

**Clifford v MTA Metro-North Railroad**

2005 NY Slip Op 30230(U)

October 14, 2005

Supreme Court, New York County

Docket Number:

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON

PART 55

Index Number : 113967/2004

CLIFFORD, JOHN

vs

MTA METRO-NORTH RAILROAD

Sequence Number : 1

PARTIAL SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_

MOTION DATE 7/13/05

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1-3

4-8

9-11

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*is decided in accordance with the annexed memorandum decision and order.*

*N.B. Preliminary conference set at end for November 14, 2005*

FILED

OCT 18 2005

NEW YORK COUNTY CLERK'S OFFICE

JANE S. SOLOMON

Dated: 10/14/05

*[Signature]*  
\_\_\_\_\_  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

[\*2]  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 55

-----X  
JOHN CLIFFORD

Plaintiff,

-against-

MTA METRO-NORTH RAILROAD

Defendant.  
-----X

INDEX NO. 113967/04

DECISION AND ORDER

JANE S. SOLOMON, J.

In this employment benefits dispute, plaintiff John Clifford ("Clifford") moves pursuant to CPLR § 3212 for partial summary judgment, and asks the court for (1) an order requiring defendant to pay short-term disability benefits in the amount of 26 weeks of salary and (2) long-term benefits for the period of time after the short-term benefits period ended until Clifford is physically capable of returning to work. Defendant MTA Metro-North Railroad ("MTA") cross-moves for summary judgment dismissing the complaint. For the reasons below, Clifford's motion is denied, and the cross-motion is granted in part.

MTA's predecessor hired Clifford as a railroad clerk in 1970, and he worked at various union jobs, including as a conductor, until MTA promoted him to a managerial position in 1998 or 1999. As a manager, he was an at-will employee.

Clifford's supervisor, Susan Doering ("Doering"), alleges that Clifford approached her several times in early 2004 to say that he wanted to return to his former job as a conductor.

He asked to remain in his job as a manager until February 21, 2004. A few days before February 21, he asked to extend his time as a manager until the end of the pay week on February 24. Doering agreed. However, for reasons described below, he did not report for work on February 21, and has not returned to work since.

While not denying Doering's description of their conversations, Clifford denies that he resigned. He argues that it was the practice at MTA for managerial employees to resign in writing, and he submits the affidavit of a former long-time employee in support of that contention. Clifford never made a written resignation, and argues that he therefor did not resign.

After work on February 20, 2004, Clifford experienced heart attack symptoms and visited a hospital emergency room. He was referred to a private physician who prescribed a stress test scheduled for March 1, 2004. Clifford was advised not to work until after the stress test, and has not returned to work since. Effective March 9, 2004, after his accrued sick days and "comp time" had been exhausted, MTA terminated Clifford's employment. Then, by a letter dated June 14, 2004, Doering advised Clifford that while his position as a manager was terminated, he could exercise his seniority rights for continued employment in a union position. Clifford and the MTA exchanged letters regarding his employment status. By a letter dated April 7, 2005, MTA advised

Clifford that its health services department determined that he was qualified to return to work, and was expected to return from his leave of absence within fifteen days or his union seniority rights would be terminated. Clifford did not return to work, and MTA terminated his employment and seniority rights by a letter dated April 25, 2005.

Clifford's complaint alleges in the first cause of action that he is entitled to short-term disability benefits pursuant to MTA's Corporate Operating Procedures Manual ("Manual") governing management employees; the second cause of action demands long-term disability and medical benefits under the Manual; and the third cause of action claims that MTA maliciously refused to provide the benefits, thereby causing him to suffer emotional distress.

Manual section 21-005 is titled "Sick and Disability Leave". Section 21-005(A)(2) describes MTA's short-term disability policy, stating that MTA will provide 100% pay for up to 26 weeks of leave required for an employee's prolonged illness. Section 21-005(A)(3) describes the long-term disability policy, and states that an employee may apply for income payments from MTA's long-term disability insurance program if the absence extends beyond 26 weeks.

Clifford claims that his benefits as a manager are described in the Manual, and that MTA was obligated to provide

short-term and long-term disability benefits pursuant to its terms. MTA points to the disclaimer in the Manual, which provides that the policy does not constitute an express or implied contract. MTA argues that it was free to terminate Clifford's employment, and therefore his benefits, at any time. Clifford claims that this is an illogical application of the Manual since it would allow MTA to terminate any sick employee and deprive him of disability benefits.

Questions of fact remain regarding whether Clifford's oral resignation was effective; whether he was entitled to recover short-term disability benefits for up to 26 weeks after his last day of work on February 20, 2004; and whether the Manual merely describes MTA benefits or is in fact an enforceable contract. In particular, if the terms of the Manual are enforceable and Clifford's resignation was effective as of February 24, 2004, it is not clear that short-term benefits extend for six months after his resignation. However, even if his allegations are true, Clifford is not entitled to receive benefits under MTA's long-term disability policy described in the Manual because he never applied for those benefits.

In its cross-motion, MTA seeks to dismiss Clifford's cause of action for emotional distress allegedly caused by MTA's intentional or malicious decision to deprive Clifford of benefits. To recover damages for intentional infliction of

[\* 6]

emotional distress, Clifford must prove four elements: "(i) extreme and outrageous conduct; (ii) intent to cause, or disregard of a substantial probability of causing, severe emotional distress; (iii) a causal connection between the conduct and the injury; and (iv) severe emotional distress." Howell v. New York Post Co., 81 N.Y.2d 115, 121 (1993). The Court of Appeals has held that liability for intentional infliction of emotional distress will be imposed "only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Murphy v. American Home Products, 58 N.Y.2d 293, 303 (1983). MTA's alleged conduct falls well short of this standard, so the cause of action for emotional distress is dismissed.

Accordingly, it hereby is

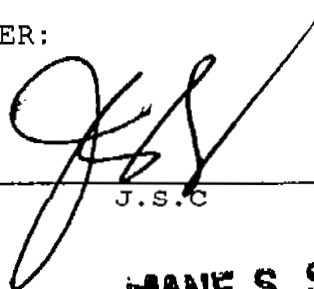
ORDERED that plaintiff's motion for summary judgment is denied; and it further is

ORDERED that defendant's cross-motion for summary judgment is granted in part to the extent that the claims for long-term disability benefits (second cause of action) and for emotional distress (third cause of action) are dismissed; and it further is

ORDERED that counsel shall appear for a preliminary conference in Part 55, 60 Centre Street, Room 432, New York, NY 10007 at noon on November 14, 2005.

Dated: October 14 2005

ENTER:

  
\_\_\_\_\_  
J.S.C.

JANE S. SOLOMON

**FILED**

OCT 18 2005

NEW YORK  
COUNTY CLERK'S OFFICE