

Anand v State of New York

2015 NY Slip Op 33022(U)

January 21, 2015

Court of Claims

Docket Number: Claim No. 122521

Judge: Francis T. Collins

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This opinion is uncorrected and not selected for official publication.

Synopsis

Defendant's motion to dismiss FLSA claim for lack of jurisdiction or failure to comply with the pleading requirements of CCA § 11 (b) was denied.

Case information

UID: 2015-015-040
Claimant(s): CHANDRABHUSHAN ANAND
Claimant short name: ANAND
Footnote (claimant name) :
Defendant(s): THE STATE OF NEW YORK
Footnote (defendant name) :
Third-party claimant(s):
Third-party defendant(s):
Claim number(s): 122521
Motion number(s):
Cross-motion number(s): M-85646, M-85654
Judge: FRANCIS T. COLLINS
Claimant's attorney: Chandrabhushan Anand, Pro Se
Honorable Eric T. Schneiderman, Attorney General
Defendant's attorney: By: Michael C. Rizzo, Esquire
Assistant Attorney General
Third-party defendant's attorney:
Signature date: January 21, 2015
City: Saratoga Springs
Comments:
Official citation:
Appellate results:
See also (multcaptioned case)

Decision

Claimant, proceeding pro se, moves for a telephone conference regarding outstanding discovery (M-85646) and defendant moves (M-85654) to dismiss the claim pursuant to CPLR 3211 (a) (2) and (5).

Claimant, an accountant employed by the New York State Department of Housing and Community Renewal (DHCR), seeks payment of overtime wages and expenses allegedly due on January 2, 2013, January 16, 2013, January 30, 2013 and February 13, 2013. The work for which overtime payments are sought were allegedly performed at Long Beach Recreation Center and Mastic Recreation Center during the pay periods ending December 5, 2012 (21 overtime hours allegedly due on January 2, 2013), December 19, 2012 (42.25 overtime hours allegedly due January 16, 2013), January 2, 2013 (51.25 overtime hours allegedly due January 30, 2013) and January 16, 2013 (25.50 overtime hours allegedly due on February 13, 2013). Claimant also seeks payment for "boarding and lodging expenses and per diem" incurred in January 2013 for work performed in Nassau and Suffolk Counties, New York, which was denied on January 15, 2013 (defendant's Exhibit 1, claim, Exhibit A, ¶ 18). Claimant alleges that the State's failure to pay overtime wages and expenses relating to his employment violates the Fair Labor Standards Act (27 USC §§ 201, *et. seq*) (hereinafter the FLSA) entitling him to liquidated damages and costs pursuant to the statute. In addition, claimant alleges that his employment was terminated on

January 10, 2013 in retaliation for complaints regarding the failure to pay him overtime and expenses.⁽¹⁾ As a result, claimant seeks lost wages for work he was scheduled to perform on January 12, 13, 14, 20, and 21 of 2013.

Defendant's dismissal motion is premised on the contention that determination of the instant claim requires review of an administrative determination which this Court has no jurisdiction to do. Claimant filed contract grievances relating to the defendant's alleged failure to pay overtime, lodging and expenses, which were denied in two Step Two Decisions, one relating to wages and the other relating to lodging and per diem expenses (defendant's Exhibit 3). According to the claimant, the union declined to pursue his grievance beyond the Step Two stage and, as a result, the matter was never submitted to arbitration.

Alternatively, defendant contends the claim should be dismissed because claimant is collaterally estopped from relitigating issues which have been decided against him during the course of the dispute resolution process provided in the union's Collective Bargaining Agreement (CBA) with the State. Lastly, defendant contends that to the extent the claimant alleges a claim of retaliation, he failed to set forth sufficient facts to meet the pleading requirements of Court of Claims Act § 11 (b).

Inasmuch as defendant's motion, if successful, would render claimant's discovery motion moot, it will be addressed first. As noted by the United States Supreme Court in *Barrentine v Arkansas-Best Freight System, Inc.* (450 US 728 [1981]), the enforcement provisions of the FLSA permit an aggrieved employee to bring a statutory wage and hour claim " 'in any Federal or State court of competent jurisdiction' " (*id.* at 740, quoting 29 U.S.C. § 216 [b]). Indeed, it is well established that the State has waived its sovereign immunity with regard to FLSA claims upon compliance with the specific conditions precedent to suit set forth in article II of the Court of Claims Act (Court of Claims Act § 8; *Lepkowski v State of New York*, 1 NY3d 201 [2003]; *Alston v State of New York*, 97 NY2d 159 [2001]; *Woolley v State of New York*, 299 AD2d 699 [3d Dept 2002]; *Bergmann v State of New York*, 281 AD2d 731 [3d Dept 2001]; *Mulverhill v State of New York*, 257 AD2d 735 [3d Dept 1999]; *Manners v State of New York*, 285 AD2d 858 [3d Dept 2001], *appeal dismissed* 97 NY2d 637 [2001]; *Speers v State of New York*, 285 AD2d 872 [3d Dept 2001]; *Gorski v State of New York*, 23 Misc 3d 327 [Ct Cl 2008]; *Dolan v State of New York*, UID No. 2002-015-271 [Ct Cl, Collins, J., July 1, 2002]). As a Court of limited jurisdiction, however, the Court of Claims "does not have jurisdiction where an administrative procedure is available and the claim, in essence, 'would require review of an administrative agency's determination' " (*Chevron U.S.A. Inc. v State of New York*, 86 AD3d 820, 820 [3d Dept 2011], quoting *City of New York v State of New York*, 46 AD3d 1168, 1169 [2007], *lv denied* 10 NY3d 705 [2008]; *see also Feuer v State of New York*, 101 AD3d 1550 [3d Dept 2012]; *Carver v State of New York*, 79 AD3d 1393 [3d Dept 2010], *lv denied* 17 NY3d 707 [2011]). Review of an administrative determination is unnecessary to reach the merits of an FLSA claim because an administrative determination, even when made pursuant to a contractual dispute resolution procedure, may not preclude litigation of an FLSA claim. As explained by the Court in *Barrentine*:

"This Court's decisions interpreting the FLSA have frequently emphasized the nonwaivable nature of an individual employee's right to a minimum wage and to overtime pay under the Act. Thus, we have held that FLSA rights cannot be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate. . . Moreover, we have held that congressionally granted FLSA rights take precedence over conflicting provisions in a collectively bargained compensation arrangement. . . As we stated in *Tennessee Coal, Iron & R. Co. v Muscoda Local No. 123*, 321 U.S. 590, 602-603, 64 S.Ct. 698, 705-706, 88 L.Ed. 949 (1944) (footnote omitted): 'The Fair Labor Standards Act was not designed to codify or perpetuate [industry] customs and contracts. . . Congress intended, instead, to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights' " (*Barrentine* at 740-741).

In reaching this conclusion, the *Barrentine* Court recognized that "even if the employee's claim were meritorious, his union might, without breaching its duty of fair representation, reasonably and in good faith decide not to support the claim vigorously in arbitration" (*id.* at 742). Moreover, even when the union has fairly and fully presented the employee's wage claim, the employee's statutory rights might still not be adequately protected because arbitrators may not be knowledgeable regarding the policy considerations underlying the FLSA (*id.* at 743). Inasmuch as an arbitrator "is required to effectuate the intent of the parties, rather than to enforce the statute, he may issue a ruling that is inimical to the public policies underlying the FLSA, thus depriving an employee of protected statutory rights" (*id.* at 744). Consequently, review of an administrative determination is

unnecessary to the resolution of the instant FLSA claim, which may be decided on the merits notwithstanding the union's refusal to submit the matter to arbitration (*see Tran v Tran*, 54 F.3d 115 [2d Cir. 1995]; *cf. Matter of American Broadcasting Cos. v Roberts*, 61 NY2d 244 [1984]). Assertion of jurisdiction in the Court of Claims is, therefore, proper.

Defendant also contends that to the extent the claim alleges retaliation, it fails to meet the pleading requirements of Court of Claims Act § 11 (b). The claim states the following in this regard:

"15) Furthermore, the defendant retaliated against the claimant protesting the non-payment of overtime. On January 10th 2013 Mr. Greg Watson called the claimant to thank him for his time and stated that the services of the claimant were not required at the DRCs . . .

16) The claimant had been preapproved to work at the DRC on January 12, 13, 14 and then on January 20, 21 but due to the retaliatory action the claimant did not work as he was instructed not to. The DRCs were demobilized as of [the] end of February 2013. In retaliation to the complaint of the claimant, the claimant was let go as of January 10, 2013 thus leading to loss of income . . ." (defendant's Exhibit 1, claim, Exhibit A, ¶¶ 15-16).

Court of Claims Act § 11 (b) requires that a claim state "the time when and place where such claim arose, the nature of same, the items of damage or injuries claimed to have been sustained and . . . the total sum claimed . . ." Here, the claim provides a sufficiently detailed description of the particulars of the alleged retaliation to enable the defendant to investigate and promptly ascertain its liability (*Lepkowski v State of New York*, 1 NY3d at 207; *Jones v State of New York*, 56 AD3d 906, 907 [3d Dept 2008], quoting *Sinski v State of New York*, 265 AD2d 319, 319 [2d Dept 1999]).

Accordingly, defendant's motion to dismiss the claim is denied. Claimant's motion for a discovery conference is granted and the parties will be notified of the date and time of the conference.

January 21, 2015

Saratoga Springs, New York

FRANCIS T. COLLINS

Judge of the Court of Claims

The court considered the following papers:

Motion No. M-85646

1. Notice of motion dated August 28, 2014;
2. Affidavit of Chandrabhushan Anand sworn to August 29, 2014.

Motion No. M-85654

1. Notice of motion dated September 16, 2014;
2. Affidavit of Michael C. Rizzo sworn to September 16, 2014 with exhibits;
3. Affidavit of Chandrabhushan Anand sworn to November 12, 2014 with exhibits;
4. Affidavit of Michael C. Rizzo sworn to November 13, 2014 with exhibits.

1. Defendant answered the claim and interposed a counterclaim for improper and unauthorized charges in the sum of \$1,824.46.

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