FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

307

CLYDE LEROY FICKES,
Appellant,
vs.
POLK COUNTY, IOWA,
Appellee.

Filed August 31, 1978

554
2-61033

Appeal from Polk District Court - John N. Hughes, Judge.

Plaintiff appeals the post-trial dismissal of his petition in which he sought payment from defendant for accrued and unused sick leave. REVERSED AND REMANDED.

Dennis J. Kirkwood, of Des Moines, counsel for appellant.

Lavon French, of Des Moines, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

Plaintiff-Clyde Leroy Fickes, a former deputy sheriff for Polk County, appeals the post-trial dismissal of his petition in which he sought payment of $3215 for accrued and unused sick leave from defendant-Polk County. He contends that the trial court erred in applying the county's general policy that accrued and unused sick leave is lost when not taken as of the time of the termination of the employment relationship to a case such as this where the employee, through no fault of his own, is terminated by the employer while drawing sick leave compensation and remains disabled during the remainder of the accrued sick leave period.

The parties stipulated that Fickes was employed by Polk County as a deputy sheriff from September 6, 1962 through December 31, 1972 and was earning $33.28 per day during his final months of employment. Fickes developed an illness which prevented him from working from November 27, 1972 until June 4, 1973. He was paid sick leave for the 23 days commencing November 27 and ending December 31, 1972.

According to plaintiff's petition, at the time of his illness he had accrued 106 days of sick leave at the rate of one and one-half days per month. Consequently, he claims that he is entitled to payment for the remaining 83 accrued and unused days.[1] On January 16, 1973, Fickes submitted a claim to the county board of supervisors for the remainder of his accrued sick leave, but his claim was rejected on the ground that a new sheriff had been elected as of January 1, 1973 and plaintiff was not reappointed as deputy sheriff on that date. Accordingly, the county concluded that all of his employee benefits terminated effective January 1, 1973.

After a trial to the court, findings of fact and conclusions of law were filed. In its findings of fact, the court stated that when Jack Woodard became sheriff of Polk County on January 1, 1973, he appointed his deputies and other employees and certified their names and annual salaries to the board of supervisors, which, in turn, certified this

[1] Although plaintiff claims in his petition that he is entitled to payment for 89 days, our calculations differ. Assuming that Fickes accrued 106 days sick leave and was already paid for 23 days, he would only be entitled to payment for an additional 83 days.

information to the county auditor, as prescribed by statute. See §§ 39.8, 337.7 and 340.8, The Code 1971. Approximately twenty of the deputies and other employees of the former sheriff, including plaintiff, were not reappointed.

The trial court found that the evidence as to the details of any county sick leave policy was unsatisfactory. Fickes testified that he accumulated one and one-half days of sick leave for each month of service, subject to a maximum. There was also testimony that in previous years the board of supervisors had adopted one or more written policies concerning the granting of sick leave, but none of these was offered into evidence. Further, a Memorandum of Understanding between the board of supervisors and an employees' union which was introduced as evidence was irrelevant here because it did not become effective until January 1, 1973. However, on the basis of the evidence adduced, the court found that on and prior to December 31, 1972, the policy and practice of the board of supervisors was that an employee lost whatever sick leave not taken as of the time of the termination of the employment relationship. The court also found that there was no suggestion in the record that Fickes was not reappointed in an effort to avoid paying the additional sick leave.

The court concluded that plaintiff's argument that once the county had commenced paying his salary under the sick leave policy, his employment could not be terminated while he remained continuously ill was without merit because Fickes' appointment was for a yearly period and expired on December 31 of each year. Consequently, the court reasoned, once his employment ended on December 31, 1972, his accrued and unused sick leave expired as well.

Since this case was tried to the court at law, findings of fact of the trial court have the force of a jury verdict. When supported by substantial evidence they must stand unless shown to have been induced by an erroneous view of the law. Rule 14(f)(1), Rules of Appellate Procedure; Vanous v. City of Cedar Rapids, 255 N.W.2d 334, 335 (Iowa 1977); Frantz v. Knights of Columbus, 205 N.W.2d 705, 708 (Iowa 1973).

The trial court's ruling in this case was filed on July 19, 1977. On June 29, 1977, Vanous v. City of Cedar Rapids, supra, was decided by the supreme court. We are persuaded that **Vanous** is dispositive of the instant case. There, a retired police officer sued the city for accrued vacation and sick leave benefits granted by the city after he

had announced his retirement. The officer, whose position was covered by civil service, had announced his retirement which was to become effective at a future date, until which time he intended to use up his regular days off, accrued holidays, compensatory time off and vacation. In holding that Vanous was entitled to receive the increase in sick leave and vacation benefits granted by the city council after his announcement, the court noted that his claim was merely one for employment compensation. Stated simply, "[i]f he was in fact employed when the right to this compensation accrued, he is entitled to it." Id. at 336; see Tevis v. City of San Francisco, 43 Cal.2d 190, 272 P.2d 757 (1954). The supreme court concluded that upon termination, Vanous "was entitled to compensation for benefits which accrued during the period of his employment." Vanous v. City of Cedar Rapids, supra; see Bettendorf Education Ass'n v. Bettendorf Community School Dist., 262 N.W.2d 550, 553 (Iowa 1978) (plaintiffs had vested right to receive lump sum payment for accumulated sick leave pursuant to contractual provisions).

Although the instant case presents no specific statutory or contractual implication as the kind involved in **Vanous** and **Bettendorf**, we are persuaded that these cases support the conclusion that Fickes is entitled to payment for the unused sick leave benefits which accrued during the course of his employment where Fickes had commenced drawing upon these benefits prior to the time of his termination. This accrued sick leave entitlement is a vested earned right where Fickes commenced using it prior to his termination. Obviously, it is not a vested earned right if he was not using it as bone fide sick leave or where he did not commence using this accrued right prior to termination. In both of these instances, the sick leave accrued benefits would expire upon his termination. The record reflects no issue as to these limitations in the matter before us. Consequently, we must reverse the judgment of the district court. However, because of the present state of the record, we must remand the case for further proceedings.

In his petition, plaintiff alleged that he had accrued 106 days of sick leave as of the time of his illness. However, defendant denied this allegation and the provision in the stipulation dealing with this matter was crossed out by the parties. Further, the trial court made no finding in this regard. Accordingly, we reverse and remand the

cause for a determination and hearing, if necessary, regarding the total number of days of sick leave accrued by Fickes during his employment until the time of his illness. Upon such a determination, the trial court is directed to enter judgment for plaintiff on the basis of the total accrued sick leave less the 23 days already paid, at the rate of $33.28 per day as specified in the stipulation.

REVERSED AND REMANDED.