[Cite as *Cranston v. Kent State Univ.*, 2004-Ohio-2752.]

IN THE COURT OF CLAIMS OF OHIO

JAY CRANSTON, M.D.	:	
Plaintiff	:	CASE NO. 2000-13099 Judge Fred J. Shoemaker
v.	:	DECISION
KENT STATE UNIVERSITY	:	
Defendant	:	

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{¶1} In *Jay Cranston, M.D. v. Kent State Univ.*, Court of Claims Case No. 98-09427 (Cranston I), Judge Bettis on March 14, 2000, entered judgment in favor of plaintiff on the issue of liability. The decision was based upon stipulated facts. Thereafter, the case was scheduled for trial on August 10-11, 2000, on the issue of damages. On August 9, 2000, the parties filed a stipulation of dismissal.

{¶2} Plaintiff, Jay Cranston, M.D., refiled this action on December 26, 2000. He made fewer claims on the damages issue than in his previous lawsuit.

{¶3} On July 11, 2001, the court issued an order bifurcating the trial and on February 21, 2002, a trial date was set for September 3, 2002, on the issue of liability.

{¶4} The parties filed modified joint stipulations on September 11, 2002. Plaintiff filed his merit brief on October 21, 2002, and defendant filed its brief on October 18, 2002.

{¶5} Plaintiff brought this action to recover the value of unpaid sick time and compensatory time that he accrued prior to resigning from his position as a physician with

defendant in lieu of termination. The case was submitted to the court upon stipulated facts and trial briefs.

{¶6} The facts of this case are contained in the following "modified joint stipulations" filed by the parties:

{¶7} "1. Dr. Jay Cranston was employed as a physician by Kent State University for 23 years- from August 1972 until July 1995.

{¶8} "2. He served in several capacities as a university physician, including Director of Health Services, Coordinator of Medical Services, and Chief of Staff in the University Health Services. In each of those positions, he was a member of the University's Administrative and Professional Staff.

{¶9} "3. In September 1994, after an investigation into various prescription practices at the University, he resigned in lieu of termination. He did not retire from the University.

{¶10}"4. During the final year of his employment, he was paid the annual salary of $69,861.00. All payments made to Dr. Cranston were made through the University's own payroll account and not by warrant of the Auditor of State.

{¶11}"5. If computed on an hourly basis based on a 40-hour week, Dr. Cranston's final annual salary would translate to $33.59 per hour ($69,861.00 divided by 2080 hours equals $33.59 per hour).

{¶12}"6. At the time of the termination of his employment by Kent State University, Dr. Cranston had accumulated unpaid sick leave totaling 2,262.05 hours. The University did not have a procedure to allow annual payment of unused sick leave.

{¶13}"7. Dr. Cranston was not paid for any accumulated and unused sick leave.

{¶14}"8. Dr. Cranston and Dr. Grezgorek and Dr. Rynearson - two former University psychologists - would testify that between 1972 and 1988, the University's health services department maintained an unwritten policy of granting compensatory time to its physicians under a system in which (a) three hours of accumulated compensatory time equaled one hour of 'real time' and (b) unused compensatory time accumulated. Dr. Cranston would

testify that he maintained personal records in which he documented 3,968 hours of compensatory time between 1972 and 1988.

{¶15}"9. The University has no record of this unwritten policy and can neither confirm nor deny that it existed in the health services department between 1972 and 1988. In any event, though, no such policy was ever approved by the University's board of trustees; University physicians do not currently accumulate compensatory time; the University has never had a written compensatory time policy for physicians; and the University maintained no records of any compensatory time accumulated by Dr. Cranston.

{¶16}"10. Dr. Cranston was not paid for any accumulated and unused compensatory time."

{¶17}Plaintiff claims that defendant was required to pay him his accrued and unpaid compensatory time and unused sick time.

{¶18}An unclassified employee is appointed at the discretion of the appointing authority and serves at the pleasure of such authority. See *Lee v. Cuyahoga Cty. Court of Common Pleas* (1991), 76 Ohio App.3d 620, 622-623, (court employees who serve at the pleasure of the court are unclassified employees who have no vested property interest in continued employment); *Peters v. Jackson* (1995), 100 Ohio App.3d 302, 311, quoting *Schack v. Geneva Civ. Serv. Comm.* (1993), 86 Ohio App.3d 689, 694, (unclassified employees serve at the pleasure of the appointing power and are not entitled to civil service protection).

{¶19}Generally, a classified employee in the civil service can be removed only for good cause and only after the procedures set forth in R.C. 124.34 have been followed. *Yarosh v. Becane* (1980), 63 Ohio St.2d 5, 9. An unclassified employee, on the other hand, is an "at-will" employee who is subject to discharge for any reason. *Lawrence v. Edwin Shaw Hosp.* (1988), 57 Ohio App.3d 93, 94. However, an employment-at-will relationship may be altered by express or implied contract. *Mers v. Dispatch Printing Co.* (1985), 19 Ohio St.3d 100, 103. It is the employee's responsibility to produce evidence of contractual intent on the part of both parties to show that the at-will employment relationship has been

modified. *Ekunsumi v. Cincinnati Restoration, Inc.* (1997), 120 Ohio App.3d 557, 562; *DeKoning v. Flower Mem. Hosp.* (1996),82 Ohio Misc.2d 20.

{¶20}R.C. 124.11(A) lists the positions which are in the unclassified service, and R.C. 124.11(B) defines the classified service as all positions "not specifically included in the unclassified service."

{¶21}In Judge Bettis' March 14, 2000, decision he made the following determination:

{¶22}"Based upon the documents in evidence, the court finds that the letters from plaintiff and his attorney acknowledge that plaintiff knew that defendant would not renew his employment contract for the 1995-96 academic year.

{¶23}"However, the parties have stipulated that, at the time of plaintiff's separation, he had positive balances in his compensatory time and sick leave accounts. The court finds that pursuant to R.C. 124.18, 124.38, and defendant's policy manual, defendant is liable to plaintiff for any accrued compensatory time and sick leave benefits."

{¶24}This branch of the court has always followed an opinion of another branch of the court unless the other branch's opinion has been reversed. Therefore, judgment shall be granted in favor of plaintiff and against defendant. Because the issues of liability and damages have been bifurcated, this case shall be set for trial in the normal course on the issue of damages.

{¶25}This case was submitted to the court on joint stipulations of fact and briefs on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in an amount to be determined after the damages phase of the trial. The court shall issue an entry in the near future scheduling a date for the trial on the issue of damages.

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FRED J. SHOEMAKER
Judge

Entry cc:

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