

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

C. RONALD GLACE,	:	
Complainant	:	
	:	
v.	:	Docket No. E-83560AD
	:	
INTERNATIONAL PERIPHERAL	:	
SYSTEMS, INC.,	:	
Respondent	:	

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PRESIDING OFFICER

ORDER

Commissioner

C. RONALD GI

v

INTERNATIONAL PERIPHERAL :

SYSTEMS, INC., :

Respondent :

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copies to Mike Smith of the
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FINDINGS OF FACT*

1. C. Ronald Glace ("Complainant") filed a complaint, at Docket No. E-83560AD, with the Pennsylvania Human Relations Commission ("Commission") against International Peripheral Systems, Inc. ("Respondent") on or about June 2, 1997. (Complaint).

2. In his complaint, Complainant alleged that Respondent discriminated against him because of his age, 62, and/or sex, male. (Complaint).

*To the extent the Conclusions of Law or Opinion which follow include necessary findings of fact in addition to those in this section, such findings shall be considered to have been included herein. The following abbreviations have been utilized for reference purposes:

N.T. - Notes of Testimony
C.E. - Complainant's Exhibit
J.E. - Joint Exhibit

3. Complainant and Respondent entered into a written Respondent and Complainant Agreement, which settled the complaint, on or about October 10, 1997. (J.E. 1).

4. By letter dated November 20, 1997, Complainant filed a Petition for Reconsideration of Adjustment, pursuant to 16 Pa. Code §42.73, in which he alleged that Respondent had breached the October 10, 1997 Settlement Agreement. (Petition for Reconsideration of Adjustment).

5. All procedural prerequisites to the convening of the hearing in this matter have been satisfied.

6. The Settlement Agreement in this case consists of a Severance and Non-Compete Agreement, a Respondent and Complainant Agreement and a Negotiated Agreement. (J.E. 1).

7. The portion of the Settlement Agreement comprising the Severance and Non-Compete Agreement was drafted by the Respondent. (J.E. 1).

8. Paragraph 3 of the Severance and Non-Compete Agreement provides:

Severance Benefits: For consideration of the promises set forth in this Agreement, IPS agrees to provide Glace with a severance payment of \$3600.00 as set forth in paragraph 1 of the Respondent and Complainant Agreement prepared by the Pennsylvania Human Relations Commission in connection with the

settlement of Glace's discrimination claim (PHRC Docket No. E-83560-AD/EEOC Charge No. 17F973539). The terms of said Respondent and Complainant Agreement are incorporated herein by reference.

Glace shall remain covered by the Company's group health insurance until October 31, 1997 after which time Glace shall be entitled to elect continuation coverage at his own expense, as provided by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Any other benefits (with the exception of vested retirement benefits and 401(k) contributions) accumulated by or provided to Glace as an employee or officer of IPS which have not already ceased will cease as of the date of this Agreement.

(J.E. 1).

9. Paragraph 10 of the Severance and Non-Compete Agreement provides:

Release: In consideration of the benefits extended to Glace under the terms of this Agreement, benefits to which Glace acknowledges that he would not otherwise be entitled, Glace agrees for himself, his heirs, executors, administrators, successors and assigns to forever release and discharge IPS and its owners, successors and assigns, affiliated companies, officers, agents, contractors, consultants and employees, past and present, collectively or individually, from any and all claims, demands, caused of actions, losses and expenses of every nature whatsoever, known or unknown, arising out of or in connection with his employment with IPS or his retirement from employment, including, but not limited to breach of contract (express or implied), intentional infliction of emotional harm, wrongful discharge or other tort, the Age Discrimination In Employment Act of 1967 (29 U.S.C. §621 et seq.) or any other federal, state or municipal statute, regulation or ordinance relating to employment, labor relations or wages. Glace further waives the right to pursue or receive any remedy against the Company, including damages, under any such statute, regulation or ordinance.

(J.E. 1).

10. Accumulated but unpaid vacation benefits are one of the "other benefits" mentioned in Paragraph 3. (N.T. 38; Respondent's brief at 4).

11. Complainant was entitled to 4 weeks of vacation time per year. (N.T. 10, 43).

12. As of the date of the Agreement, Complainant had 64 hours of accumulated vacation time for which he had not been paid. (N.T. 38; C.E. 2).

13. Complainant would have been paid for these 64 hours if were it not for Respondent's interpretation of the meaning of the Severance and Non-Compete Agreement. (N.T. 38; Respondent's brief at 8-9).

14. Complainant's hourly rate of pay during the applicable time period was \$21.75 per hour. (N.T. 13-14).

CONCLUSIONS OF LAW

1. The Settlement Agreement in this case is a contract to which general principles of contract law apply.
2. Section 42.73 of the Commission's Special Rules of Administrative Practice and Procedure ("Special Rules"), 16 Pa. Code § 42.73, authorizes the Commission to enforce Respondent and Complainant agreements such as the one in this case.
3. Section 42.73 of the Special Rules allows the Commission to take whatever action it deems necessary or appropriate, as justice may require.
4. The Severance and Non-Compete Agreement does not prohibit Complainant from petitioning the Commission to enforce the Agreement according to its terms.
4. Paragraph 3 of the Severance and Non-Compete Agreement portion of the Settlement Agreement in this case requires Respondent to pay Complainant the value of unprovided vacation time he had accumulated as of the date of the Agreement.
4. Paragraph 3 of the Severance and Non-Compete Agreement portion of the Settlement Agreement is unambiguous.

5. The benefits to which Complainant is entitled under Paragraph 3 are not waived by the release contained in Paragraph 10.

OPINION

I. History of the Case

This matter arises on a Petition for Reconsideration of Adjustment filed with the Pennsylvania Human Relations Commission ("Commission") by C. Ronald Glace ("Complainant"). The Petition was filed pursuant to Section 42.73 of the Commission's Special Rules of Administrative Practice and Procedure ("Special Rules"), 16 Pa. Code §42.73. The Petition alleged a breach of a Respondent and Complainant Agreement ("Settlement Agreement") between Glace and International Peripheral Systems, Inc. ("Respondent"), which had been entered into on or about October 10, 1997. The Settlement Agreement settled a complaint which Complainant had filed with the Commission against Respondent, at Docket No. E-83560AD.

On consideration of Complainant's Petition, the Commission determined that sufficient evidence of breach had been presented to merit a hearing on the issue. Respondent was notified of this determination, and a hearing was held before Presiding Officer Michael M. Smith on September 1, 1998.

II. Analysis

This case involves an alleged breach of a Settlement Agreement between Complainant and Respondent. The Agreement resulted in the dismissal of an underlying discrimination complaint filed with the Commission by Complainant against Respondent. The Settlement Agreement consists of a Severance and Non-Compete Agreement, a Respondent and Complainant Agreement and a Negotiated Agreement. The portion of the Settlement Agreement comprising the Respondent and Complainant Agreement and Negotiated Agreement were prepared on forms and with standard language prepared by the Commission. The portion of the Settlement Agreement comprising the Severance and Non-Compete Agreement was drafted by the Respondent, who insisted on its inclusion as a requirement of the settlement. Complainant made deletions to Paragraphs 11 and 14(b) of the Severance and Non-Compete Agreement, which were agreed to by Respondent.

Respondent initially alleges that this proceeding violates Complainant's agreement in Paragraph 11 of the Severance and Non-Compete Agreement that he "will not bring any action, suit or administrative proceeding or request contesting the validity of this Agreement or attempting to negate, modify or reform it" The Commission has the authority, under Section 42.73 of the Commission's Special Rules, to enforce Agreements of this type and to remedy such breaches as may be found. Mechensky v. Com., Pennsylvania Human Relations Commission, 134 Pa.Cmwlth. 192, 578

A.2d 589 (1990) (upholding the Commission's regulatory authority under this section). The purpose of this proceeding is not to negate, modify or reform the Agreement. It is to interpret the Agreement, as entered into by the parties, and to enforce that Agreement as may be necessary and appropriate. Paragraph 11 does not prohibit Complainant from petitioning the Commission to enforce the Agreement according to its terms.

At issue in this case is the meaning of Paragraph 3 of the Severance and Non-Compete Agreement portion of the Settlement Agreement. Paragraph 3 of the Severance and Non-Compete Agreement provides:

Severance Benefits: For consideration of the promises set forth in this Agreement, IPS agrees to provide Glace with a severance payment of \$3600.00 as set forth in paragraph 1 of the Respondent and Complainant Agreement prepared by the Pennsylvania Human Relations Commission in connection with the settlement of Glace's discrimination claim (PHRC Docket No. E-83560-AD/EEOC Charge No. 17F973539). The terms of said Respondent and Complainant Agreement are incorporated herein by reference.

Glace shall remain covered by the Company's group health insurance until October 31, 1997 after which time Glace shall be entitled to elect continuation coverage at his own expense, as provided by the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Any other benefits (with the exception of vested retirement benefits and 401(k) contributions) accumulated by or provided to Glace as an employee or officer of IPS which have not already ceased will cease as of the date of this Agreement.

Complainant alleges that Paragraph 3 entitles him to receive the value of any accumulated but unpaid vacation benefits, which he

may have accrued as of the date of the Agreement. Respondent alleges that this provision not only stops any further accumulation of vacation benefits, but also waives Complainant's rights to any benefits already accumulated but not paid, with the exception of vested retirement benefits and 401(k) contributions.

A settlement agreement is a contract between the parties, to which general principles of contract law apply. See Mechensky v. Com., Pennsylvania Human Relations Commission, 134 Pa. Cmwlth. 192, 578 A.2d 589 (1990). See also International Organization Master, Mates and Pilots of America, Local No. 2, etc., et al. v. International Organization Masters, Mates and Pilots of America, Inc. etc., et al., 497 Pa. 102, 439 A.2d 621 (1981); Avery v. Com., Pennsylvania Labor Relations Board, 97 Pa. Cmwlth. 160, 509 A.2d 888, 891 (1986); Buchanan v. Century Federal Savings & Loan Association, 295 Pa. Super. 384, 441 A.2d 1285, 86 (1982). Pennsylvania utilizes the plain meaning rule of contract interpretation. The plain meaning rule "assumes the intent of the parties to an instrument is embodied in the writing itself" Duquesne Light Co. v. Westinghouse Elec. Corp., 66 F.3d 604, 613 (3d Cir. 1995) (citation omitted). The "objective is to ascertain the parties' intent as it is manifestly expressed in the agreement itself. [citations omitted]." Warren v. Greenfield, 407 Pa. Super. 600, 595 A.2d 1308, 1311 (1991). Every provision of the contract must be "taken into consideration and given effect, if possible, and the intention of the parties must be ascertained from the

entire instrument." Marcinak v. S.E. Greene School District, 375 Pa. Super. 486, 544 A.2d 1025, 1027 (1988). The fact that the parties may have differing interpretations does not necessarily mean the contract is ambiguous. Krizovensky v. Krizovensky, 624 A.2d 638, 643 (1993), appeal denied, 637 A.2d 287 (Pa. 1993).

Construing the Severance and Non-Compete Agreement as a whole, the meaning of the final provision of Paragraph 3 is clear and unambiguous. There is nothing in the Agreement to indicate that Paragraph 3 was intended to work as a release of Complainant's rights to benefits accumulated but not provided as of the date of the Agreement. As Paragraph 3 plainly states, Complainant is to remain covered by Respondent's health insurance until October 31, 1997, after which time he may elect coverage under the Consolidated Omnibus Budget Reconciliation Act. Any other benefits, which have not already ceased to be accumulated or provided, as of the date of the Agreement, cease to be accumulated or provided on that date. These other benefits are not extended until October 31, 1997.

There is also a provision concerning vested retirement benefits and 401(k) contributions. These are excepted from ceasing either as of the date of the Agreement or on October 31, 1997. They continue in full force and effect, with no stated time period for them to cease. Thus, Complainant retains the right to any additional interest or other increase in value that might accrue to his vested retirement benefits and 401(k) contributions for an

indefinite period after the date of the Agreement.

The extent of a release is to "be determined by the ordinary meaning of its language." Republic Insurance Company v. Paul Davis Systems of Pittsburgh South, Inc., 543 Pa. 186, 670 A.2d 614, 615 (1995), reargument denied. The ordinary, dictionary definition of the term "cease" is "to stop; discontinue". Random House Webster's Dictionary (1998 ed.). Under this definition, there can be no question about the meaning of Paragraph 3. Complainant remains covered by Respondent's health insurance until October 31, 1997, when Respondent stops having to provide it. Any other benefits, except for vested retirement contributions and 401(k) contributions, which have not already stopped being accumulated or provided as of the date of the Agreement, stop being accumulated or provided as of that date. Complainant, however, retains the right to any benefits already accumulated by or provided to him.

In order to reach any other interpretation of Paragraph 3, it is necessary to ignore the plain language used by Respondent in drafting the Severance and Non-Compete Agreement. "It is settled law that a written agreement is construed against its drafter." Reilly Associates v. Duryea Sewer Authority, 428 Pa. Super. 460, 631 A.2d 621, 623 (1993). Under the express wording of Paragraph 3, it is not only accumulated benefits which "will cease as of the date of the Agreement". It is also any benefits "provided to" Complainant. The term "will cease" relates back to both

accumulated and provided benefits. If the term "cease" was intended to denote a release of past benefits, as well as future ones, Complainant would not only lose previously accumulated benefits but would also be obligated to return any benefits already provided. This would arguably include the value of past paid vacation benefits, sick pay, and even salary.

Respondent, rather understandably, contends only that accumulated, but as yet unprovided, benefits cease under this paragraph. Respondent's Brief at 4. This, however, is clearly not what the sentence says. Respondent's construction requires that Paragraph 3 be rewritten to say, in effect, that only Complainant's rights to previously accumulated benefits cease, while his rights to previously provided benefits do not.

Paragraph 3 also provides that benefits accumulated or provided to Complainant "which have not already ceased will cease as of the date of this Agreement." If the term "will cease as of the date of this Agreement" includes only the cessation of any further accumulation or provision of benefits, then the modifying term "which have not already ceased" is necessary to indicate that benefits which are no longer being accumulated or provided are not in any way extended under this paragraph to the date of the Agreement. If the term "will cease" also includes the release of Complainant's rights to any benefits already accumulated or provided, however, then it does not matter whether these benefits

have already ceased or continue right up to the date of the Agreement. Respondent will have no additional liability, in any event, and there is absolutely no need to mention them.

Similarly, the term "will cease as of the date of the Agreement" indicates that benefits are to continue accumulating and being provided up to that date, when they will cease. This is in keeping with the plain meaning of the word "cease" as "to stop". If benefits only stop accumulating or being provided, under this provision, it is necessary to have a cut-off date after which they shall no longer be accumulated or provided. In this way, Complainant knows how long his benefits will continue to accumulate before he is no longer entitled to any further accumulation.

Conversely, if Complainant's benefits not only stop, but if all prior accumulated or provided benefits are also waived, there is no need to provide for the ongoing provision or accumulation of benefits until a date certain. It makes no difference how long benefits continue to be accumulated or provided, since they will all be waived under the Agreement. The only thing that need be said is that all benefits, except for vested retirement benefits and 401(k) contributions, cease.

The plain meaning of the final sentence of Paragraph 3 is further confirmed by a comparison of it to the release contained in Paragraph 10 of the Severance and Non-Compete Agreement. Like

Paragraph 3, Paragraph 10 was drafted by Respondent. In this Paragraph, Complainant "agrees ... to forever release and discharge [Respondent] ... from any and all claims ... of every nature ... arising out of or in connection with his employment ... or his retirement from employment" The language of release and waiver is clear. Significantly, and unlike the final provision of Paragraph 3, there is no date from which all claims are released. This, of course, is because none is necessary. Once the Agreement is entered into, all applicable claims, whenever they accrued, are released.

This language is in sharp contrast to that used in Paragraph 3. Rather than paralleling the broad language of discharge and release in Paragraph 10, Paragraph 3 uses the much more limited term "will cease". In construing a contract, "the law does not assume that the language of the contract was chosen carelessly." PBS Coals, Inc. v. Burnham Coal Company, 384 Pa. Super. 323, 558 A.2d 562, 564 (1989), appeal denied 524 Pa. 598, 568 A.2d 1248. The use of this more limited term, with its commonly understood meaning of "to stop" or "to discontinue", plainly requires that a more limited effect be given to it.

Respondent, fully recognizing the broad language of discharge and release it used in Paragraph 10, argues that this language releases it from any obligation to pay any previously accumulated benefits to Complainant, with the exception of vested retirement

benefits and 401(k) contributions. Respondent's brief at 4-5. Respondent argues that there is no "vacation pay exception" to the release in Paragraph 10. Id. at 5. This is true. But there is also no "vested retirement benefits and 401(k) exception" in Paragraph 10, either. This exception is obtained only by the operation of Paragraph 3 as an exception to the release in Paragraph 10.

Respondent is correct, of course, in its implied conclusion that the benefits provided in Paragraph 3 are excepted from the general release in Paragraph 10. A release covers only those matters which were fairly within the contemplation of the parties when given. In re Jones & Laughlin Steel Corporation, 328 Pa. Super. 442, 477 A.2d 527, 534 (1984). Paragraph 3 contains Complainant's severance package, which was the consideration for the release and other promises made by Complainant. The parties could not have contemplated that this severance package was included within the release, since a failure to except these benefits would cause the Agreement to fail for lack of consideration.

Respondent is incorrect, however, that the final sentence of Paragraph 3 only excepts vested retirement benefits and 401(k) contributions. For the reasons already stated, Paragraph 3 also excepts any benefits accumulated by or provided to Complainant, up to the date of the Agreement. While accumulated but unpaid

vacation benefits are not expressly mentioned in Paragraph 3, Respondent admits that they are one of the "other benefits" mentioned in that paragraph. N.T. 38; Respondent's brief at 4. To the extent that Complainant can prove that he had accumulated vacation benefits, as of the date of the Agreement, he is entitled to receive them as part of his severance package contained in Paragraph 3.

Complainant claims that he had accumulated, but not been paid for, 104 hours of vacation pay as of the date of the Settlement Agreement. N.T. 14. He presented his final pay stub as evidence, which showed a balance of 64.00 hours of vacation time. Respondent admits that Complainant was not paid for these 64 hours because of its interpretation of the Severance and Non-Compete Agreement as a waiver of Complainant's right to accumulated vacation pay.¹ N.T. 38; Respondent's brief at 8-9.

In addition to the 64 hours of vacation time shown on his final pay stub, Complainant alleges that he is due an additional 40 hours. He testified that the 64 hours represented time accumulated

¹ Respondent argues that Paragraph 13 of the Settlement and Non-Compete Agreement bars Complainant from relying on his final pay stub in establishing that Respondent is obligated to pay him for his accumulated vacation time. Paragraph 13 is a rather standard clause stating that the Agreement may only be amended or modified in a writing signed by both parties. Having already held that the Agreement, itself, requires Respondent to pay Complainant for any accumulated vacation time, up to the date of the Agreement, Complainant is entitled to rely on the pay stub as evidence of the amount of time so accumulated and unpaid.

only through June, 1997, and that he accumulated an additional 40 hours of time between July 1, 1997 and September 30, 1997. N.T. 12. The evidence establishes that he was entitled to 4 weeks of vacation per year (N.T. 10, 43), and July through September is one-fourth of a year. This does amount to 40 hours of vacation on a pro-rated basis.

Complainant has not presented sufficient evidence, however, to establish that he is entitled to this additional 40 hours. His final pay stub, which covers the time period up to October 10, 1997, indicates that the 64 hours of vacation time represents Complainant's unused balance for the year to date. There is no evidence on this stub that the 64 hours represents his entitlement only through the end of June, 1997, rather than through October 10, 1997, as the term "year to date" plainly indicates. It is only this amount that he has proven and only this amount to which he is entitled.

In determining the value of this 64 hours of accumulated vacation time, Complainant's rate of pay was \$21.75 per hour. N.T. 13-14. Multiplying this hourly rate by 64 hours results in a total value of \$1,392.00. Complainant is also entitled to simple interest on Respondent's debt at the statutory rate of 6% per annum, to run from the date it should have been received by Complainant. Ferdnandez v. Levin, 519 Pa. 375, 548 A.2d 1191 (1988). Since Complainant should have received his vacation pay

with his last pay, interest shall run from October 17, 1997, which is the date of Complainant's final pay as evidenced by his final pay stub. This interest shall run until payment of the total amount due and owing is made.

2. That International Peripheral Systems, Inc., shall pay Mr. Glace simple interest on the amount of \$1,392.00 at the statutory rate of 6% per annum, calculated from October 17, 1997, until payment of the total amount specified in paragraph 1 of this Order has been received.

By: Gregory J. Ceila Jr.
GREGORY J. CEILA JR, ACTG CHAIRPERSON

ATTEST:

Russell S. Howell Jr.

RUSSELL S. HOWELL, ACTG SECRETARY

ADJUDICATION

February 22, 1999

file

**Recommendation:
By Presiding Officer Michael Smith**

E83560AD - LEGAL

