

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

PETER IWOMI

Plaintiff

v.

CENTRAL STATE UNIVERSITY

Defendant

Case No. 2007-05636-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Peter Iwomi, a tenured economics professor employed by defendant, Central State University (“CSU”), filed this complaint alleging CSU “[i]mproperly withheld compensation due in the amount of \$1,232 from (his) 2005-2006 salary.” Evidence has shown plaintiff missed a total of nineteen classes on four separate dates, Monday, January 9, 2006; Wednesday, January 11, 2006; Friday, January 13, 2006; and Wednesday, January 18, 2006. Apparently, plaintiff had traveled to Nigeria in December 2006 during the CSU holiday break and was unable to book a return flight to the United States until January 17, 2006, many days after classes had resumed at CSU on January 9, 2006. Plaintiff sent a voice mail message to his CSU supervisor, Department Chairperson, Dr. Massoumeh Vafaie, on January 17, 2006, informing him that he would be unavailable for class until January 19, 2006. On April 24, 2006, plaintiff received a copy of an e-mail sent from Dr. Massoumeh Vafaie. This e-mail notified the CSU Human Resources Department that plaintiff had unauthorized absences from work in January 2006 and his pay should consequently be reduced due to his failure to perform his scheduled teaching assignments. On May 31, 2006, defendant made a pay adjustment to plaintiff’s salary withholding an amount totaling four days pay-\$1,232.00. Plaintiff contends defendant “had no legal right or authority” to reduce his salary and consequently, the salary reduction constituted either a breach of his employment contract or unjustly enriched CSU. Under either circumstance, plaintiff

asserts he has established grounds for recovery.

{¶ 2} Plaintiff acknowledged he was a bargaining unit employee under a collective bargaining agreement (“CBA”) between CSU and the American Association of University Professors (“AAUP”). Plaintiff further acknowledged the terms and conditions of his employment were governed by the CBA between CSU and AAUP as authorized by R.C. 4117. A copy of the applicable CBA was submitted with plaintiff’s complaint. Although both plaintiff and defendant agree the CBA governs the particular wage dispute forming the basis of this claim, plaintiff contended defendant essentially did not abide by the CBA when reducing his salary for the four days of unauthorized absence in January 2006. Furthermore, plaintiff explained he “worked with students to make up lost class days before the end of the term.” Plaintiff essentially maintained that since he performed his required teaching duties, on an admittedly delayed schedule, he should not have suffered any pay reduction and defendant had no authority to implement the pay reduction.

{¶ 3} Plaintiff noted that under the terms of the CBA, specifically Article 17 (Discipline and Dismissal Standards and Procedures)¹ he could be disciplined for “just

¹ Article 17 of the CSU/AAUP Contract-Discipline And Dismissal Standards And Procedures provides in particular part:

“17.3 Discipline Standards. A faculty member may be disciplined or dismissed for just cause. Any disciplinary action shall be predicated upon a violation of this Agreement or of the University’s rules or standards of professional conduct. Dismissal may be imposed only for a reason related directly and substantially to the professional fitness of the faculty member, including serious professional misconduct, gross neglect of professional duties, incompetence, moral turpitude, or conviction of a felony.

“17.4 Investigation. When the Administration has reason to believe an incident(s) has occurred that might constitute grounds for discipline, the faculty member’s Dean or the Library Director may institute an investigation by sending written notice to the faculty member and the President of AAUP-CSU. The notification must include a statement of the charges and, except where prohibited or restrained by law, who brought them. During the investigation, the faculty member’s Dean or Library Director shall discuss the matter with the faculty member in personal conference. The faculty member may bring to this meeting an observer of his/her choice and/or the President of AAUP-CSU or his/her designee, and/or legal counsel. The Administration may bring to this meeting an observer of its choice and/or the University legal counsel. The matter may be settled by mutual consent at this point.

cause.” Plaintiff pointed out defendant, through the CSU faculty member’s Dean, has the authority to propose several disciplinary options including a warning, a formal warning, a formal reprimand, suspension with or without pay, or dismissal for cause. Plaintiff recalled he was asked to attend an Article 17 disciplinary hearing and after the hearing he received a Letter or Reprimand from the CSU College of Business and Industry, Dean, Charles H. Showell, Jr. Plaintiff produced a copy of this “Letter or Reprimand” (dated March 2, 2006) which served as written notification “[i]n accordance with Article 17.6a” of the CBA that plaintiff was “reprimanded for failure to meet assigned classes between January 9, 2006 and January 18, 2006.” Plaintiff received no further communication regarding his absence from January classes until April 24, 2006, when he was informed by e-mail from his supervisor, Department Chairperson Massoumeh Vafaie of an impending action involving a pay reduction for the unauthorized work absences. This pay reduction was reflected in plaintiff’s May 31, 2006 pay statement. Plaintiff characterized the pay reduction as additional Article 17 discipline.

{¶ 4} Plaintiff related that since he initially was issued a written reprimand due to

“17.5 Should the faculty member’s Dean or Library Director determine on the basis of investigation that discipline is warranted, the faculty member shall receive written notice of the proposed discipline within twenty (20) working days after the faculty member was notified of the institution of the investigation. The President of AAUP-CSU will receive a concurrent copy of the notice of proposed discipline. Upon receipt of this notice, the faculty member may seek resolution of the matter with his or her Dean or Library Director in personal conference. The meeting may include an observer of the faculty member’s choice and/or the President of AAUP-CSU or his/her designee, and an observer of the Dean’s or Library Director’s choice. The matter may be settled by mutual consent at this point.

“17.6 Disciplinary Actions. If the faculty member’s Dean or the Library Director proposes discipline of a faculty member, it shall be for just cause as specified in 17.3. The faculty member’s Dean or the Library Director shall have the authority to propose:

“a) a written or oral warning to the faculty member, and that no record be placed in the faculty member’s personnel file;

“b) a formal reprimand of the faculty member, and that a copy of the reprimand be placed in the faculty member’s personnel file;

“c) disciplinary suspension with or without pay, provided that in no circumstance shall the suspension without pay exceed one academic semester, and that a copy of the suspension be placed in the faculty member’s personnel file; or

“d) dismissal of the faculty member for cause, and that a copy of the dismissal be placed in the faculty member’s personnel file.”

his unauthorized absences from class, he “chose not to challenge the discipline.” Plaintiff observed defendant, under Article 17 of the CBA could have suspended him without pay as a more severe form of discipline than the written reprimand. Plaintiff reasoned, “[h]aving passed on the opportunity to suspend me without pay under Article 17 of the CSU/AAUP contract, the University had no other right to withhold pay as a result of my missing four days of classes in January of 2006.” Plaintiff asserted he did perform all duties expected of him under Article 9² of the CBA during the 2005-2006 academic year by providing instruction to his students to make up the scheduled class time he missed in January 2006. Plaintiff contended that since he made up the class time he missed, defendant had no right or authority to dock his pay four months after the absences occurred. Furthermore, plaintiff pointed out that if he had received harsher discipline than a written reprimand, such as a suspension without pay, he would have been able to challenge the act and pursue arbitration, presumably through the means provided by Article 47³ of the CBA. Plaintiff seemingly has asserted defendant’s act of reducing his pay in May 2006 was a form of discipline that defendant had no authority under contract to invoke.

² Article 9.2(a) (Academic Safeguards And Responsibilities) states:

“9.2 The responsibilities of Bargaining Unit members encompass many professional functions appropriate to their varied roles, including but not limited to:

“a) teaching and/or providing instructional support in a variety of manners, settings, and times.”

³ Article 47 (Grievance And Arbitration) provides detailed procedure for dispute resolution between bargaining unit employees and CSU.

Article 47.19 provides:

“47.19 In those cases where the Provost and Vice President for Academic Affairs/President receives an appeal from Step 2, the Provost and Vice President/President may either transmit a Grievance Disposition Form to the grievant (a) within ten (10) days after receipt of the appeal, or hold a hearing within ten (10) days after receipt of the appeal at a time which is mutually convenient to the parties. If the Provost and Vice President/President hold a hearing, the Provost and Vice President/President will file a disposition with the grievant(s) within ten (10) days after the hearing. Within ten (10) days after receipt of the disposition by the Provost and Vice President/President, the grievant(s) may appeal to arbitration by completing and distributing a Grievance Disposition Reaction Form. Within thirty (30) days after receipt of the appeal to arbitration, AAUP-CSU will notify the Administration and the grievant(s) whether it supports the appeal. In matters involving Termination for Cause, AAUP-CSU support for an appeal to arbitration will not be required.”

{¶ 5} Defendant denied the reduction in plaintiff's pay covering a four-day period was a form of disciplinary action addressed in the CBA between CSU and AAUP. Defendant explained plaintiff was docked four days pay simply due to the fact he missed four days of classes. Defendant stated CSU "has no record demonstrating that all of the students in the 19 classes Dr. Iwomi missed 'made up' their work." Additionally, defendant asserted plaintiff was not authorized to privately reschedule lost class days with his students. Defendant maintained CSU had the right to reduce plaintiff's pay based on his failure to perform his teaching duties at the assigned time.

{¶ 6} Among other issues advanced, defendant contended the Court of Claims lacks jurisdiction to hear plaintiff's action. Defendant asserted plaintiff's claim is "nothing more than a disguised administrative appeal" and this court does not have subject matter jurisdiction over administrative appeals. Defendant explained that since plaintiff is a public-sector bargaining unit employee covered under a CBA between CSU and AAUP, he is subject to the "framework" established for the resolution of labor disputes addressed in R.C. 4117. Eg. *Franklin Cty. Law Enforcement Ass'n v. Fraternal Order of Police* (1991), 59 Ohio St. 3d 167, 572 N.E. 2d 87. Specifically, defendant noted R.C. 4117.10(A) addresses situations such as the wage dispute in the instant action where a CBA "provides for a final and binding arbitration of grievances." Defendant observed the CBA covering plaintiff's employment under Article 47 contains a four-step process for resolving grievances such as wage disputes. Defendant related plaintiff's dispute over his pay reduction could have been grieved under the provisions of Article 47 in the CBA. When a CBA contains a grievance procedure providing final and binding arbitration, "the court of claims is accordingly without jurisdiction to decide matters that are subject solely to a final and binding grievance procedure." *Goodwin v. Ohio Dept. of Rehab. and Corr.* (1997), 86 Ohio Misc. 2d 62, 65, 684 N.E. 2d 1324.

{¶ 7} Defendant related that plaintiff did file an Article 47 Step 3 grievance in regard to his pay reduction on May 14, 2006. On August 24, 2006, CSU Interim Provost and Vice President for Academic Affairs, Dr. Terrence Glass, drafted correspondence to

plaintiff informing him that his May 14, 2006 grievance had been denied. Defendant submitted a copy of the correspondence from Glass who wrote “[t]he University’s position is that the unapproved absences you had during the 2005-2006 academic year are grounds for withholding pay, and that the amount deducted from your pay is equal to the salary for the dates missed.” On October 18, 2006, plaintiff addressed a memorandum (copy submitted) to Dr. Glass noting, “I will like to appeal to arbitration, given the denial of my grievance hearing.” In this memorandum plaintiff expressed his position that the reduction in his salary constituted a violation of the CBA. On October 24, 2006, plaintiff filed a Grievance Disposition Reaction Form (copy submitted) formalizing his request to advance his appeal of the denial of his Step 3 grievance.

{¶ 8} On November 28, 2006, AAUP representative, McGregor Coleman, notified Dr. Glass by e-mail (copy submitted) that AAUP-CSU decided to take plaintiff’s wage issue grievance to arbitration. On December 6, 2006, CSU General Counsel, Andrew Hughey, sent an e-mail (copy submitted) to McGregor Coleman addressing the matter of arbitrating plaintiff’s grievance. In this e-mail, Hughey advised Coleman that the CSU Administration was declining to refer the matter of plaintiff’s grievance to arbitration based on the position the Grievance Disposition Reaction Form (dated October 18, 2006, received October 25, 2006) was untimely filed beyond the CBA deadline established under Article 47.19.³ Hughey noted specific language of Article 47.19 requires a Grievance Disposition Reaction Form to be completed and distributed within ten (10) days after a grievant receives the grievance disposition from the proper administration personnel.⁴ Hughey maintained plaintiff received the notice of disposition

⁴ Evidence shows plaintiff filed a Step 3 grievance and Article 47.19 addresses procedure for appealing a Step 2 grievance. Appeals for a Step 3 grievance are addressed in Article 47.18. It should be noted the ten (10) day distribution time frame for an appeal is the same for both Article 47.18 and 47.19 appeals. Article 47.18 provides:

“47.18 Step 3 - Provost and Vice President for Academic Affairs/President: In those cases where a grievance originates at the level of the Provost and Vice President for Academic Affairs/President, the Provost and Vice President for Academic Affairs/President will hold a hearing within twenty (20) days after receipt of the grievance at a time which is mutually convenient to all parties. The Provost and Vice

of his Step 3 grievance on September 1, 2006, and the Grievance Disposition Reaction Form plaintiff completed was received by CSU Administration personnel on October 25, 2006. According to Hughey, in order to establish compliance with the CBA in regard to appeal time frames for arbitration, the proper form needed to be received no later than September 18, 2006. Based on defendant's position regarding time limitations, plaintiff's grievance was never advanced to arbitration. Defendant argues the fact plaintiff's grievance was not arbitrated does not alter the contention that the CBA language concerning grievances and arbitration procedures divests this court of subject matter jurisdiction.

{¶ 9} Conversely, plaintiff contends this court does have jurisdiction over the wage dispute issue presented despite the fact the grievance process was pursued under the CBA. Plaintiff maintains provisions in Article 47 of the CBA vest jurisdiction over the remedy sought in this court.

{¶ 10} Article 47.23 and 47.24 provide:

{¶ 11} "47.23 The AAUP-CSU will have final decision, in its sole discretion, on whether a particular grievance will be submitted to arbitration.

{¶ 12} "47.24 In the event that a grievant(s) decides to pursue the grievance through any other lawful means, such grievance will be considered withdrawn and the grievant(s) may pursue the case through any court of competent jurisdiction. Exercise of such other lawful means will compromise the grievant(s)' sole remedy and the grievant(s) will waive his/her/their right to the grievance procedure and arbitration hereunder."

{¶ 13} Plaintiff asserts that under the provisions of Article 47.24, he was entitled to file a claim for breach of contract outside the parameters of the CBA in a "court of

President/President will file a disposition with the grievant(s) within ten (10) days after the hearing. Within ten (10) days after receipt of the disposition by the Provost and Vice President/President, the grievant(s) may appeal to arbitration by completing and distributing a Grievance Disposition Reaction Form. Within thirty (30) days after receipt of the appeal to arbitration, AAUP-CSU will notify the Administration and the grievant(s) whether it supports the appeal. In matters involving Termination for Cause, AAUP-CSU

competent jurisdiction.” Plaintiff further asserts under the CBA he is entitled to have his dispute decided in the Court of Claims. Plaintiff insists defendant had no right under the CBA to dock him four days pay and, in essence, violated the contract by authorizing the pay reduction. Furthermore, plaintiff states he indeed subsequently performed all teaching duties required under contract despite missing four days of classes and therefore, he contends he is entitled to receive all compensation for those four days.

{¶ 14} Evidence has shown plaintiff attempted to follow the Article 47 grievance and arbitration procedure through Article 47.20-Step 4-Arbitration⁵ to resolve his wage dispute with defendant. Article 47.20 contains specific language regarding binding arbitration. It has been previously held that this court does not have jurisdiction over employment matters subject to a collective bargaining agreement which makes provisions under the grievance procedure for binding arbitration. See *Goodwin*, 86 Ohio Misc. 2d 62, 684 N.E. 2d 1324. Although plaintiff could not avail himself of the arbitration process due to defendant’s refusal to forward plaintiff’s grievance to arbitration, the attempt to arbitrate the dispute under the terms of the CBA was made. The grievance was never withdrawn. Only after defendant’s refusal on procedural grounds to forward the grievance to binding arbitration did plaintiff file the present action in this court to seek a remedy for his dispute.

{¶ 15} Plaintiff asserts Article 47.24 of the CBA allows him to pursue his case in

support for an appeal to arbitration will not be required.”

⁵ Article 47.20 provides:

“47.20 Step 4-Arbitration: If AAUP-CSU supports the appeal to arbitration, representatives of the Administration and AAUP-CSU will meet within ten(10) days to select an arbitrator or to request the Federal Mediation and Conciliation Service or the American Arbitration Association to supply them with a list of names from which they will select an arbitrator. The arbitrator will be selected from the list within ten (10) days of receipt of the list or a new list will be requested. If there is a doubt as to the arbitrability of the grievance, the parties will request the arbitrator to rule on the arbitrability of the grievance. If the arbitrator rules that the grievance is arbitrable, he or she will then proceed to conduct a hearing on the merits of this grievance. The arbitrator will have no power to add to, subtract from, or modify any of the terms of this Agreement. The arbitrator’s decision will be binding upon the Administration, AAUP-CSU, and the grievant(s). The arbitrator will render a decision within thirty (30) days after the arbitration hearing.” (Emphasis added.)

this court. R.C. 2743.02 addressing jurisdiction of the Court of Claims states in pertinent part:

{¶ 16} “(A)(1) The state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.”

{¶ 17} In the present claim, this court does not have jurisdiction over plaintiff’s action. Not only does the claim involve a situation where the state has previously consented to be sued, but the dispute is subject to the binding arbitration provision of the CBA. Plaintiff’s claim is not cognizable in this forum. The claim is dismissed.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Based on the foregoing analysis, the court lacks subject matter jurisdiction over this claim. Accordingly, plaintiff's claim is DISMISSED. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

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