation, the "Judges' method" is the terminology given by the parties to the City-Parish's interpretation of the laws applicable to and the proper calculation pursuant to which Judge White's severance was calculated. The "State method" is the terminology given to interpretation and calculations posited by Judge White as being applicable to her severance, and which she urges this court to adopt.

as a "statutory entitlement"; however, as noted earlier, the statute uses permissive and not mandatory language. We also note that the right to be paid for all accrued unused vacation time arises out of a City-Parish personnel rule, and not, as asserted by Judge White, from the "Plan of Government" or the employment contract city court judges have with the City-Parish government. Thus, assignments of error one and four lack merit.

Also, relevant to resolving the issue presented is City-Parish Ordinance 11212, entitled: "Amending Title 1 (Municipal and Parish Organization), ... So as to Amend and Re-enact Section 1:58 Thereof, *Relative to the Vacations, Sick Leave and Compensation*," which became effective on January 1, 2001. This ordinance is the first provision that specifically addresses city judges' right to pay of accrued vacation time – the precise issue before the court. The defendant maintains it was applicable to Judge White from that date until her severance from the Baton Rouge City Court. They also maintain she was paid severance pursuant to that ordinance and that all such pay due to her had been paid in full. That ordinance amended the Code of Ordinances, Section 1:58, to provide, as follows, in pertinent part:

- A. The city judges shall be entitled to such vacations as provided by law. Vacation accrual and severance pay *shall be allowed in accordance with the Personnel Rules for Classified Employees of the City ... Parish...*

(Emphasis added.) The Code of Ordinances additionally provides, in Section 1:230 (which was in effect prior to the passing of 11212):

Vacations for full time unclassified employees of the city-parish shall be granted in the same manner and subject to the same rules provided for employees in the classified service, as set forth in rule IX, section 2, of the Personnel Rules, as same may be amended from time to time.

Thus, both The Code of Ordinances as well as Ordinance 11212 establish the Personnel Rules as the method for accruing vacation leave and receiving severance pay for such accrued yet unused leave upon termination of service. In pertinent part, Rule IX provides, as follows:

Section 3.2 Maximum Accrual

An employee may accumulate vacation time up to the maximum that is equivalent to the number of vacation days

which can be earned by that employee during his or her most recent five years of employment, not to exceed one-hundred twenty (120) days. Once accumulated vacation time reaches that maximum, no further vacation time is earned until the employee uses vacation time and reduces his or her accumulated vacation time to an amount less than the maximum, at which time accumulation shall commence against subject to the maximum.

Section 3.4 Payment/Credit

- A. Upon termination of employment for any reason, the employee ... shall be entitled to be paid for all accrued but unused vacation time subject to the maximum set forth in Section 3.2 herein.

Thus Ordinance 11212, by reference to the Personnel Rules, established that the accrual rate for city judges would be based on years of service as opposed to actual "unused vacation" days.

Defendant maintains Judge White's severance was calculated and paid pursuant to Rule IX for the amount to which Judge White was entitled from the period of January 1, 2001, to her departure. They also submit that they used the balance on the City Court Judicial Administrator's books to calculate the pre-2001 hours owed.³ Our review of the record reflects that these calculations were properly based on and calculated pursuant to Personnel Rule IX. Thus, assignments of error two and three also lack merit and were properly rejected by the trial court.

Accordingly, finding no error in the method employed by the defendant in calculating and paying Judge White's severance, we likewise find no error in the trial court's judgment denying her claim and dismissing her suit. The judgment of the trial court is hereby affirmed; costs of this appeal are assessed to the plaintiff, Trudy M. White.

AFFIRMED.

³ The City-Parish calculated Judge White's severance pay prior to January 1, 2001 (and the effective date of Ordinance 11212) pursuant to §1:230 and using the balance provided by the City Court Judicial Administrator. Thereafter, pursuant to Ordinance 11212, her severance for January 1, 2001, until her departure from city court, was calculated and paid pursuant to Personnel Rule IX.