2015 IL App (3d) 150059-U

Order filed October 2, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

STEVE MARTIN,	)	Appeal from the Circuit Court
	)	of the 1th Judicial Circuit,
Plaintiff-Appellant,	)	Tazewell County, Illinois.
	)	
v.	)	Appeal No. 3-15-0059
	)	Circuit No. 12 LM 364
CITY OF EAST PEORIA,	)	
	)	The Honorable
Defendant-Appellee.	)	Paul P. Gilfillan,
	)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment is not appropriate where the terms of the collective bargaining agreement do not make clear whether or when the obligation to grieve the non-payment for unused vacation hours arises.

¶ 2 This appeal involves a claim filed by Steve Martin, plaintiff-appellant, against the City of East Peoria (the City), defendant-appellee, for the alleged nonpayment of one year's vacation benefits. The trial court granted the City's motion for summary judgment holding that Martin (1)

had failed to exhaust his administrative remedies and (2) had already been paid. Martin appeals. We reverse.

¶ 3 FACTS

¶ 4 Martin was employed as a patrolman for the City for roughly thirteen years. He was also a member of the Police Benevolent Labor Committee (the Union). The City and the Union have a collective bargaining agreement (CBA), which governs the terms of employment for patrolmen and provides a procedure for grievances related to covered issues. The Union is recognized by the City as the "sole and exclusive bargaining agent for all regular full-time patrolmen."

¶ 5 According to Section 8.2 of the CBA, "[f]or each week of vacation, a patrolman shall be entitled to an allowance of forty (40) hours' pay at his regular hourly rate of pay." The City is to have the patrolman's allowance check ready "when requested *** at least on the last scheduled working day prior to his vacation." If the patrolman changes his scheduled vacation date, the City is to be given "one week's advance notice." The patrolman is given "one week's advance notice" if the City changes his vacation date. Section 8.3 of the CBA further states that "[all] vacations must be completed by the end of the anniversary year and are not cumulative." An employee's anniversary year is commensurate with his date of hire. If there are eligible unpaid vacation benefits at the time of the employee's separation from the department, the patrolman is entitled to payment of that benefit.

¶ 6 There is no provision in the CBA that covers the specific issue raised in this case – that is, the payment for unused vacation hours at the end of each anniversary year.[1]

[1] Though not stated in the collective bargaining agreement, both Martin and the City agree in their respective briefs that, by custom, the City pays the patrolman any unused vacation allowance at the end of the patrolman's anniversary year.

¶ 7 The CBA also provides a "sole and exclusive manner for handling and processing grievances." Pursuant to section 15.1, "[f]or purpose of this Agreement, the term "grievance" means any dispute or difference of opinion between the City and any patrolman covered by the Agreement involving the meaning, interpretation or application of the provisions of this Agreement." The procedure includes a chain of command for a patrolman to voice his grievance that progresses from a complaint to the patrolman's sergeant through the Union and subsequently to binding arbitration. Section 15.4 states, however, that "[n]o grievance shall be entertained or processed unless it is submitted within fourteen (14) calendar days after the occurrence of the event giving rise to the grievance."

¶ 8 Martin's employment anniversary as a patrolman was June 26 of each year and as of 2008 he was eligible for three weeks' vacation or had accrued 120 vacation hour benefits. On July 6, 2008, Martin used 8 of his 120 vacation hours for his 2008-2009 employment anniversary year. He was injured on-duty on September 13, 2008, before using any additional vacation hours. After his injury, he became disabled and could only perform light duty. Martin then began to receive benefits under the Public Employee Disability Act (Disability Act) (5 ILCS 345/1(b) (West 2014). At the end of his employment anniversary year, the City paid Martin for the full 112 remaining unused vacation hours for his 2008-2009 employment anniversary year.[2]

¶ 9 On June 29, 2010, Martin made a written request to be paid for his unused vacation benefits for his 2009-2010 employment anniversary year. He had been collecting benefits under the Disability Act when his employment anniversary occurred on June 26, 2010, and he had not

[2] The Disability Act requires continued payment, including benefits, to an employee "on the same basis" as before his injury for no "longer than one year in relation to the same injury" after the employee becomes eligible for its coverage. 5 ILCS 345/1(b) (West 2014)

begun receiving worker's compensation or pension benefits. The City responded that it would have to check on his vacation pay.

¶ 10 Neither Martin nor the Union pursued a grievance or arbitration under the CBA, at that time, regarding Martin's contention that he was not paid for earned but unused vacation.

¶ 11 On October 18, 2010, Martin was granted a disability pension by the East Peoria Police Pension Funds Board of Trustees. This caused his membership in the Union to effectively end.

¶ 12 On December 7, the city administrator responded to Martin's June 29 request with a letter that stated "you have already been paid out the unused vacation hours you had available." On December 11, Martin requested assistance from the Union regarding the matter. The Union sent a letter on December 20 to the city administrator asking him to "double-check" the records regarding Martin's unused vacation hours for his 2009-2010 employment anniversary year.

¶ 13 On January 14, 2011, Martin received correspondence from the Union stating that the City had not responded to its letter, it did not represent disability status officers such as Martin, and it suggested Martin seek private counsel.

¶ 14 Martin filed a claim against the City in the circuit court seeking payment for the requested allegedly unpaid vacation hours under the Illinois Wage Payment and Collection Act (Collection Act) ((820 ILCS 115/1 *et seq*.) (West 2014)). The circuit court, ultimately, granted the City's motion for summary judgment finding that Martin had failed to exhaust his administrative remedies and that, pursuant to the CBA, the City had already paid Martin all benefits he had earned. This decision foreclosed his action under the Collection Act. Martin timely appealed.

¶ 15 ANALYSIS

¶ 16 Here on appeal, Martin asserts two arguments against the trial court's grant of summary judgment in favor of the City. First he argues that he did not fail to exhaust his administrative remedies because, according to the plain language of the CBA, he was ineligible to be represented by the Union at the time he became aware of his grievances. Martin claims that he "had no reason to file a grievance until he was officially denied the vacation pay." This official denial occurred on December 7, 2010, two months after he was granted a disability pension on October 18, 2010, and his membership in the Union had effectively ended. He asserts that the City purposefully waited to deny his benefits claim until he was no longer able to file a grievance.

¶ 17 Second, Martin argues that the trial court erred in granting summary judgment because the language of the CBA is ambiguous regarding when separation occurs in terms of a disability claim and the accrual of benefits such as vacation pay ends. He asserts also that two similarly situated employees were paid for the same benefits Martin was denied. Thus he claims a material issue of fact exists precluding summary judgment.

¶ 18 Summary judgment is appropriate when "the pleadings, depositions, and admissions on file *** show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). We review *de novo* orders entered granting a motion for summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 19 "Where a collective bargaining agreement establishes a grievance and arbitration procedure for disputes arising out of the agreement, an employee alleging a violation of the agreement must attempt to exhaust his or her contractual remedies before seeking judicial relief." *Kostecki v. Dominick's Finer Foods, Inc. of Illinois*, 361 Ill. App. 3d 362, 369 (2005) (citing

Gelb v. Air Con Refrigeration & Heating, Inc., 356 Ill. App. 3d 686, 695 (2005)). The CBA provides a grievance procedure to handle "any dispute or difference of opinion between the City and any patrolman covered by the Agreement involving the meaning, interpretation or application of the provisions of the Agreement."

¶ 20 Section 8 of the CBA specifically discusses how and when a patrolman is to be paid with respect to his vacation allowance when vacation is scheduled or rescheduled. However, a patrolman's ability to request payment from the City for any unused vacation hours upon his employment anniversary date [as vacation hours are not cumulative] is not discussed or referenced in the CBA. Though the existence of the custom is acknowledged by both parties, it remains a question of material fact whether such a custom is actually governed by the CBA and its grievance procedures.

¶ 21 We also find that there exists a material issue of fact with respect to when Martin was required to grieve, if at all. Martin applied for his vacation benefits for his 2009-2010 employment anniversary year on June 29, 2010, pursuant to the custom. If we were to accept the City's argument, under section 8 of the CBA, the City was required to have Martin's vacation check ready for him, at the least, one week after the request. When payment was not received at that time, the City contends Martin's recourse was to grieve the issue according to the grievance procedure outlined in section 15 the CBA. By his own admission, Martin was still a member of the Union at the time the City failed to pay him his vacation pay within the aforementioned week's timeframe. He would have been able to use the Union's representation to grieve the non-payment. Under section 8, however, the five-day window applies to the City's obligation to pay the employee for a scheduled actual vacation.

¶ 22 Moreover, Martin counters that the City's response to his request was essentially that they needed more time to determine if he was eligible for the pay. It was not until December 2010, after he began receiving his pension benefits in October 2010, that the City advised Martin that he had already been paid all of the vacation allowance for which he was eligible. Because the CBA is silent on the issue, it is unclear whether Martin actually had an issue to grieve when he was not paid his vacation allowance within the week's time allotment or if the issue only became one that could be grieved, if at all, when he was actually denied his vacation pay. These are material facts that remain unanswered and that render the entry of summary judgment improper.

¶ 23 Martin's second issue on appeal also presents a dispute of material fact that precludes summary judgment. We find that section 8.6 of the CBA is ambiguous with respect to when *separation* occurs in terms of a disability claim causing the accrual of benefits such as vacation allowance payouts to cease. It does not advise whether this *separation* occurs at the time of the actual injury, at the time the officer's status changes to disability due to his award of the pension, or at any other time after the injury.

¶ 24 Section 15 of the CBA does require the "meaning, interpretation or application" of section 8.6 to be grieved prior to any outside proceedings. The record, however, shows that Martin attempted to grieve the denial of his vacation pay in December 2010. The Union lodged a complaint with the City on his behalf. In January 2011, after it had not heard from the City, the Union notified Martin that there had been no response and informed him that it could no longer represent him due to his disability status. The record is, however, unclear whether the Union agreed with the City's response of having already been paid all of his eligible vacation benefits with respect to his *separation*; whether it did not consider the issue at all; or whether it declined

to consider the issue as it was no longer obligated to represent Martin since he was, at that time, officially receiving his pension.

¶ 25 Thus we cannot be sure that Martin failed to exhaust his administrative remedies when it is uncertain when and whether those remedies were applicable or if they were even employed. See *Kostecki*, 361 Ill. App. 3d at 369. Therefore, we find that the trial court erred in granting the City's motion for summary judgment.

¶ 26 CONCLUSION

¶ 27 For the forgoing reasons the judgment of Tazewell County is reversed and remanded.

¶ 28 Reversed and remanded.