

SUPREME COURT OF APPEALS OF WEST VIRGINIA

West Virginia Consolidated Public Retirement Board v. Robert Clark

West Virginia Consolidated Public Retirement Board v. Clark · No. No. 20-0350 · Decided June 14, 2021

SUMMARY

This document is a separate opinion by Justice Wooton, concurring in part and dissenting in part, in a West Virginia Supreme Court of Appeals case concerning whether subsistence allowances paid to natural resources police officers constitute pensionable compensation under the Public Employees Retirement System. Justice Wooton agreed that the respondents' retirement benefits should not be reduced because of the Retirement Board's failure to act timely, but disagreed with the majority's conclusion that the subsistence payments were not compensation. The opinion emphasizes the payments' regular treatment as wages and applies statutory-interpretation principles to West Virginia Code § 5-10-2(8).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	June 14, 2021
DOCKET	No. 20-0350
DISPOSITION	other
PROCEDURAL POSTURE	The West Virginia Consolidated Public Retirement Board challenged the treatment of statutory subsistence payments made to natural resources police officers as compensation for purposes of calculating Public Employee Retirement System benefits.
PRECEDENTIAL VALUE	Published Supreme Court of Appeals of West Virginia opinion; the provided text is a per curiam opinion with a separate partial concurrence and dissent.
PARTIES	West Virginia Consolidated Public Retirement Board v. Robert Clark and other current and former DNR officers and/or their beneficiaries

TOPICS

[administrative law](#)[statutory interpretation](#)[plain meaning rule](#)[canons of construction](#)[employee benefits](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether statutory subsistence payments made regularly to natural resources police officers constituted compensation under West Virginia Code § 5-10-2(8) for purposes of calculating Public Employee Retirement System benefits.
2. Whether respondents could be stripped of retirement benefits that had been calculated to include the subsistence payments after the Board failed to take timely corrective action.

HOLDINGS

1. The court's majority concluded that respondents could not then be stripped of retirement benefits calculated to include the subsistence payments because the Board failed to take timely corrective action.
2. The majority determined that the subsistence payments did not constitute compensation for purposes of Public Employee Retirement System benefits; Justice Wooton disagreed and would have held that the regularly paid subsistence allowance was compensation.

KEY QUOTATIONS

“The subsistence pay was handled in every meaningful way just as ordinary compensation—issued with no questions asked and no strings attached insofar as an employee was otherwise receiving his or her salary.” (2)

“The doctrines are similar in nature, and their application holds that in an ambiguous phrase mixing general words with specific words, the general words are not construed broadly but are restricted to a sense analogous to the specific words.” (9)

“The critical inquiry is whether items are of the “same general class or nature” as the included items.” (10)

FACTUAL BACKGROUND

Natural resources police officers received a statutory minimum subsistence allowance of \$60 every two weeks for telephone service, uniform dry cleaning, and meals while performing regular duties in their primary assignment areas. The allowance was included in regular biweekly paychecks, reported on W-2 forms, and used in calculating taxable income, insurance premiums, retirement contributions, and retirement benefits. Officers were not required to document expenses, spend the allowance on specified items, or return unused amounts, and they continued receiving it while on paid annual, sick, or military leave.

PROCEDURAL HISTORY

The circuit court concluded that the subsistence payments were not the type of irregular payments excluded from retirement compensation under West Virginia Code § 5-10-2(8). The Board appealed. The majority concluded that the subsistence pay did not constitute compensation but also concluded that respondents could not then be stripped of retirement benefits calculated to include the payments because the Board failed to take timely corrective action. Justice Wooton concurred in the latter conclusion and dissented from the former.

DISPOSITION

other

CASES CITED

- Anderson v. City of Long Beach, 341 P.2d 43, 45-46 (Cal. Ct. App. 1959)
- SAIF Corp. v. Sparks, 309 P.3d 174, 177 (Or. Ct. App. 2013)
- In re Marriage of Murphy, 885 P.2d 440 (Mont. 1994)
- Iron Workers Loc. 118, Int'l Ass'n of Bridge & Structural Iron Workers, AFL-CIO v. N.L.R.B., 804 F.2d 1100 (9th Cir. 1986)
- Hilligoss v. LaDow, 368 N.E.2d 1365, 1370-71 (Ind. Ct. App. 1977)
- Murray v. State Farm Fire & Cas. Co., 203 W. Va. 477, 485, 509 S.E.2d 1, 9 (1998)
- Vector Co. v. Bd. of Zoning Appeals of City of Martinsburg, 155 W. Va. 362, 366, 184 S.E.2d 301, 303-04 (1971)
- Marcellus Shale Coal. v. Dep't of Env't Prot., 193 A.3d 447, 472 (Pa. Commw. Ct. 2018)

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