

SUPREME COURT OF NEW HAMPSHIRE

Jason Boucher v. Town of Moultonborough

Carroll No. 2022-0500 · No. Carroll No. 2022-0500 · Decided November 15, 2023

SUMMARY

The Supreme Court of New Hampshire held that RSA 41:48 does not require exhaustion of administrative remedies when a police officer alleges constructive discharge because the statute does not contemplate constructive discharge or provide a corresponding administrative process. The court reversed the dismissal of Jason Boucher’s complaint and remanded the case. It declined to decide whether the complaint adequately stated a wrongful termination claim.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	MacDonald, C.J.; Bassett, J.; Hantz Marconi, J.; Donovan, J.
JURISDICTION	New Hampshire
DECIDED	November 15, 2023
DOCKET	Carroll No. 2022-0500
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting the Town's motion to dismiss a complaint alleging constructive termination in violation of RSA 41:48.
STANDARD OF REVIEW	The court reviewed the order granting the motion to dismiss de novo, assuming the truth of the pleaded facts and construing reasonable inferences in the plaintiff's favor. The question was whether the allegations were reasonably susceptible of a construction permitting recovery; documents properly considered with the pleadings could also be reviewed.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of New Hampshire; precedential subject to rehearing and formal revision.
PARTIES	Jason Boucher v. Town of Moultonborough

TOPICS

- constructive discharge
- wrongful termination
- exhaustion of remedies
- municipal law
- statutory interpretation

PRACTICE AREAS

employment law

municipal law

administrative law

torts

QUESTIONS PRESENTED

1. Whether RSA 41:48 required Boucher to exhaust administrative remedies when he alleged constructive discharge without formal notice of intent to dismiss or formal removal by the select board.
2. Whether the superior court erred in dismissing the complaint for failure to exhaust administrative remedies under RSA 41:48.
3. Whether Boucher stated a claim for wrongful termination based on constructive discharge.

HOLDINGS

1. RSA 41:48 does not contemplate constructive discharge where the police officer received no formal notice of intent to dismiss and was never formally removed by the select board; therefore, the statute provides no administrative process that the plaintiff was required to exhaust.
2. The superior court erred in finding that Boucher failed to exhaust administrative remedies under RSA 41:48.
3. The court declined to reach the Town's argument that Boucher failed to state a wrongful-termination claim because the superior court had not addressed the merits of the complaint.

KEY QUOTATIONS

“Constructive discharge occurs when an employer renders an employee’s working conditions so difficult and intolerable that a reasonable person would feel forced to resign.” (at 3)

“Because RSA 41:48 does not, by its plain terms, contemplate constructive discharge, we conclude that there was no administrative process through which the plaintiff could exhaust a remedy.” (at 4)

“Even if the plaintiff sought and was granted a hearing before the Board, the only remedy afforded to him under the statute would be to resume working in the very environment which gave rise to his constructive discharge claim.” (at 4)

FACTUAL BACKGROUND

Jason Boucher served as a Town of Moultonborough police officer for nineteen years and most recently held the rank of sergeant. After a change in police management, he alleged that an interim police manager and a lower-ranking officer undermined his authority and subjected him to four internal investigations in six weeks. Boucher alleged that these actions were intended to isolate and demean him, causing working conditions that would compel a reasonable police officer to resign. He resigned, obtained other employment at reduced pay and benefits, and alleged emotional and physical harm.

PROCEDURAL HISTORY

Boucher filed a complaint in the superior court seeking compensatory damages for constructive discharge from his position as a police sergeant. The Town moved to dismiss, arguing, among other things, that Boucher was

required to exhaust administrative remedies under RSA 41:48. The superior court dismissed the complaint without prejudice for lack of subject-matter jurisdiction based on failure to exhaust and did not reach the Town's other arguments. The New Hampshire Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings; the Supreme Court did not decide whether the complaint adequately stated a wrongful-termination claim.

CASES CITED

- Barufaldi v. City of Dover, 175 N.H. 424, 425 (2022)
- Barufaldi v. City of Dover, 175 N.H. 424, 427 (2022)
- Karch v. BayBank FSB, 147 N.H. 525, 536 (2002)
- Porter v. City of Manchester, 151 N.H. 30, 38 (2004)
- St. Onge v. Oberten, LLC, 174 N.H. 393, 395 (2021)
- Porter v. City of Manchester, 151 N.H. 30, 40-41 (2004)
- Frost v. Comm'r, N.H. Banking Dep't, 163 N.H. 365, 373 (2012)
- Appeal of Town of Pelham, 124 N.H. 131, 136 (1983)
- Ingersoll v. Williams, 118 N.H. 135, 139 (1978)