

SUPREME COURT OF PENNSYLVANIA

Raymond J. Whalen v. Public School Employees' Retirement Board

No. 33 MAP 2021 (Pa. 2021) · No. No. 33 MAP 2021 · Decided December 22, 2021

SUMMARY

Justice Dougherty concurred in the result, agreeing that the Public School Employees' Retirement Board could not be bound by a private settlement agreement and that the payment did not qualify as compensation under the Retirement Code. The concurrence disagreed with the Commonwealth Court and the Board's application of the parol evidence rule to exclude evidence concerning the Board's duties as a nonparty to the agreement. It nevertheless concluded that the claimant failed to establish that the payment was based on a standard salary schedule.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Kevin Dougherty
JURISDICTION	Pennsylvania
DECIDED	December 22, 2021
DOCKET	No. 33 MAP 2021
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from the Commonwealth Court's order reversing the Public School Employees' Retirement Board's adjudication concerning whether a settlement payment constituted compensation under the Retirement Code.
STANDARD OF REVIEW	The concurrence discusses the appropriate standard of review for the Board's adjudication and interpretation of the Retirement Code, but the excerpt does not state a definitive standard.
PRECEDENTIAL VALUE	Published concurring opinion; persuasive only as to Justice Dougherty's separate reasoning, with the binding precedential value determined by the majority opinion.
PARTIES	Public School Employees' Retirement Board v. Raymond J. Whalen

TOPICS

agency adjudication

judicial review of agency action

parol evidence rule

evidence

contract interpretation

PRACTICE AREAS

administrative law

evidence

contracts

statutory interpretation

QUESTIONS PRESENTED

1. Whether the Board and Commonwealth Court applied the proper standard of review to the Board's adjudication and interpretation of the term "compensation" under the Retirement Code.
2. Whether the Board improperly excluded evidence concerning the nature and purpose of the settlement payment under the parol evidence rule.
3. Whether the \$15,000 settlement payment qualified as "compensation" under the Retirement Code.

HOLDINGS

1. A private contract between the employee and the school district could not bind the Retirement Board because the Board was not a party to the agreement.
2. The parol evidence rule should not have been applied to exclude evidence concerning the Board's own duties under the Retirement Code because the Board was a stranger to the settlement agreement.
3. Whalen failed to prove that the \$15,000 payment constituted compensation under the Retirement Code because he did not produce a standard salary schedule establishing that the payment was based on such a schedule.

KEY QUOTATIONS

“the parol evidence rule does not apply to exclude evidence regarding the duties or obligations of a stranger to the contract, such as the Board in relation to the settlement agreement here.” (at 2)

“the Board, as a stranger to the settlement agreement, should not have applied the parol evidence rule to preclude evidence pertaining to its own duties under the Retirement Code.” (at 3)

“This is crucial, because the Code explicitly excludes from the retirement calculation any remuneration not based on the employee’s standard salary schedule.” (at 5)

FACTUAL BACKGROUND

Whalen received a \$15,000 payment under a settlement agreement with his school district after asserting age-discrimination claims. He argued the payment represented back wages or a salary adjustment and should be treated as compensation for retirement-calculation purposes. He offered letters from the district's attorney and finance manager, an affidavit, and discrimination-charge materials, but the Board excluded the evidence under the parol evidence rule and determined that the payment did not qualify as compensation.

PROCEDURAL HISTORY

The Public School Employees' Retirement Board rejected Whalen's extrinsic evidence under the parol evidence rule and concluded that the \$15,000 settlement payment was not compensation under the Retirement Code. The Commonwealth Court reversed the Board. The Supreme Court of Pennsylvania granted review, and Justice

Dougherty concurred in the result while separately addressing the standard of review and the Board's exclusion of evidence.

DISPOSITION

other

CASES CITED

- Whalen v. Pub. Sch. Emps.' Ret. Bd., 241 A.3d 1242, 1249 n.8 (Pa. Cmwlth. 2020)
- Roberts v. Cauffiel, 128 A. 670, 671 (Pa. 1925)
- Commonwealth v. Contner, 21 Pa. 266, 272 (Pa. 1853)
- A. Simon & Sons v. Emery, 99 A. 78, 79 (Pa. 1916)

OPINION

Whalen, R. v. Public School Empl Ret Board, Aplt.

PER CURIAM.

[J-67-2021] [MO: Wecht, J.]

IN THE SUPREME COURT OF PENNSYLVANIA

MIDDLE DISTRICT

RAYMOND J. WHALEN, : No. 33 MAP 2021

Appellee : Appeal from the Order of the : Commonwealth Court at No. 45 C.D. : 2020 dated
October 27, 2020 v. : Reversing the Order of the Public : School Employees' Retirement : Board at
No. 2016-05 dated PUBLIC SCHOOL EMPLOYEES' : December 6, 2019. RETIREMENT
BOARD, : : ARGUED: October 26, 2021 Appellant :

CONCURRING OPINION

JUSTICE DOUGHERTY DECIDED: December 22, 2021 I concur in the result. Specifically, I agree parties cannot bind the Public School Employees' Retirement Board through their private contracts to which the Board is not a party. See Majority Opinion at 10. I further agree that for a settlement payment to be "compensation" under the Retirement Code, it must have been based on a standard salary schedule. See *id.* at 11. I write separately, however, to address the second issue on which we granted review: the appropriate standard of review to be applied to the Board's adjudication and interpretation of the term "compensation" under the Retirement Code. Related to the question of whether the Commonwealth Court applied the correct standard of review here, is whether that court correctly affirmed the Board's decision to exclude certain evidence presented by appellee. In my view, the Commonwealth Court erred in this regard. At the Board level, appellee Whalen asserted seven counterstatements of fact and sought to admit exhibits supporting his interpretation of the settlement agreement. See Board Opinion at 2-3. The counterstatement of facts included averments supporting his claim the \$15,000 settlement payment equaled the amount he would have earned but for the District's alleged age discrimination. The proffered exhibits

included a July 8, 2014 letter from John Freund, the District's attorney, which accompanied a copy of the deposit for the settlement payment and stated that payment "reflect[ed] the \$15,000 pay adjustment[and that t]his includes the new rate of pay from July 1 to September 24 based upon his new adjusted salary." Freund Letter (July 8, 2014). Appellee also produced a letter from Joe Rodriguez, the District's Finance Manager, stating it was his understanding the settlement payment "was to be considered back wages[, and] Mr. Whalen was a member of the WVW Act 93 Management Group at the time of his retirement." Rodriguez Letter (October 18, 2018). Appellee also proffered an affidavit outlining his understanding of the settlement agreement, and a copy of the discrimination charge he filed with the Pennsylvania Human Relations Commission and Equal Employment Opportunity Commission. See Whalen Aff., Sept. 13, 2019; Whalen Charge of Discrimination, May 25, 2011. The Board did not accept the above-described exhibits, citing the parol evidence rule. It explained contract law governs the interpretation of settlement agreements, and when a fully integrated contract's terms are clear and unambiguous, extrinsic evidence will not be admitted to alter the express terms. See Board Opinion at 3-4. It further stated [J-67-2021] [MO: Wecht, J.] - 2 the only exceptions to the parol evidence rule are in cases of fraud, accident, mistake, and when the contract is ambiguous. See *id.* at 4. Because it found none of these exceptions applied, the Board rejected appellee's extrinsic evidence. See *id.* And, without that evidence, the Board reasoned, there were no genuine issues of material fact, and no evidentiary hearing was required under 2 Pa.C.S. §504.1 See *id.* On appeal, the Commonwealth Court agreed with the Board, reasoning it was simply interpreting a contract, and contractual interpretation is a purely legal inquiry. See *Whalen v. Pub. Sch. Emps.' Ret. Bd.*, 241 A.3d 1242, 1249 n.8 (Pa. Cmwlth. 2020). In my view, the Commonwealth Court erred because the Board incorrectly applied the parol evidence rule in these circumstances. I agree the settlement agreement is an unambiguous, fully integrated contract. And though the parol evidence rule typically bars the use of extrinsic evidence by the parties to a contract in order to alter that contract, the parol evidence rule does not apply to exclude evidence regarding the duties or obligations of a stranger to the contract, such as the Board in relation to the settlement agreement here. See, e.g., *Roberts v. Cauffiel*, 128 A. 670, 671 (Pa. 1925) ("[I]t is a matter of indifference whether or not the parol evidence is offered by one of the parties to the writing; unless both parties, or their privies, are the real contestants, the rule of evidence . . . has no application."); *Commonwealth v. Contner*, 21 Pa. 266, 272 (Pa. 1853) ("But this is not a contest between the parties themselves, and the rule which excludes parol evidence does not apply to strangers."); *A. Simon & Sons v. Emery*, 99 A. 78, 79

1 Section 504 provides: "[n]o adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded . . . an opportunity to be heard." 2 Pa.C.S. §504. Section 505 further explains that "Commonwealth agencies shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received." *Id.* at §505. [J-67-2021] [MO: Wecht, J.] - 3 (Pa. 1916) ("As to strangers such rule does not apply."); see also 11 W ILLISTON ON CONTRACTS §33:9 (4th ed.) ("The parol evidence

rule is frequently held to apply only to the contracting parties and their privies and not to third persons, often referred to as strangers to the contract, . . . unless they seek to enforce rights under the contract.”) (footnote omitted); *id.* (“[I]t does not follow from the parol evidence rule that the written contract between two parties, which is conclusive as to them, must necessarily be conclusive as to the proof of any rights or claims either one of them may have against a third party merely because those claims grow out of the same transaction reflected in the written contract.”) As the majority correctly notes, the Board was not a party to the contract between appellee and the District, and it therefore could not be bound by its terms. See Majority Opinion at 8-10. This being the case, however, the Board, as a stranger to the settlement agreement, should not have applied the parol evidence rule to preclude evidence pertaining to its own duties under the Retirement Code.² Even considering the excluded evidence, however, I nevertheless agree with the majority’s conclusion appellee failed to prove the \$15,000 payment constituted “compensation” as defined under the Retirement Code. See *id.* at 10-11. That evidence (most notably, the contemporaneous letter from Attorney Freund) suggests the District’s payment may have been meant as back pay and in part covered appellee’s work during the 2014-2015 school year. But as the majority correctly points out, appellee never 2 For this reason, I would not fault appellee for the fact the settlement agreement itself does not say when the payment was earned. See Majority Opinion at 11 (“[T]he agreement fails to mention when the ‘salary enhancement’ was earned, which makes it impossible for PSERS to treat the payment as ‘compensation’ even if it wanted to do so.”). [J-67-2021] [MO: Wecht, J.] - 4 produced a standard salary schedule. See *id.* at 11. I agree with the majority that “[t]his is crucial, because the Code explicitly excludes from the retirement calculation any remuneration not based on the employee’s standard salary schedule.” *Id.* [J-67-2021] [MO: Wecht, J.] - 5