

COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD

ANTHONY McDERMOTT,

Petitioner-Appellee

v.

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION,

Intervenor-Respondent.

CR-19-0071

DECISION

Respondent-Intervenor Public Employee Retirement Administration Commission (“PERAC”) appeals from a decision of an Administrative Magistrate of the Division of Administrative Law Appeals (“DALA”) allowing the Motion for Summary Decision filed by Petitioner Anthony McDermott (“McDermott”) and finding that McDermott is entitled to a termination retirement allowance under G.L c. 32, § 10(2)(a). The magistrate admitted seven exhibits. The DALA decision is dated August 21, 2020. PERAC filed a timely appeal to us.

After considering all the arguments presented by the parties and after a review of the record, we reverse the DALA decision granting the Motion for Summary Decision and remand this matter for an evidentiary hearing. Our discussion follows. ***Reverse*** and ***Remand***.

I. Background

In October 1997, Roxbury Community College (“RCC”) hired McDermott as the Associate Director of the Reggie Lewis Track and Athletic Center (“RLTAC”). Approximately one year later, RCC promoted him to Director.¹

¹ DALA Decision (“DALA”) Finding of Fact (“FF.”) 1; DALA Exhibit (“Ex.”) A and B.

On September 8, 2016, McDermott received a letter from RCC, notifying him that his appointment as Director of the RLTAAC was to be discontinued (the “Discontinuation Notice”) and that he would be placed on fully paid administrative leave until March 10, 2017, the date of discontinuation. While the Discontinuation Notice provided him with six months’ notice and cited the Massachusetts Community College Non-Unit Professional Personnel Policies Handbook (“NUP Handbook”), no reason was provided by RCC for its decision to discontinue his appointment.² On September 16, 2016, McDermott formally appealed the Discontinuation Notice under the provisions of the NUP Handbook, claiming he had been wrongfully terminated and that his termination was retaliatory for positions he advocated as Director of RLTAAC.³

In early 2017, McDermott retained an attorney to represent him regarding the discontinuation of his appointment. McDermott’s attorney engaged in negotiations with counsel for the RCC’s Board of Trustees, President, and Vice-President.⁴

On February 18, 2017, the Chairperson of RCC’s Board of Directors (“Chair”) telephoned and texted McDermott to discuss settling the dispute.⁵ The Chair told McDermott that the Board and the College would want to access his help and advice as needed on an ongoing basis. This was consistent with an earlier text message exchange between the College President and McDermott, which referenced McDermott meeting and consulting with RCC officials as needed during a “consulting phase.” Although McDermott continued to press his desire for reinstatement, he agreed to consider a settlement proposal. On February 20, 2017, McDermott received a proposed settlement from RCC, which he rejected. Nevertheless, negotiations continued between the parties. Subsequently, on February 25, 2017, a final settlement agreement was signed between McDermott and RCC (“Settlement”).⁶ The Settlement provided that McDermott would be on a fully paid administrative leave from September 9, 2016, through December 31, 2017 (“Leave”) and his employment with and compensation from RCC would end on January 1, 2018 (“Termination

² FF. 2, 6; Ex. B, p. 103.

³ FF. 11; Ex. A.

⁴ FF. 12.

⁵ FF. 13, 14.

⁶ FF. 21, Ex. B(3), p. 112-114.

Date”). The Settlement specified that McDermott was being relieved of his duties as Director of the RLTAC, would not return to work or to RLTAC without consent from the RCC President, and would withdraw his complaint under the NUP Handbook. RCC retained the right to terminate McDermott earlier than January 1, 2018, for cause or if he failed to comply with the terms of the Settlement. Also, RCC agreed to “take all reasonable action to support McDermott’s application for retirement.” Both parties agreed to release all claims against each other and to refrain from disparagement. After the Termination Date, McDermott filed for a termination retirement allowance pursuant to G.L. c. 32, §10 (2). The State Board of Retirement (“Board”) twice approved McDermott’s application and twice received a remand from PERAC. On its third consideration of McDermott’s application, the Board informed McDermott that it would not act on his application.⁷

On February 7, 2019, McDermott filed an appeal with DALA.⁸ On February 13, 2020, McDermott filed a Motion for Summary Decision. On August 21, 2020, the DALA Magistrate granted McDermott’s Motion for Summary Decision and concluded that McDermott was entitled to a termination retirement allowance under G.L. c.32, § 10(2)(a).⁹ PERAC appealed that decision to us.

II. Discussion

A. Motion for Summary Decision

The Standard Adjudicatory Rules of Practice and Procedure provide, “When a party is of the opinion there is no genuine issue of fact regarding all or part of a claim or defense and he is entitled to prevail as a matter of law, the Party may move, with or without supporting affidavits, for a summary decision on the claim or defense.” 801 C.M.R. §1.01(7)(h). A motion for summary decision in an administrative proceeding is the functional equivalent of a motion for summary judgment in a civil proceeding. *Zoning Bd. of Appeals of Amesbury v. Housing Appeals Committee*, 457 Mass. 748, 763, 933 N.E.2d 74, 86 (2010). To be successful, a moving party must show, with competent evidence, an absence of a genuine issue of material fact as well as an

⁷ DALA, p. 2.

⁸ DALA p. 2.

⁹ DALA p. 23-24.

entitlement to a decision in his favor under applicable law. *Mass. Outdoor Advertising Council v. Outdoor Advertising Bd.*, 9 Mass. App. Ct. 775, 785-786, 405 N.E. 2d 151, 156-157 (1980).

McDermott supported his Motion for Summary Decision with his own affidavit¹⁰ and six exhibits,¹¹ including an affidavit of McDermott's attorney with supporting materials, and the affidavits of three of McDermott's former colleagues.¹² The Magistrate noted that the oppositions filed by PERAC and the Board were devoid of supporting materials. Both oppositions urged that the motion should be denied because there were genuine issues of fact, which they would establish during the cross-examination of witnesses McDermott might call at a hearing. The Magistrate stated that the parties did not specify in their oppositions what factual discrepancies they hoped to uncover,¹³ yet, in a footnote remarked,

"The Board states only that it doubts whether [] McDermott provided the services to his employer that he and the other affiants aver that he did...PERAC simply states that the affiants make numerous factual assertions about 'meetings, discussions, timelines, knowledge of retirement law, and work performed' and PERAC has 'no idea whether those assertions are true.'"

Regardless of whether the Board and PERAC provided a basis for or specifics regarding their claims, it is clear from our review of the record that it contains contradictory evidence that cannot support McDermott's Motion for Summary Decision. Here, through affidavits, McDermott states that he provided services to RCC in return for the compensation paid to him during the Leave. However, item #6 of the Settlement provides the following:

"6. During the leave period Mr. McDermott shall not return to work for any reason without the express consent of the President of the College. During the leave period, Mr. McDermott shall be relieved of all duties associated with the position of Director of the RLTA, and shall have no authority to act on behalf of the College or the Center in any matters, including, but not limited to, attend meetings, activities or events in an official capacity as a

¹⁰ Ex. A.

¹¹ Ex. B (2).

¹² Ex. B (2).

¹³ Having not seen the pleadings, we cannot verify statements made by the parties.

representative of the College or the Center or make any decision(s) which shall bind the College or the Center in any manner.”¹⁴

The Settlement reflects that McDermott would not be on campus or assume the role of Director in any interactions. The affidavits submitted by McDermott, on the otherhand, mention a variety of work he performed during the Leave, including offering assistance and advice to other employees, recruiting and promoting student athletes, advocating for RCC’s Boston marathon application, arranging training, providing assistance and advice regarding RL TAC’s energy management system, assisting completion of report to U.S. Dept. of Education, and helping with preparations for the upcoming year regarding inventory, temporary staffing, and various other operational matters.¹⁵

It is apparent from the above that the parties have a factual dispute. This dispute over services is critical to the determination as to whether the pay McDermott received in accordance with the Settlement is regular compensation. This factor is needed to decide whether McDermott is entitled to creditable service during the period he was on administrative leave pursuant to G.L. c. 32, § 4(1)(c) and ultimately as to whether he is entitled to a termination retirement allowance under G.L. c. 32, § 10(2)(a). This is a genuine issue of material fact that must be resolved through a hearing process. Therefore, a Summary Decision is not appropriate under these circumstances. The magistrate’s decision granting McDermott’s Motion for Summary Decision is reversed. We do not reach a decision on the merits of this case. This matter is remanded back for an evidentiary hearing. Any other issues which the parties or the magistrate deem necessary to this appeal can also be addressed at that time. ***Reverse*** and ***Remand***.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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¹⁴ Ex. B (3), p. 112.

¹⁵ Ex. B (2).

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Date: March 12, 2025