ROBERT B. WHITE,
Petitioner,
v.
BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES’ RETIREMENT SYSTEM,
Respondent.
Decided

Initial Decision

SYNOPSIS

White appealed from a decision of the Board of Trustees of the Public Employees’ Retirement System (PERS) denying his application to purchase pension credits for nine months of out-of-state service on the basis that the purchase had not been completed prior to White’s retirement date.

The administrative law judge ruled that pursuant to N.J.S.A. 43:15A-73.1 and N.J.A.C. 17:2-5.1 only a contributing member of the pension system could purchase such service merits and thus the Board was technically correct in denying the application. However, the judge concluded that White had substantially complied with the statute and regulation and thus should be permitted to purchase the service credit.

The judge noted that since pension statutes are remedial in nature, they are to be liberally construed, administered in favor of the persons intended to be benefited, and that the statute in question was not a statute of limitations but one designed to protect an employee’s rights. Bernstein v. Bd. of Trustees, 151 N.J. Super. 71 (App. Div. 1977).

Applying Bernstein, the judge invoked the doctrine of substantial compliance finding that: 1) there would be no prejudice to PERS since White would pay the full cost of the credit purchase, 2) White had faithfully attempted to meet the requirements of all the statutes in question, 3) he had generally complied with the statutory scheme by unequivocally stating his intention to purchase his credit while still a contributing member, 4) he tendered payment in full when informed of the amount and the statutory requirement to do so, and 5) White was inadvertently misled by a relatively high-ranking employee of the Division of Pensions that his purchase of credit for out-of-state service could be completed after the effective date of his retirement.

Accordingly, the administrative law judge ordered that the application to purchase out-of-state credit be approved.
Robert B. White, Pro se

Prudence H. Bisbee, Deputy Attorney General for Respondent (John J. Degnan, Attorney General of New Jersey, Attorney)

MILLER, ALJ:

Robert B. White (petitioner) appeals from a decision of the Board of Trustees of the Public Employees' Retirement System (Board of Trustees) denying his application to purchase nine months of out-of-state service on the basis that he had not completed the purchase prior to his effective retirement date of July 1, 1979.

The matter was referred to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. The hearing was held on May 27, 1980.

Prior to the taking of testimony, the following stipulations were made by the respective parties:

1. Petitioner's date of birth was May 14, 1923.
2. Petitioner's membership in the Public Employees' Retirement System (PERS) was effective January 1, 1955.
3. Petitioner established veteran status and received free veteran credit from September 6, 1951 to June 30, 1953 based upon service as a teacher for the Lakewood School District and additional credit from November 1954 through December 1954 as a state employee.
4. Petitioner's membership in PERS continued to June 30, 1979 as the result of subsequent employment by multiple public employees.
5. At its July 18, 1979 meeting, the Board of Trustees approved petitioner's application for early retirement, executed by him on May 11, 1979, based upon his employment as tax assessor for the City of Pleasantville, and his subsequent application, executed on July 9, 1979, based upon his employment as tax assessor for the municipalities of Pleasantville, Bass River, and Tuckerton.
6. Petitioner received his first monthly retirement check (in the amount of $704.91) dated August 17, 1979 and is presently continuing to receive his monthly retirement allowance.
8. By letter dated July 18, 1978 petitioner forwarded to the Board of Trustees a Certification of out-of-state service which was received by the Division of Pensions on July 26, 1978.
9. Thereafter, and until December 1978, there was a series of communications between petitioner, the Division of Pensions, the Board of Trustees and the Commonwealth of Pennsylvania with regard to withdrawal of his money (amounting to $162.20) in a pension fund in Pennsylvania so as to allow him to qualify for his New Jersey pension; the withdrawal of said money was effectuated on December 22, 1978.

10. By letter dated January 5, 1979, the Division of Pensions provided petitioner with a quotation of cost to purchase the Pennsylvania service, said cost being $1,285.94.

11. By check dated August 17, 1979 petitioner forwarded to PERS a lump sum payment of $1,285.94.

12. At its September 19, 1979 meeting the Board of Trustees denied petitioner’s request to purchase out-of-state service based upon his effective retirement date of July 1, 1979, advising petitioner of its determination by letter dated September 26, 1979.

13. By letter dated October 1, 1979, pursuant to a determination of the Board of Trustees, the Division of Pensions returned to petitioner his check dated August 17, 1979 in the amount of $1,285.94.

14. By letter dated October 22, 1979 petitioner filed a timely notice of appeal from the adverse determination of the Board of Trustees.

15. On January 9, 1979 the Division of Pensions sent to petitioner two quotations of retirement benefits under early retirement for which he could qualify based upon an assumed retirement date of March 1, 1979; one quotation was based on an assumed purchase of nine months of out-of-state service and the other quotation upon an assumption that there would be no such purchase.

16. On June 28, 1978 petitioner executed an application for early retirement effective July 1, 1979, which was filed with PERS on July 5, 1978; thereafter, at petitioner’s request the effective retirement date was postponed until March 1, 1979 and then to July 1, 1979.

The only person to testify at the hearing was petitioner himself. He stated that over the past 25 years he has worked for at least 10 different New Jersey public employers. In 1976, for example, he served as the tax assessor for 3 different municipalities and as the mayor of a fourth. He contended that his complicated employment history made it difficult for the employees of the Division of Pensions to properly and correctly process his retirement application. During the past few years he has spoken with and been advised by at least 3 or 4 different employees of the Division of Pensions.

In or about 1975 or 1976 petitioner spoke with Mr. William Murphy of the Division of Pensions who counselled and advised him on the various choices of retirement which were available to him and the consequences
thereof. According to petitioner, his discussion with Mr. Murphy was "excellent". By 1978 his desire to retire had become "strong". At that time he was suffering from what he described as an "emotional burnout" because of the numerous jobs and positions which he was holding simultaneously. His duties began to "overwhelm" him and became "traumatizing". Taxpayer reaction to the reevaluation which petitioner had undertaken was strongly adverse and petitioner received a "heavy dose of . . . tension, anxiety and disrepute." Furthermore, his employment problems were adversely affecting his marriage.

Thus, in 1978 he began discussions and negotiations with Mr. James DeWan, the chief of the Bureau of Retirement of the Division of Pensions. He had numerous telephone discussions and some correspondence with Mr. DeWan but he found that Mr. DeWan could not provide the coordination and assistance which he needed. He soon found himself "embroiled" with a number of other employees of the Division of Pensions, including Messrs. Wallace Olson, John Chopan and John Olender. He declared that he went to considerable lengths to keep in touch with "these people" and to pursue his retirement "in a methodical manner." Despite his efforts, however, he was never made aware of one essential point, i.e., that he was required to effectuate the purchase of his out-of-state service prior to the effective date of his retirement. Nevertheless, he categorically and frequently expressed his intention to purchase the out-of-state service. By separate letters dated January 8, 1979 to Wallace B. Olson, supervisor of the Purchase Section of the Division of Pensions, and to James F. DeWan, chief of the Bureau of Retirement, he stated his intention clearly. To Mr. Olson, he wrote:

I shall purchase the one year of service with the Nether Providence School District, and I shall make a lump sum payment just as soon as I can.

To Mr. DeWan he wrote:

The matter of purchasing credit for service time in Pennsylvania is now settled, apparently. Today I received from Wallace Olson notification of the purchase cost, and I have advised him of my intention of making a lump sum payment.

During this period of time he was involved in several other matters affecting his ultimate retirement allowance, including litigation with respect to his illegal dismissal as tax assessor for the Municipality of North Bergen and an inaccurate salary certification by one of his employers. Accordingly, he had to twice postpone his retirement. Some time between March and May of 1979 he had a telephone conversation with Mr. DeWan and was given the "assurance" of Mr. DeWan that he could safely retire and that all of the pending matters could be resolved after his retirement had been effected.
Petitioner further declared that he never had any intention to violate any of the pension regulations or to cheat PERS. Rather, he was methodically attempting to follow the advice which had been given to him. He stated that if he had known of the necessity of making the payment before retirement he could and would have made it as early as January of 1979. On August 17, 1979, in the course of a brief conversation with Mr. Olender at the Offices of the Division of Pensions in Trenton, he learned for the first time of the regulation requiring that payment for purchase of out-of-state service be made prior to retirement. That very day, he issued and delivered a check payable to “New Jersey P.E.R. System” in the amount of $1285.94 (the exact amount quoted to him for the cost of purchase) for the purchase of nine months of Pennsylvania service. He stated that although the check was returned to him after the Board of Trustees denied his application, he still stands ready to purchase the service.

N.J.S.A. 43:15A-73.1 reads as follows:

A member may file a detailed statement of public employment in other States, rendered by him prior to becoming a member, for which he desires credit and on account of which he desires to contribute, and of such other facts as the retirement system may require. He may be permitted to purchase credit for the service evidenced therein up to the nearest number of years and months, but not exceeding 10 years. No application shall be accepted for the purchase of credit for such service, however, if, at the time of application, the member has a vested right to retirement benefits in another retirement system based in whole or in part upon that service.

The member may purchase credit for such service by paying into the annuity savings fund the amount required by applying the factor, supplied by the actuary, as being applicable to his age at the time of the purchase to his salary at that time. Such purchase may be made in regular installments equal to at least 1/2 of the full normal contribution to the retirement system, over a maximum period of 10 years.

Any member electing to contribute toward such service who retires prior to completing payments as agreed with the retirement system for the purchase of such services will receive pro rata credit for service purchased prior to the date of retirement, but if he so elects at the time of retirement, he may make such additional lump sum payment at that time as will be necessary to provide full credit. (emphasis supplied)

N.J.A.C. 17:2-5.1 provides:

Only active contributing members of the system shall be eligible to make application for the purchase of credit. (emphasis supplied)

Clearly, only a member can effect a purchase of service credit. Since petitioner sent his check 48 days after his retirement had become effective and he was therefore no longer an active member, the Board of Trustees
was technically correct in denying his application. Nevertheless, for the reasons to be expressed hereafter, I CONCLUDE that petitioner substantially complied with the aforesaid statute and regulation and should be permitted to make the purchase he seeks.

I note initially that petitioner was an impressive witness. Having carefully observed and listened to him during a full day of hearing, I found him to be unusually forthright, candid, sincere, honest and articulate. Thus, his testimony, as summarized above, was highly credible.

Specifically, I believe petitioner’s statement that he was assured by Mr. DeWan that he could “safely retire” and that the various complicating problems — including the purchase of out-of-state service — could be “ironed out” after his retirement. Mr. DeWan’s assurance, of course, was incorrect. I attribute his error to inadvertence or misapprehension, and to nothing more. Mr. DeWan’s unintentional misrepresentation is not particularly surprising. As noted in Burkhardt v. PERS, 158 N.J. Super. 414 (App. Div. 1978), we are dealing with a “perplexing statutory scheme.” It is sometimes difficult, even for experienced administrators, to successfully negotiate the statutory and regulatory maze.

Indeed, Mr. Olson, the supervisor of the Purchase Section of the Division of Pensions, also appears to have been mistaken in his interpretation of the law. In his letter to petitioner dated January 5, 1979 he states:

The lump sum cost to purchase this service is $1,285.94. We must request this payment in a lump sum since your retirement was effective January 1, 1979. If you are interested in making this purchase, please make your check payable to Public Employees’ Retirement System, and forward it to us written 30 days from the date of this letter. (emphasis supplied)

It should be noted that Mr. Olson’s letter was precatory in nature. Further, it clearly had the capacity to mislead the reader — as petitioner testified he was misled — into thinking that the purchase could be accomplished after the effective retirement date.

Pensions for public employees serve a public purpose. A primary objective in establishing them is to induce able people to enter and remain in public employment and to render faithful and efficient service. They are in the nature of compensation for service previously rendered. Being remedial in character, statutes creating pensions should be liberally construed and administered in favor of the persons intended to be benefited thereby. See, Geller v. Department of the Treasury, 53 N.J. 591, 597-98 (1969). Under consideration is a statute designed to protect an employee’s rights, and not a statute of limitations. Bernstein v. Board of Trustees, 151 N.J. Super. 71, 76 (App. Div. 1977).
The doctrine of “substantial compliance” will be invoked when the following factors are present: (1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) reasonable notice of petitioner’s claim; and (5) a reasonable explanation as to why there was not a strict compliance with the statute. Bernstein v. Board of Trustees, supra, at pp. 76-77.

In my opinion, these factors are present in the instant case. There is no prejudice to PERS because petitioner will pay the full cost of purchase. He faithfully attempted to meet the time consuming statutory and administrative requirements of both Pennsylvania and New Jersey. He generally complied with the statutory purpose by unequivocally stating his intention to purchase while he was a member and tendering payment in full as soon as he was informed of the statutory requirement. As indicated above, there were a reasonable notice of his claim and a reasonable explanation of why he did not strictly comply. In addition, petitioner tendered payment less than seven weeks after the technical deadline. Finally, and perhaps most importantly, petitioner was inadvertently misled to his detriment by an erroneous “assurance” from a relatively high-ranking employee of the administrative agency.

As in the case of Geller v. Department of the Treasury, supra, “the preponderance of the equities” are with petitioner and it would be unfair to penalize him for an innocent and inadvertent failure to strictly comply with the statute, where such failure was caused, at least in part, by false assurances and misleading information.

**FINDINGS OF FACT**

1. Stipulations numbered 1 to 16 as if set forth in full.
2. Petitioner was unaware that he was required to complete the purchase of his out-of-state service prior to the effective date of his retirement.
3. Petitioner was erroneously assured by an employee of the Division of Pensions that he could retire effective July 1, 1979 without jeopardizing his ability to complete the purchase of his out-of-state service.
4. Petitioner was also misled into believing that he could effectuate the purchase of out-of-state service after the effective date of his retirement by correspondence which he received from another employee of the Division of Pensions.
5. Prior to the effective date of his retirement, on January 8, 1979, petitioner clearly and unequivocally stated his intention to purchase his out-of-state service.
6. Petitioner was first informed on August 17, 1979 of the requirement
that the purchase for out-of-state service be completed before his effective retirement date.


Upon the basis of the aforesaid Findings of Fact and analysis of law, I **CONCLUDE** that petitioner is entitled to purchase service credit for the period of service rendered in the State of Pennsylvania from September 1953 through June of 1954. Accordingly, it is hereby **ORDERED** that petitioner's application to purchase the aforementioned out-of-state service be approved.

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After reviewing this Initial Decision, the Board of Trustees of the Public Employees' Retirement System on July 16, 1980 issued the following Final Decision:

The Board of Trustees of the Public Employees' Retirement System hereby adopts the findings of fact and conclusion of law of the administrative law judge's report and further adopts the recommendations contained in the administrative law judge report and incorporates the same herein by reference.