11-30-2022

Bruce Somers v. General Electric Co

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

No. 22-1093

_____

BRUCE SOMERS,
Individually and on behalf of all others similarly situated,

Appellant

v.

GENERAL ELECTRIC COMPANY

_____

On Appeal from the United States District Court
For the Western District of Pennsylvania
(D.C. No. 2-20-cv-00704)
District Judge: Honorable W. Scott Hardy

_____

Submitted Under Third Circuit L.A.R. 34.1(a)
November 9, 2022

Before: CHAGARES, *Chief Judge,* JORDAN, and SCIRICA, *Circuit Judges*

(Filed: November 30, 2022)

_____

OPINION*

_____

* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

JORDAN, *Circuit Judge*.

Bruce Somers, a former employee of General Electric Company ("GE"), sued GE claiming that he was owed payment for unused vacation time under the terms of an employee handbook that Somers contends is a contract. GE moved for summary judgment, which the District Court granted. For the following reasons, we will affirm.

I. BACKGROUND

Somers worked for GE Transportation[1] at its Grove City, Pennsylvania facility from July 9, 1990, until February 25, 2019, the date when Westinghouse Air Brake Technologies Corporation ("Wabtec") acquired the business. While at GE, Somers received vacation benefits consistent with the terms of the "GE Your Benefits Handbook: Vacation and Other Time Off" (the "Handbook"). Somers accrued paid vacation benefits under what the Handbook called the "Annual Vacation Allotment Method."[2] He was allotted 200 hours in 2019. Section 1.1.7 of the Handbook provides:

> If you earn vacation under the Annual Vacation Allotment Method, you (or your estate) will be paid for any unused vacation days when you leave the

[1] GE Transportation was a "line of business and reportable segment of" GE, rather than a separate legal entity. (App. at 164.)

[2] The Handbook describes the method as follows:

> The Annual Vacation Allotment Method enables you to earn vacation time based on the length of your continuous service with the Company on January 1 of the calendar year. The paid vacation time that you can take during the calendar year is earned during that same current calendar year. Your full annual allotment is granted at the beginning of the calendar year.

(App. at 136.)

> Company for any reason, including resignation, discharge, retirement, layoff, disability or death.

(App. at 139.)

Prior to setting out the substance of the vacation policy, the Handbook contained disclaimer language beneath a header saying, "IMPORTANT INFORMATION ABOUT THIS HANDBOOK." (App. at 132 (capitalization in original).) The disclaimer stated in relevant part:

> This handbook does not create a contract of employment between the Company and any individual.
>
> **The General Electric Company reserves the right to terminate, amend, suspend, replace or modify the plans described in this handbook (subject to applicable collective bargaining agreements), at any time and for any reason. No individual has a vested right to any benefit under a plan.**

(App. at 132 (emphasis in original).)

In connection with the acquisition of GE Transportation, GE and Wabtec entered into an "Employee Matters Agreement" that addressed, among other things, GE Transportation employees' earned but unused vacation.[3] With respect to "Continuing Employees," i.e., those who were transitioning to work for Wabtec, it provided:

> Vacation and Paid Time Off. … [Wabtec] … shall … provide vacation benefits to Continuing Employees for so long as they are employed with … [Wabtec] … that are at least as favorable as those provided to Continuing Employees under the applicable vacation program of [GE] or its Affiliates immediately prior to [Wabtec's acquisition of GE Transportation, i.e., February 25, 2019]. Effective as of [February 25, 2019] … [Wabtec] … shall … honor all obligations of [GE] … for the accrued, unused vacation and paid time off as of [February 25, 2019] for Continuing Employees.

[3] Somers denies being aware of the Employee Matters Agreement prior to filing this action.

(App. at 198.)

Before Wabtec completed its acquisition of GE Transportation, Somers received a letter from Wabtec stating that it planned "to offer employment to all [GE Transportation] employees who are actively employed on the date that the transaction closes[,]" subject to the terms of the letter. (App. at 223.) The letter also said that "Wabtec benefit plans" would be "similar in the aggregate to those provided by GE, however not identical[,]" with "paid time off and other important terms of employment … outlined in the attached pages[.]" (App. at 223.) In addition, the letter specifically noted that employees' "remaining vacation days, holidays and personal illness time **will not reset** on the date the transaction closes with Wabtec." (App. at 225 (emphasis in original).) Rather, "[v]acation, holiday and personal illness time will renew on January 1, 2020." (App. at 225.)

Somers accepted Wabtec's offer.[4] On February 25, 2019, after his employment transitioned to Wabtec, Somers still had 184 hours of vacation time available to him, and he used those remaining hours before the end of the calendar year.[5]

On April 6, 2020, Somers filed a putative class action in the Court of Common Pleas of Allegheny County, Pennsylvania to recover for unused vacation time from GE

[4] The letter advised that "**[i]f you would like to accept this offer there is no action needed on your part**[,]" but it gave instructions on how to reject it. (App. at 223 (emphasis in original).)

[5] Indeed, Somers admits he was paid at a higher hourly rate ($34.91) for those hours than his hourly rate immediately prior to the closing of the acquisition ($33.86).

on behalf of himself and others who previously worked for GE and then commenced employment with Wabtec. The complaint contained three counts: breach of contract, violation of the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 et seq., and unjust enrichment. GE removed the case to the U.S. District Court for the Western District of Pennsylvania and answered the complaint. After discovery, it filed a motion for summary judgment on all three of Somers's claims.[6]

A Magistrate Judge issued a Report and Recommendation, urging that the motion for summary judgment be granted. With respect to the breach of contract and WPCL claims, she suggested summary judgment principally because the Handbook did not constitute a contract under Pennsylvania law, due to its disclaimer language. With respect to the unjust enrichment claim, she recommended summary judgment because, even assuming GE was unjustly enriched, that enrichment would have been at Wabtec's expense. The District Court adopted the Report and Recommendation and granted summary judgment in favor of GE. Somers has timely appealed.

[6] Somers did not file a motion for class certification.

II. DISCUSSION[7]

A. Breach of Contract[8]

GE is entitled to summary judgment on Somers's breach of contract claim because he has offered no evidence from which a jury could conclude that the Handbook was offered as a contract. Because those "who retired from GE rather than take the job with Wabtec" were paid for their unused vacation hours, Somers asserts that GE is contractually obligated under the Handbook to pay out the vacation hours that he had accumulated at the time of Wabtec's acquisition of GE Transportation. (App. at 280 ¶ 65.) But his argument is fundamentally inconsistent with the Pennsylvania Supreme Court's decision in *Morosetti v. Louisiana Land & Expl. Co.*, 564 A.2d 151 (Pa. 1989).

In that case, the defendant acknowledged "there was indeed a severance pay policy[.]" *Id*. at 152. When the defendant sold its subsidiary, the employees of the subsidiary were "offered either new positions with the purchasers or up to a maximum of

---

[7] The District Court had jurisdiction over this diversity case under 28 U.S.C. §§ 1332(d) and 1441. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of the District Court's grant of summary judgment is plenary. *Sikkelee v. Precision Airmotive Corp.*, 907 F.3d 701, 708 (3d Cir. 2018). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). We view the evidence in the light most favorable to the non-moving party and "give that party the benefit of all reasonable inferences that can be drawn from the evidence." *Halsey v. Pfeiffer*, 750 F.3d 273, 287 (3d Cir. 2014).

[8] Under Pennsylvania law, a breach of contract claim requires "(1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract[,] and (3) resultant damages." *Ware v. Rodale Press, Inc.*, 322 F.3d 218, 225 (3d Cir. 2003) (citing *CoreStates Bank, N.A. v. Cutillo*, 723 A.2d 1053, 1058 (Pa. Super. Ct. 1999)) (alteration in original).

twenty-six weeks severance pay for each year of service." *Id*. The class plaintiffs were former employees who "chose to accept employment with the purchasing company" but nevertheless "claim[ed] that they [we]re entitled to the twenty-six weeks severance pay as well." *Id*. The court reversed a directed verdict in favor of the class plaintiffs. *Id*. at 153. As the court explained, "[a] company may indeed have a policy upon which they intend to act, given certain circumstances or events, but unless they communicate that policy as *part of a definite offer of employment* they are free to change as events may require." *Id*. at 153 (emphasis added).

Morosetti thus made clear that, unless an offer has been made with respect to the benefits in question, there can be no acceptance or contract formation as to those benefits. "It is basic contract law that one cannot suppose, believe, suspect, imagine or hope that an offer has been made. An offer must be intentional, definite, in its terms and communicated, otherwise the minds cannot meet. ... An offer must define its terms, specify the thing offered and be an intention of the present or the future to be bound." *Id*. at 152 (footnotes omitted).

Thus, the question before us is whether GE "intended to offer [the Handbook] as a binding contract[.]" *Id*. at 152-53. Under Pennsylvania law, "[i]t is well-settled that to find that … a handbook has legally binding contractual significance, the handbook or an oral representation about the handbook must in some way clearly state that it is to have such effect." *Luteran v. Loral Fairchild Corp.*, 688 A.2d 211, 215 (Pa. Super. Ct. 1997) (quotation marks omitted) (second alteration in original).

When, as in this case, an employee offers no contrary evidence, an explicit statement in the handbook disclaiming an intent to form a contract will preclude a finding of the requisite intent to offer it as such. *See Rutherfoord v. Presbyterian-Univ. Hosp.*, 612 A.2d 500, 504 (Pa. Super. Ct. 1992) ("[T]his 'disclaimer' language in the front of the employee handbook ... contains a clear expression of the Hospital's intention that the policies within the Manual … are not intended to constitute a contract .... [A]s a matter of law, the Manual cannot be found to create an implied contract of employment."). In other words, an employee may not rely solely on a handbook as the basis for a claimed contractual right to a benefit when that very handbook explicitly disclaims vesting him with any right to that benefit. *See Ruzicki v. Cath. Cemeteries Ass'n of Diocese of Pittsburgh*, 610 A.2d 495, 498 (Pa. Super. Ct. 1992) ("The appellant cannot [selectively] rely on the handbook as a source of his alleged rights[.]"); *see also id*. ("[W]e refuse to let the appellant have his cake and eat it too by relying on one section of the handbook to establish his claim while ignoring [the disclaimer,] which calls his claim severely into question.").[9]

[9] Somers does not argue that the Handbook's disclaimer language is unclear. Nor could he, as it is very clear indeed. *Cf. Luteran v. Loral Fairchild Corp.*, 688 A.2d 211, 214-15 (Pa. Super. Ct. 1997) ("We have held that it is for the court to interpret the handbook to discern whether it contains evidence of the employer's intention to be bound legally."). In addition to the text of the disclaimer, we note that Somers, after having been read the first sentence of the disclaimer language during a deposition, accepted the characterization that the "vacation policy contained [a] *very clear* statement that this handbook does not a create a contract of employment between [GE] and any individual[.]" (App. at 094 (emphasis added).) *See Luteran*, 688 A.2d at 214 ("A handbook is enforceable against an employer if a reasonable person in the employee's

In short, Somers failed to raise a triable issue that the Handbook constitutes a contract, so GE was entitled to summary judgment on the breach of contract claim.

B. Pennsylvania Wage Payment and Collection Law

In the absence of a contractual right to the wages or benefits, a claim under Pennsylvania's WPCL fails as a matter of law. *See Weldon v. Kraft, Inc.*, 896 F.2d 793, 801 (3d Cir. 1990) ("WPCL does not create a right to compensation. Rather, it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. The *contract* between the parties *governs* in determining whether specific wages are earned.") (emphasis added); *see also Oberneder v. Link Computer Corp.*, 696 A.2d 148, 150 (Pa. 1997) ("The Wage Payment and Collection Law provides employees a statutory remedy to recover wages and other benefits that are *contractually* due to them.") (emphasis added). Thus, GE was entitled to summary judgment on Somers's WPCL claim for the same reason as on Somers's breach of contract claim: his failure to raise a triable issue that the Handbook constitutes a contract.

C. Unjust Enrichment[10]

GE was also entitled to summary judgment on Somers's unjust enrichment claim, for two reasons. First, Somers did not show that he suffered any injustice: he received all

---

position would interpret its provisions as evidencing the employer's intent to … be bound legally by its representations in the handbook.").

[10] "A cause of action for unjust enrichment arises only when a transaction is not subject to a written or express contract." *Ne. Fence & Iron Works, Inc. v. Murphy Quigley Co.*, 933 A.2d 664, 669 (Pa. Super. Ct. 2007). "The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances

the paid vacation Wabtec offered, and, for the reasons already given, GE was not contractually obligated to him with respect to his earlier unused vacation hours. Second, we agree with the District Court that, even assuming GE "was unjustly enriched" because Wabtec paid for 184 hours of Somers's vacation, "[GE] would not owe that money to [Somers], it would owe that money to Wabtec, who actually paid [Somers]." (App. at 020.)

III. CONCLUSION

For the foregoing reasons, we will affirm the District Court's grant of summary judgment to GE on all of Somers's claims.

---

that it would be inequitable for defendant to retain the benefit without payment of value." *AmeriPro Search, Inc. v. Fleming Steel Co.*, 787 A.2d 988, 991 (Pa. Super. Ct. 2001) (internal quotation marks omitted). "The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff." *Id.*