

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: December 2, 2015)

PARMELEE, POIRIER AND
ASSOCIATES LLP

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V.

C.A. No. PC2012-0441

R.I. DEPARTMENT OF LABOR
AND TRAINING, et al.

DECISION

MATOS, J. The present matter is before this Court on Parmelee, Poirier & Associates LLP's, (Appellant or Parmelee) appeal from an administrative decision of the R.I. Department of Labor and Training (the Decision). The Decision requires Parmelee to pay its former employee, Joanna L'Heureux (Ms. L'Heureux), 114 hours of unused personal time.¹ Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth in this Decision, this Court affirms the Decision of the R.I. Department of Labor and Training.

I

Facts and Travel

The facts of this case are largely undisputed. Ms. L'Heureux worked for Parmelee as a professional accountant from September 2002 until the middle of March 2011. (Hr'g Tr. at 5, 13, Dec. 19, 2011 (Hr'g Tr.); Appeal Ex. 1 at 1-4, Non-Payment of Wages Complaint Form.) When Ms. L'Heureux commenced employment with Parmelee

¹ The Decision also requires Parmelee to pay the R.I. Department of Labor and Training a 25% penalty amounting to \$1296.75 pursuant to G.L. 1956 § 28-14-19. This Decision does not address the appropriateness of that penalty because the Appellant has not raised that issue on appeal.

in 2002, the company did not have an employee handbook. Hr’g Tr. at 5, 21, 25. Sometime in 2009, Parmelee’s partners drafted an employee handbook and distributed it to their employees in January 2010. Id. at 21, 46-47. Ms. L’Heureux was given the handbook on January 22, 2010. At that time, Ms. L’Heureux signed it and agreed to “abide by the policies and procedures contained therein.” Id. at 21, 23.

The handbook stated, in pertinent part, “the policies and benefits contained in this employee handbook may be added to, deleted, or changed by the firm at any time.” Id. at 24. The handbook contained a section, at page 10, regarding personal time. That section read:

“The firm allows all employees to take personal time. Personal time covers the entire time that employees have the benefit of paid absences from the firm, including the following:

- Vacation
- Medical (Sick and Medical Appointments)
- Personal Days
- Bereavement Days

The amount of time allowed is as follows:

- During first year of employment – One week
- (Allocated by hours worked if employee leaves the firm)
- Second through fifth year of employment –Two weeks
- Sixth through tenth year of employment – Three weeks
- After ten years of employment – Four weeks.” (Ex. 1 at 11, Employee Handbook at 10.)

The final pertinent section of the employee handbook said, “Employees leaving the firm are entitled to unused personal time.” (Ex. 1 at 13, Employee Handbook at 21.)

Upon separation from employment, Ms. L’Heureux requested that Parmelee pay her 114 hours in accrued, unused vacation time. (Hr’g Tr. at 45.) Parmelee denied Ms. L’Heureux 114 hours of unused vacation time because it claimed the hours had not yet accrued. See id. Ms. L’Heureux then filed a claim with the R.I. Department of Labor

and Training pursuant to § 28-14-4(b) for her accrued vacation time. See Ex. 1, Non-Payment of Wages Complaint Form.

In accordance with the statute, the Director's designee (Hearing Officer) conducted a hearing on December 19, 2011. See Hr'g Tr.; see also § 28-14-19(a). Ms. L'Heureux testified at the hearing. According to Ms. L'Heureux, she left the firm on March 17, 2011, after providing three weeks written notice. See Hr'g Tr. at 44. On her final timesheet, Ms. L'Heureux requested twenty-eight hours of personal time, but she received compensation for only fourteen hours of personal time. Id. at 45. Ms. L'Heureux had intended to put in for the remaining one hundred hours she contends that Parmelee owed her over the next two weeks. Id. at 45. When she was not paid for the full twenty-eight hours requested, Ms. L'Heureux sent Parmelee's managing partner, Mr. Bernard Poirier, an email asking for her personal time. Id. at 45-46. He responded that she was not owed any personal time. See id. at 45.

Ms. L'Heureux introduced her final paystub from March 18, 2011. Id. at 9-10. The paystub had a list of categories on its right hand side. Id. at 11. Such categories were entitled "Personal," "Carry Over," and "Accrued"; next to those categories, it stated "160." Id. Ms. L'Heureux understood, from her paystubs, that she was allowed to take up to 160 hours of personal time for the year. Id. Further, she testified that her checks indicated that she was entitled to the 160 hours upon the commencement of the calendar year, as noted on the first calendar year check she received in January 2011. Id. at 10. Underneath the 160 hours on the right side of the paystub, there was a number "32" which was subtracted from the 160. Id. at 11. Ms. L'Heureux testified that the 32 represented the hours of personal time which she had already taken in 2011. Id.

Therefore, Ms. L’Heureux testified that the balance of her unused personal time was payable to her at separation. Id. at 14.² It was Ms. L’Heureux’s position that, according to the handbook and as supported by her paystub, Parmelee allocated personal hours by hours worked only during the first year of an employee’s employment. (Hr’g Tr. at 28.)

Parmelee’s managing partner, Mr. Poirier, also testified at the hearing. Throughout his testimony, Mr. Poirier was firm in his contention that it had always been the company’s policy to allocate personal time based on the time worked during the year. See id. at 49, 52. To support this contention, Mr. Poirier gave examples of two of Parmelee’s other ex-employees who had recently left the company and received an allocation of personal time based on the hours they had worked during the year in which they left the company. Id. at 53-60. In regard to page ten of the employee handbook, pertaining to personal time, Mr. Poirier stated as follows:

“Well, our position that was a bullet point stands on its own, um, that we always, we always, uh, had kept the policy of allocating all time, uh, based on the year. So, um I, I think that basically, the, the, um parentheticals are simply a, a mistyping by one of my partners.” Id. at 52.

Ultimately, on December 29, 2011, the Hearing Officer issued a formal Decision regarding Ms. L’Heureux’s claim. In reaching the Decision, the Hearing Officer cited §§ 28-14-1(4), et seq., which relates to the payment of wages by employers in Rhode Island. (Decision at 3.) The statute defines “wages” as “all amounts at which the labor or service rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the amount.” Sec.

² Ms. L’Heureux had claimed 128 hours. See Hr’g Tr. at 45. However, Parmelee paid Ms. L’Heureux for fourteen of the hours she requested upon separation. See id. Therefore, only 114 hours were disputed during the hearing. See id.

28-14-1(4). The Hearing Officer also cited to the relevant section of the statute regarding payment on separation of employer. (Decision at 3.) That section states:

“Whenever an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee.”
Sec. 28-14-4.

The Hearing Officer considered the above facts and determined that the language of the employee handbook was not clear. (Decision at 4-5.) The Hearing Officer acknowledged that Mr. Poirier averred that the language in the handbook was clear and should be followed. Id. The Hearing Officer found that there was conflict in the terms of the handbook, and that the conflict should be construed against Parmelee, as Parmelee drafted the employee handbook. See id. The Hearing Officer also found that Parmelee’s payroll record further supported Ms. L’Heureux’s claim for unpaid vacation time. See id. at 5.

The paystub presented at the hearing noted that Ms. L’Heureux had 160 hours of personal time and that she had taken thirty-two hours, leaving a balance of 128 hours of personal time. Id. It is undisputed that Parmelee subsequently paid Ms. L’Heureux an additional fourteen hours of personal time, leaving 114 hours in dispute. See id. Accordingly, the Hearing Officer held that Ms. L’Heureux was entitled to \$5187.00 gross in unpaid wages for the 114 hours of unused vacation time. Id. Additionally, the Hearing Officer ordered Parmelee to pay a twenty-five percent penalty equaling \$1296.75 to the R.I. Department of Labor and Training. Id. Parmelee timely appealed the Decision.

II

Standard of Review

Pursuant to the Administrative Procedures Act, the Superior Court has appellate jurisdiction to review final orders of state administrative agencies. Sec. 42-35-1, et seq.; McAninch v. State of R.I. Dep't of Labor & Training, 64 A.3d 84, 87 (R.I. 2013). Section 42-35-15(g) of the Administrative Procedures Act governs this Court's review of the R.I. Department of Labor and Training's (the Department's) Decision. It provides:

“The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error or law;

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g)

This Court's review of an agency's decision “is circumscribed and limited to ‘an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.’” Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). If this Court does find that legally competent evidence exists in the record, then “the court is required to uphold the agency's

conclusions.” See id. (quoting Barrington Sch. Comm., 608 A.2d at 1138). Our Supreme Court has defined legally competent evidence to mean “the presence of some or any evidence supporting the agency’s findings.” Auto Body Ass’n of R.I. v. State Dep’t of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (citations omitted). The Court further clarified that legally competent evidence must be an amount “more than a scintilla but less than a preponderance.” Arnold v. R.I. Dep’t of Labor & Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003) (internal quotations omitted). Legally competent evidence must be “relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” Id. (internal quotations omitted).

If this Court does find that there is legally competent evidence supporting an agency’s decision, then this Court shall defer to the agency’s decision on questions of fact. See Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007). In reviewing an agency’s interpretation of a “statute as applied to a particular factual situation[, this Court] must accord that interpretation weight and deference as long as that construction is not clearly erroneous or unauthorized.” Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004) (internal quotations omitted). In reviewing agency appeals, this Court “shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.” Sec. 42-35-15(g). Alternatively, an agency’s determinations on questions of law are not binding on this Court, which may review the agency’s determinations on questions of law in order to determine the law in view of the applicable facts. Narragansett Wire Co. v. Norberg, 118 R.I. 596, 607, 376 A.2d 1, 6 (1977).

III

Analysis

On appeal, Parmelee contends that the Decision of the Hearing Officer was clearly erroneous in view of the reliable, probative, and substantial evidence of the record. Parmelee claims that the Hearing Officer abused his discretion by disregarding what Parmelee characterizes in its memorandum as “the uncontradicted testimony of Bernard Poirier as to the Employer’s terms and conditions of vacation time/ personal time contained in the employee handbook.” Parmelee contends that the employee handbook is not ambiguous and argues that the handbook clearly states what benefits Ms. L’Heureux was entitled to when she left Parmelee. Conversely, the R.I. Department of Labor and Training and Ms. L’Heureux aver that the R.I. Department of Labor and Training gave a full, fair, and impartial hearing considering the evidence before it and request that the Decision be affirmed.

A

The Employee Handbook

Pursuant to § 28-14-4(b),

“Whenever an employee separates or is separated from the payroll of an employer after completing at least one year of service, any vacation pay accrued or awarded by collective bargaining, written or verbal company policy, or any other written or verbal agreement between employer and employee shall become wages and payable in full or on a prorated basis with all other due wages on the next regular payday for the employee.”

The statute on its face requires payment of accrued vacation time. See § 28-14-4(b). Here, the parties disagree about the nature of the existing policy regarding the amount of vacation pay that had actually “accrued” at the time of separation.

There is limited case law in Rhode Island concerning the import of written employment policies and/or handbooks. In Roy v. Woonsocket Inst. for Sav., our Supreme Court declined to decide whether handbooks and employment policies could give rise to contract rights in certain circumstances. 525 A.2d 915, 918 (R.I. 1987). Instead, the Court found, in Roy, that when an employee handbook provides that the employer has the unilateral right to add, delete, or alter the benefits or policies within the handbook, then an employee cannot have a legitimate expectation that a particular policy shall remain in effect. See Neri v. Ross-Simons, Inc., 897 A.2d 42, 48 (R.I. 2006); Roy, 525 A.2d at 918. The Rhode Island Supreme Court held that the handbooks in Roy and Neri did not create employment contracts based on the Court's finding in Roy, as both employee handbooks at issue gave the employer the unilateral right to add, amend, or delete policies within the handbook. See Neri, 897 A.2d at 46; Roy, 525 A.2d at 918.

However, the issue here is not whether Parmelee had a unilateral right to alter, add, or delete policies within the handbook. The gravamen of the matter is the determination of the existing policy at the time of Ms. L'Heureux's separation. The employee handbook represented, if nothing else, Parmelee's written policy regarding personal time and an employee's entitlement to personal time upon separation from employment. See § 28-14-4(b); Wilkinson v. State Crime Lab. Comm'n, 788 A.2d 1129, 1144 (R.I. 2002). Ms. L'Heureux agreed to abide by the procedures and policies in the handbook when she signed the handbook. (Hr'g Tr. at 23.) Neither Ms. L'Heureux nor Mr. Poirier testified that the policy regarding personal time changed after the issuance of the handbook; in fact, Parmelee contends that the handbook is clear and represents the

policy. Nor is there any testimony that any policy other than that contained in the handbook was communicated to Ms. L'Heureux.

However, the Hearing Officer determined that the handbook's policy regarding the amount of personal time to which Ms. L'Heureux was entitled to upon separation from employment was ambiguous. In his Decision, the Hearing Officer noted that Mr. Poirier testified he was involved in the development of the handbook. (Decision at 3.) Additionally, he testified that the term, "(Allocated by hours worked if employee leaves the firm)," within the section entitled Personal, was intended to apply to all employees—not just those employees who left Parmelee during their first year of employment—no matter how long the employee worked for Parmelee before he or she left Parmelee's employment. *Id.* The Hearing Officer further noted that Mr. Poirier asserted that the parentheses around the phrase were a misprint. *Id.* Ultimately, the Hearing Officer determined that the language of the handbook was unclear as to how much personal time employees would be paid upon separation. See Town of Burrillville, 921 A.2d at 118.

Although the handbook may not have been a contract, principles of contract interpretation are helpful to this analysis. Whether a term in a contract is ambiguous is a question of law. Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009) (citing Gorman v. Gorman, 883 A.2d 732, 738 n.8 (R.I. 2005)). Our Supreme Court has consistently held that "an agreement is ambiguous only when it is reasonably and clearly susceptible to more than one interpretation." W.P. Assocs. v. Forcier, Inc., 637 A.2d 353, 356 (R.I. 1994). "In determining whether the contract has an ambiguous meaning, this Court cannot consider the subjective intent of the parties; but rather must consider the intent expressed by the language of the contract." Bliss Mine Rd. Condo.

Ass'n v. Nationwide Prop. & Cas. Ins. Co., 11 A.3d 1078, 1083-84 (R.I. 2010). After reviewing all the documentary evidence before him, the Hearing Officer determined that the meaning of the written policy entitling Ms. L'Heureux to her unpaid personal time upon separation from employment was ambiguous.

The Court finds that the Hearing Officer's finding that the handbook is ambiguous regarding whether an employee's personal time is accrued by hours worked after her first year of employment was not affected by error of law. See Bliss Mine Rd. Condo. Ass'n, 11 A.3d at 1083 (citing Young, 973 A.2d at 558). Namely, it is unclear from the handbook whether employees in their second year of employment and beyond accrue personal time by hours worked or if they are automatically given it at the beginning of each year as Ms. L'Heureux argued. See Employee Handbook at 10; see also Paul v. Paul, 986 A.2d 989, 994 (R.I. 2010). Accordingly, the Hearing Officer's finding that the written policy was ambiguous was not affected by error of law.

Moreover, the Hearing Officer found that the conflict created by the ambiguity within the handbook should be construed against Parmelee, as Parmelee was solely responsible for publishing the handbook. (Decision at 4-5.) Pursuant to contra proferentem, ambiguities within a contract are construed against a drafter of the document. Young, 973 A.2d at 559 n.10; Elliott Leases Cars, Inc. v. Quigley, 118 R.I. 321, 328, 373 A.2d 810, 813 (1977). Parmelee wrote the employee handbook, and the employees had to agree to abide by the policies and procedures contained within.

In determining whether Ms. L'Heureux was entitled to the 114 hours of personal time, the Hearing Officer considered the payroll records, Ms. L'Heureux's testimony concerning her understanding of the personal time policy at Parmelee, Mr. Poirier's

testimony regarding the policy and Mr. Poirier's examples of the benefits other employees received upon separation from Parmelee. The Hearing Officer credited the payroll records as supporting Ms. L'Heureux's claim for the unpaid hours and, while the Hearing Officer considered the testimony and evidence of Mr. Poirier, he did not find that that evidence altered his Decision. This Court defers to the Hearing Officer's factual finding regarding the evidence. See Labor Ready Ne., Inc., 849 A.2d at 344. Therefore, the Hearing Officer's construing the ambiguity in the employment policy against the drafter was not clearly erroneous or affected by error of law. See Haviland v. Simmons, 45 A.3d 1246, 1260 (R.I. 2012); Elliott Leases Cars, Inc., 118 R.I. at 334, 373 A.2d at 816 (citing 3 Corbin, Contracts 547, at 173 (1960)).

The Hearing Officer determined that Ms. L'Heureux was entitled to 114 hours of personal time. After careful review, this Court finds that the testimony, handbook, and paystubs support the Hearing Officer's finding that Parmelee owed Ms. L'Heureux 114 hours personal time. Mr. Poirier himself admitted that the parentheses were a typographical error. The payroll records further support the Hearing Officer's Decision. See Nickerson, 853 A.2d at 1205. This Court is satisfied that the Hearing Officer's considering all the testimony and evidence before him in determining that Ms. L'Heureux was entitled to 114 hours of personal time was not clearly erroneous or made upon unlawful procedure.

IV

Conclusion

After reviewing the entire record, this Court is satisfied that the R.I. Department of Labor and Training's Decision is supported by legally competent evidence. Further,

this Court finds that the Hearing Officer for the R.I. Department of Labor and Training considered all evidence before him in making the Decision. This Court concludes that the R.I. Department of Labor and Training's Decision is not affected by error of law; made upon unlawful procedure; clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record; or arbitrary and capricious, or characterized by abuse of discretion. Substantial rights of the Appellant have not been prejudiced. Accordingly, the R.I. Department of Labor and Training's Decision of December 29, 2011 is affirmed.

Counsel shall submit the appropriate order for entry.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: **Parmelee, Poirier and Associates LLP v. R.I. Department of Labor and Training, et al.**

CASE NO: **PC2012-0441**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **December 2, 2015**

JUSTICE/MAGISTRATE: **Matos, J.**

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