1997

Jim Crittenden v. Alpine School District : Reply Brief

Utah Court of Appeals

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IN THE COURT OF APPEALS

OF THE STATE OF UTAH

JIM CRITTENDEN,	:	
Plaintiff-Appellant,	:	Case No. 970091-CA
vs.	:	Oral Argument Priority 15
ALPINE SCHOOL DISTRICT,	:	
Defendant-Appellee.	:	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE RULING OF THE FOURTH DISTRICT COURT,
UTAH COUNTY, THE HONORABLE ANTHONY W. SCHOFIELD, PRESIDING

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ARGUMENT

I. THE SCHOOL ADMINISTRATION'S PRETERMINATION PROCEDURES LACKED DUE PROCESS PROTECTION.

As appellee correctly points out in its brief, due process requires that a public employee be given "an opportunity to present his side of the story." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985). Contrary to appellee's assertion, the undisputed facts are inconclusive as to whether district administrators gave Mr. Crittenden an opportunity to present his side of the story. In the alleged pretermination hearing, Mr. Crittenden was only allowed to confirm or deny the allegations against him not to offer any explanation. The undisputed facts are conclusive that Mr. Crittenden met with an assistant superintendent, but are inconclusive as to what happened at the meeting. Thus, it is a question of fact whether Mr. Crittenden was given due process as required in Loudermill.

The appellees' brief contemplates that not only was Mr. Crittenden given one pretermination hearing, but three. In an attempt to prove that the district administration provided Mr. Crittenden with an opportunity to be heard, the appellees quote a statement by Mr. Crittenden. This statement was not issued to the district and could not have been part of Mr. Crittenden's due process right to present his side of the story. In a further attempt to show that the administration did not deny Mr. Crittenden's right to due process, the appellee states "latter that day, plaintiff . . . had a second meeting." (Brief of Appellee at 10). This meeting was not a pretermination hearing, but rather as the District Court found, was the termination of Mr. Crittenden, as he was given a letter notifying him of his termination. (Ruling at 9). It is a question of fact whether Mr. Crittenden's right to due process was violated by the district, and therefore the District Court erred in granting summary judgment.

II. MR. CRITTENDEN HAS A VESTED RIGHT TO EARLY RETIREMENT.

The appellee maintains that Mr. Crittenden does not have a vested right to early retirement because he "made no contributions to the plan." (Brief of Appellee at 24). In support of this position, the appellee cites Ellis v. Utah State Retirement Bd., 757 P.2d 882, 886 (Utah App. 1988), aff'd, 783 P.2d 540 (Utah 1989). The court in Ellis states:

> an employee who receives a mere gratuitous allowance awarded for appreciation of past services has no vested rights in the allowance and it is terminable at will. On the other hand, when a retired employee had made the requisite contributions and had satisfied all the conditions precedent to his benefits, then the employee had a "vested right" in his retirement benefits.

The districts early retirement plan is not "a mere gratuitous allowance," but rather Mr. Crittenden made a contribution to the plan with over 30 years of service to the appellee.

Furthermore, the district argues in its brief that Mr. Crittenden has failed to identify language in the policy "that permits early retirement to one whose continued employment has already been

rejected for misconduct." (Brief of Appellee at 25). However, while in some cases "specified misconduct by an employee may result in forfeiture of pension or retirement benefits," where "a contractual retirement provision state[s] that an employee discharged for 'dishonesty [is] not entitled to receive any payment from the fund," 13 Am. Jur. Proof of Facts (Second) 531 § 6, no such contractual provision exists in the school district policy. In the even of any ambiguity of interpretation of the contract, the language of the pension contracct should be liberally construed in favor of the pensioner. Driggs v. Utah State Teachers Retirement Board, 142 P.2d 657 (Utah 1943).

III. THE MARCH 1 DEADLINE IS NOT A CONDITION PRECEDENT AND IT IS ARBITRARY AND CAPRICIOUS TO INTERPRET IT AS SUCH.

The District Court improperly gave a narrow construction of the pension policy in favor of the school district. "Pension statutes are liberally construed in favor of the pensioner." Johnson v. Utah State Retirement Bd., 770 P.2d 93, 96 (Utah 1988). According to the district, latitude should be given to a school district's interpretation of its own policy, but not when the interpretation is arbitrary and capricious. (Brief of Appellee at 25). The district is interpreting the March 1 deadline as a condition precedent to receiving the disputed benefits. However, such an interpretation is unreasonable and arbitrary and capricious. The only reasonable interpretation is that the March 1 is for determining whether the benefits will start the year of application or the next. Applications made after March 1 should be considered timely for receiving benefits the following year. In other words, it is a matter of administrative convenience, not a condition precedent. Otherwise, the benefits would arbitrarily be available only to those who apply during two months out of the year. Certainly the district would not deny early retirement benefits to an administrator who fell ill and decided to retire

on March 2 merely because she missed the deadline. A proper construction of the policy would allow Mr. Crittenden to apply for benefits when he learned of his plight.

IV. MR. CRITTENDEN WAS NOT TERMINATED AT TIME OF APPLICATION.

The district also states that Mr. Crittenden was denied his early retirement benefits, because at the time he applied for retirement Mr. Crittenden was "terminated" and "no longer work[ed] for the school district." (Brief of Appellee at 16 and 21). Mr. Crittenden was in fact suspended and not terminated when he applied for the benefits. The school district's policy states that notification of termination "shall be given in writing at least fifteen days prior to the proposed date of termination." (District policy no. 4759.4.1 (1986)). If Mr. Crittenden was terminated or considered terminated, then his right to due process was violated.

V. THE DISTRICT WAIVED THE DEFENSE OF UNTIMELINESS.

Finally, it cannot be emphasized enough that, as argued earlier, the district waived the timeliness defense by failing to raise it in its motion for summary judgment or answers to interrogatories. The district, in its brief, correctly restates the interrogatories at issue, one of which asked the district to "[s]et forth all facts upon which defendant relies to substantiate [its denial of early retirement benefits to Mr. Crittenden]." (Brief of Appellee at 15). The district then argues that the interrogatory did not ask specifically about timeliness and so it did not put the district on a duty to speak on the issue. (Brief of Appellee at 16). On the contrary, the interrogatory asked the district to set forth all facts on which it relied in denying the early retirement benefits. Timeliness of the application is a fact that falls into that category. The argument now presented by the district is disingeuous.

CONCLUSION

The judgment of the District Court must be reversed, if not in whole, then in part.

DATED this 19th day of September, 1997.

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MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing were mailed to the following, postage prepaid, this 19th day of September, 1997.

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