

MASSACHUSETTS APPEALS COURT

Gerard Fontana & another v. City of Boston

No. 25-P-352 (Mass. App. Ct. June 2, 2026) · No. No. 25-P-352 · Decided June 2, 2026

SUMMARY

The Massachusetts Appeals Court held that retired Boston fire department chiefs were not entitled to cash payments for unused compensatory time created through a formula converting unused vacation time. The court concluded that the governing compensation schedule did not provide for a second conversion of compensatory time into cash and that the Massachusetts Wage Act did not require payment for this category of time. The court reversed summary judgments for the plaintiffs and remanded for entry of summary judgment in favor of the City of Boston.

CASE DETAILS

COURT	Massachusetts Appeals Court
WRITING FOR THE COURT	Hodgens, J.; Hershfang, J.; Smyth, J.
JURISDICTION	Massachusetts Appeals Court
DECIDED	June 2, 2026
DOCKET	No. 25-P-352
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The City of Boston appealed from summary judgments entered for the plaintiffs on their breach-of-contract and Massachusetts Wage Act claims.
STANDARD OF REVIEW	De novo review of summary judgment rulings.
PRECEDENTIAL VALUE	Published Massachusetts Appeals Court opinion
PARTIES	City of Boston v. Gerard Fontana, John F. Walsh

TOPICS

- wage and hour
- employment contracts
- contract interpretation
- municipal law
- appellate procedure

PRACTICE AREAS

- employment law
- contracts
- municipal law
- wage and hour
- appellate procedure

QUESTIONS PRESENTED

1. Whether the parties' compensation schedule required the City of Boston to pay cash for compensatory time that had been created by converting unused vacation time and remained unused at retirement.
2. Whether the plaintiffs' unused compensatory time constituted wages earned, or otherwise payable compensation, under Massachusetts General Laws chapter 149, section 148.
3. Whether the plaintiffs' compensatory time was payment in lieu of overtime wages under *Plourde v. Police Department of Lawrence*.

HOLDINGS

1. The compensation schedule did not require a second conversion of unused compensatory time into cash. The plaintiffs therefore had no breach-of-contract claim for payment of the unused compensatory-time banks.
2. The unused compensatory time did not constitute wages earned under G. L. c. 149, § 148, and the city therefore did not violate the Wage Act by failing to pay cash for it.
3. The plaintiffs' compensatory time was not payment in lieu of overtime wages and was not governed by the reasoning of *Plourde*.

KEY QUOTATIONS

"Silence alone is not ambiguity. 'There is no room for the construction of doubtful words, for there are no words whatever.'" (at 4)

"'It is not the role of the court to alter the parties' agreement.'" (at 4)

"ordinarily we will not add language to a statute where the Legislature itself has not done so." (at 5)

FACTUAL BACKGROUND

Gerard Fontana and John F. Walsh held nonunion, salaried chief positions in the Boston Fire Department and retired in 2020. The city paid each plaintiff substantial amounts primarily for unused personal, sick, and vacation time. The plaintiffs also claimed that a compensation schedule entitled them to cash for unused compensatory time created through a formula converting unused vacation days into both cash and compensatory time. The Appeals Court concluded that the schedule did not provide for a second conversion of unused compensatory time into cash and that the compensatory time did not constitute wages earned under the Wage Act.

PROCEDURAL HISTORY

After retiring from the Boston Fire Department, the plaintiffs sued the City of Boston for payment for unused compensatory time. On cross motions for summary judgment, the Superior Court allowed the plaintiffs' motion, doubled damages, and entered awards including interest and attorney's fees. The Appeals Court reversed and remanded for entry of summary judgment in favor of the city.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for entry of summary judgment in favor of the City of Boston.

CASES CITED

- Hasseltine House, LLC v. Jewish Family & Children's Servs., Inc., 106 Mass. App. Ct. 30, 33 (2025)
- Marcelle, Inc. v. Sol & S. Marcus Co., 274 Mass. 469, 474-475 (1931)
- Rogaris v. Albert, 431 Mass. 833, 835 (2000)
- Calixto v. Coughlin, 481 Mass. 157, 160 (2018)
- Segal v. Genitrix, LLC, 478 Mass. 551, 560 (2017)
- Tze-Kit Mui v. Massachusetts Port Auth., 478 Mass. 710, 712-713 (2018)
- Awuah v. Coverall N. Am., Inc., 460 Mass. 484, 492 (2011)
- Massachusetts State Police Commissioned Officers Ass'n v. Commonwealth, 462 Mass. 219, 226 (2012)
- Weems v. Citigroup Inc., 453 Mass. 147, 153-154 (2009)
- Prozinski v. Northeast Real Estate Servs., LLC, 59 Mass. App. Ct. 599, 603 (2003)
- Plourde v. Police Dep't of Lawrence, 85 Mass. App. Ct. 178, 179-180 (2014)