

NOT DESIGNATED FOR PUBLICATION

WPH
SG
PMC

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2016 CA 0164

WILBERT HARRIS

VERSUS

CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE

Judgment Rendered: DEC 22 2016

**Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C611117**

Honorable Janice Clark, Judge Presiding

**Jean-Paul Robert
Gonzales, LA**

**Counsel for Plaintiff/Appellee,
Wilbert Harris**

**Dawn N. Guillot
Baton Rouge, LA**

**Counsel for Defendant/Appellant,
City of Baton Rouge/ Parish of East Baton Rouge**

BEFORE: WHIPPLE, C.J., GUIDRY, AND McCLENDON, JJ.

WHIPPLE, C.J.

This matter is before us on appeal from a judgment of the trial court in favor of plaintiff, Wilbert Harris, and against defendant, the City of Baton Rouge/Parish of East Baton Rouge (“the City”) as a result of the City terminating plaintiff from his civil service employment position as a Complaint Investigator with the Department of Public Works. For the following reasons, we reverse.

FACTS AND PROCEDURAL HISTORY

Wilbert Harris was employed by the City of Baton Rouge in the Department of Public Works, Complaint Resolution Department, as a Complaint Investigator. After working for the City for twenty-five years, Harris entered into the DROP program in June of 2007 for a five-year period. However, prior to completing five years in the DROP program, he was terminated by the City, effective June 8, 2008.

In accordance with the City’s promulgated rules for civil service employees, Harris filed a timely appeal of his termination. The appeal was heard by an administrative law judge, who recommended that Harris’s termination be overruled. On August 18, 2011, the Personnel Board unanimously voted to accept the administrative law judge’s recommendation and voted for Harris to be suspended for five days without pay in lieu of termination.

However, following the decision of the Personnel Board, the City failed to reemploy Harris in his prior position. Thereafter, Harris filed a petition for damages in the Nineteenth Judicial District Court, seeking the payment of all wages owed to him, together with penalties and attorney’s fees.

The trial court conducted a hearing on Harris’s petition as a summary proceeding. During the hearing, the City acknowledged that Harris was not offered his previous employment position following the decision of the Personnel Board. However, in mitigation, the City introduced a letter from Harris’s previous attorney, which the City received after the Personnel Board hearing, stating that

Harris would not be returning to work for the City. Harris testified at the hearing that he had not seen this letter from his former attorney. He further testified that the only letter he wrote was written before the Personnel Board hearing, wherein he stated that he would not accept the position of Maintenance Worker III as offered to him by the City because that position was a demotion. The trial court also heard the testimony of Harris's forensic accounting expert, who calculated the wages owed to Harris due to his "illegal termination," and the monetary interest that Harris would have earned on his DROP account if he had not been "illegally terminated" and if the City had reemployed him in his prior position following the Personnel Board hearing.

Following the hearing, the trial court rendered judgment on November 9, 2015, awarding Harris: (1) \$76,894.00 for past loss wages; (2) \$8,618.00 for past loss fringe benefits; (3) \$13,551.00 for penalty wages; (4) \$5,856.00 for expert witness fees; (6) \$33,818.00 for lost DROP damages; and (7) \$838.12 for costs. The trial court also rendered a subsequent judgment, on December 14, 2015, awarding Harris \$17,823.00 in attorney's fees.

In this appeal, the City challenges only the December 14, 2015 judgment that awarded Harris attorney's fees.¹ The City contends that the trial court erred in granting attorney's fees pursuant to LSA-R.S. 23:631, the "Wage Payment Act," contending that Harris's claim for damages is governed by LSA-R.S. 49:113, which does not authorize an award of attorney's fees. The City further contends that the trial court erred in calculating attorney's fees at the hourly rate of \$300.00 per hour.

¹In a companion appeal, Harris v. City of Baton Rouge, 2016-0163 (La. App. 1st Cir. --/--) (unpublished opinion), also handed down this day, the City and Harris both appeal the November 9, 2015 judgment.

DISCUSSION

In its first assignment of error, the City contends that Harris is not entitled to attorney's fees pursuant to the Wage Payment Act because the wages at issue are not "earned wages" following Harris's termination, but instead represent backpay for time that Harris alleges he should have been working but for his improper termination.

Attorney's fees are not recoverable unless authorized by statute or contract. Fontenot v. State, Department of Public Safety and Corrections, 625 So. 2d 1122, 1124 (La. App. 1st Cir. 1993). Accordingly, in this case, we must determine the applicable governing statute, namely, whether Harris's claim is governed by LSA-R.S. 23:631, the Wage Payment Act, which authorizes attorney's fees or LSA-R.S. 49:113, which does not.

The Wage Payment Act is designed to compel the prompt payment of earned wages upon the discharge or resignation of an employee. Amer v. Roberts, 2015-0599 (La. App. 1st Cir. 11/9/15), 184 So. 3d 123, 135. The Act imposes a duty on an employer, upon the discharge or resignation of any employee, to pay the employee the amount then due, under the terms of the employment, not later than fifteen days following the date of discharge or resignation. An employer who in bad faith fails to comply with the provisions of LSA-R.S. 23:631 shall be liable to the employee for penalty wages and reasonable attorney's fees. LSA-R.S. 23:632. However, this statute is penal in nature and therefore must be strictly construed. Pace v. Parker Drilling Co. and Subsidiaries, 382 So. 2d 988, 990 (La. App. 1st Cir.), writ denied, 383 So. 2d 1016 (La. 1980).

Louisiana Revised Statute 49:113, which addresses salaries and wages of employees illegally separated from service and the offset of wages for outside employment during the period of separation, does not authorize an award of attorney's fees, as it states as follows:

Employees in the state or city civil service, who have been illegally discharged from their employment, as found by the appellate courts, shall be entitled to be paid by the employing agency all salaries and wages withheld during the period of illegal separation, against which amount shall be credited and set-off all wages and salaries earned by the employee in private employment in the period of separation.

In determining whether the Wage Payment Act or LSA-R.S. 49:113 applies to Harris's claim for damages, we rely on the well-recognized principle of statutory construction that legislation addressing a more particularized subject matter prevails over more generalized legislation. Roberson v. Roberson, 2012-2052 (La. App. 1st Cir. 8/5/13), 122 So. 3d 561, 568. Accordingly, in this case, we conclude that we must apply LSA-R.S. 49:113, which specifically addresses the entitlements of a state or city civil service employee, such as Harris, "illegally discharged from their employment."

Moreover, we note that while state Civil Service Rule 13:35 and LSA-RS. 42:1451 specifically authorize an award of attorney's fees to a wrongfully terminated **state** civil service employee, the protection afforded under these provisions do not appear to apply herein because Harris was a **city** civil service employee, not a State civil service employee.² After review of the "Rules Governing Employees in the Classified Service of the City of Baton Rouge," we are unable to find, nor have the attorneys pointed out, a similar attorney's fees provision in these rules.

Accordingly, while we are mindful of the circumstances that gave rise to Harris's claims, we find that in the absence of any clear legal authority for an

² Cf. Baker v. Southern University, 590 So. 2d 1313, 1316 (La. App. 1st Cir. 1991), wherein this court upheld an award of attorney's fees to a terminated state university employee, relying on LSA-R.S. 42:1451 and State Civil Service Rule 13:35(a).

award of attorney's fees to Harris under the specific rules that govern his termination, the trial court erred in awarding Harris \$17,823.00 in attorney's fees.³

CONCLUSION

For the above and foregoing reasons, the December 14, 2015 judgment of the trial court, awarding attorney's fees in the amount of \$17,823.00 to Wilbert Harris, is hereby reversed. Costs of this appeal are assessed to Wilbert Harris.

REVERSED.

³As we have found that the awarding of attorney's fees was improper, we premit discussion of the City's second assignment of error pertaining to the amount of attorney's fees that were awarded.