EDNA M. BURNS AND JOHN C. BURNS,
Petitioners,

v.

BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT SYSTEM,
Respondent.

Decided June 29, 1979

Initial Decision

SYNOPSIS

Parents of deceased county employee who was on leave at the time of her death were not entitled to death benefits under the Public Employee Retirement System. N.J.S.A. 43:15A-47 specifically provides that death benefit coverage begins on the first day of membership on which the public employee is actively employed. Under N.J.S.A. 43:15A-41(c), benefits are only payable upon the death of a member in service. In this case, equitable estoppel was inapplicable, since there was no evidence that the decedent relied on the issuance of insurance and payroll deduction certificates indicating her coverage would begin on the effective date of her leave of absence.

Alan D. Bell, Esq., for Petitioners

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

MILLER, ALJ:

The essential facts in this case are not in dispute. Edna M. Burns and John C. Burns (petitioners) are the parents of the late Muriel L. Burns (decedent), who, on November 15, 1978, while on an approved leave of absence from her employment as a food service worker at Roosevelt Hospital (Middlesex County) in Metuchen, New Jersey, was killed in an automobile accident.

Decedent was born on November 2, 1957. She became a permanent employee of Middlesex County on June 9, 1978. She applied for enrollment in the Public Employees' Retirement System (PERS) by application dated July 12, 1978. On this application she stated that she wished to become enrolled as of the first day of the month four months after her appointment became permanent. This made her enrollment date, and, consequently, her
memorandum in PERS, effective November 1, 1978. On the application she
named petitioners as co-beneficiaries under the Group Life Insurance Policy
issued by Prudential Insurance Company.

On October 27, 1978 decedent made a written request for a leave of
absence beginning November 1, 1978 and ending May 1, 1979. The reason
for the request was stated as "medical reasons." The doctor's certificate
(attached to said request) was signed on October 30, 1978; it indicated that
decedent was temporarily disabled by reason of "chronic low back pain
syndrome." The request for the leave of absence was officially approved
on November 1, 1978.

The leave of absence granted to decedent was without pay, effective
November 1, 1978. Her last day of active service was October 31, 1978.
No deductions from the decedent's salary for pension and insurance
purposes were ever made.

The broad question presented for resolution in this matter is whether
petitioners are entitled to the death benefits provided by N.J.S.A. 43:15A-41(c) (also known as the non-contributory insurance benefit) and by
N.J.S.A. 43:15A-57 (also known as the contributory insurance benefit). For
the reasons to be expressed hereafter, I am of the opinion that this question
must be answered in the negative.

In pertinent part, N.J.S.A. 43:15A-41(c) reads as follows:

- Upon the receipt of proper proofs of the death of a member in
  service on account of which no accidental death benefit is payable
  under section 49 there shall be paid to such member's beneficiary:
    (1) The member's accumulated deductions at the time of death
    together with regular interest; and
    (2) An amount equal to one and one-half times the compensation
    upon which contributions by the member to the annuity savings fund
    were based in the last year of creditable service; ... (emphasis
    supplied)

The applicable subsections of N.J.S.A. 43:15A-57 are (c) and (g), which
read:

- Each person becoming a member on or after the effective date of
  this amendatory act who on the date he becomes a member is less than
  60 years of age shall automatically be covered for such additional death
  benefit coverage from the first day of his membership on which he is
  actively at work and performing all his regular duties at his customary
  place of employment. Such automatic coverage shall continue during
  the member's first year of membership and during such year he shall
  make contributions as fixed by the board of trustees. ...

- Upon the receipt of proper proofs of the death in service of any
  such member while covered for the additional death benefit coverage
there shall be paid to such person, if living, as the member shall have
ominated by written designation duly executed and filed with the board of
trustees, otherwise to the executor or administrator of the member’s estate,
an amount equal to one and one-half times the compensation received by
the member in the last year of creditable service....” (emphasis supplied)

A careful reading of the statutory scheme reveals that only a “member
in service” receives death benefit coverage. In the case of contributory
insurance, the statute specifically states that coverage begins on the first day
of an employee’s membership “on which he is actively at work and
performing all his regular duties at his customary place of employment.”
On November 1, 1978 decedent was on a leave of absence. She was not
actively at work and performing her regular duties.

With respect to the non-contributory insurance provided by N.J.S.A.
43:15A-41(c), the death benefit payable is “an amount equal to one and one-
half times the compensation upon which contributions by the member to the
annuity savings fund were based in the last year of creditable service.” Since
decedent was on an unpaid leave of absence on the date of her death, and
since no contributions were due from her or made by her to the annuity
savings fund, there is no compensation upon which the one and one-
half times formula can be applied. The “benefit” payable under these
circumstances is zero.

The statutory language is clear and precise. Despite the harshness of the
result in the instant case, the language must be given effect. Neither I nor
the Board of Trustees is free to ignore it.

Petitioners contend that pension statutes being remedial in character,
should be liberally construed and administered, citing Geller v. Dept. of the
Treasury, 53 N.J. 591 (1969). I am familiar with the Geller principle of
liberal construction and concur with it. I believe, however, that in the
present case the principle of liberal construction is inapplicable. Both the
courts and administrative agencies must give effect to the words used
according to the clear and plain meaning they ordinarily import and must
avoid giving construction which would distort that meaning or give greater
effect than the language requires. Matthews v. Board of Education of
statute is primarily ascertained by reading the language employed in its
ordinary and common significance. Lane v. Holderman, 23 N.J. 304
(1957). Effect must be given to the language employed by the Legislature.
Dixon v. Gassert, 25 N.J. 1 (1958). In the absence of ambiguity permitting
the use of extrinsic aids, the legislative intent is to be found in the language

Petitioners argue that the case of Bernstein v. Board of Trustees,
T.P.A.F., 151 N.J. Super. 71 (App. Div. 1977) (invoking the equitable doctrine of substantial compliance to allow the filing of an application for disability retirement) should be applied in the instant case. In my opinion, however, the Bernstein case is distinguishable in that Ms. Bernstein had been a contributing member of the Fund for many years, and the court was understandably loathe to deprive her of benefits which accrued on account of that membership and for which she had paid -- both in terms of service and money.

Petitioners also cite Bahrle v. Mirabelli, 107 N.J. Super. 361 (Law Div. 1969) (action for damages against Board of Trustees and others dismissed in view of fact that plaintiff employees, who were compulsory enrollees, automatically became members of the Fund and were entitled to benefits even though they had not been enrolled and had not contributed to it). The Bahrle case, however, dealt with employees who, through no fault of theirs, were not enrolled. See N.J.A.C. 17:2-3.9, which provides for the payment of insurance benefits in the case of delayed enrollment (or non-enrollment) of compulsory enrollees. Unlike the employees in Bahrle, in the instant case decedent voluntarily chose to delay her enrollment until November 1, 1978, the latest possible date. She could have chosen July 1, August 1, September 1 or October 1 -- and if she had, the insurance benefits would have undoubtedly been paid and no controversy would have arisen.

Finally, petitioners argue that equitable estoppel should be applied because prior to taking her leave of absence decedent received a Certificate of Insurance and Certification of Payroll Deductions, which indicated that insurance coverage would begin on November 1, 1978. The case of Skulski v. Nolan, 68 N.J. 179 (1975), is cited to support their position. The Skulski case, however, is readily distinguishable. There, the evidence clearly established that it would be unfair and unjust to reopen pension awards which had been made years before and upon which the employees had relied. In the instant case, there was no showing that decedent relied on the Certificate of Insurance and the Certification of Payroll Deductions in deciding to apply for a leave of absence.

In my opinion, the doctrine of estoppel is not applicable here. This doctrine rests upon the principle that where someone has done an act or made a statement which would be a fraud to controvert because another party justifiably acted upon it in the belief that what was done or said was true, conscience and honest dealing require that the first person be not permitted to repudiate his act or gainsay his statement. Bowler v. Fidelity and Casualty Co. of N.Y., 99 N.J. Super. 84 (App. Div. 1968). The doctrine of estoppel also usually requires that the individual invoking the doctrine has sustained some damage or detriment. See Black's Law Dictionary
(Third Edition).

There is no evidence in this case that the Board of Trustees or the Division of Pensions has acted in any way other than conscientiously and honestly, nor is there any evidence that decedent changed her position to her detriment in reliance upon any word or conduct of the Board of Trustees.

I also take note of the fact that the doctrine of estoppel is not applied against the State or its administrative agencies to the same extent as against private parties. Bayonne v. Murphy and Perrett Co., 7 N.J. 298, 311 (1951); Abbott v. Beth Israel Cemetery Ass'n., 13 N.J. 528, 548 (1953); Schultz v. Wilson, 44 N.J. Super. 591 (App. Div. 1957). Specifically, estoppel has been held inapplicable to acceptance of pension contributions based on ineligible employment. Tubridy v. Consolidated Police and Firemen's Pension Fund Commission, 84 N.J. Super. 257, 263 (App. Div. 1964); See also Casale v. Pension Commission of Newark, 78 N.J. Super. 38, 41 (Law Div. 1963).

This is a close and difficult case. If decedent's leave of absence had begun one day late (on November 2), she would have been covered. Nevertheless, the line has been drawn by the Legislature. Only contributing members i.e., "members in service," are entitled to insurance coverage. Unfortunately, decedent missed becoming a "member in service" by one day.

It must be remembered that the Board of Trustees is an administrative agency with limited powers. It is not a court of equity. It cannot modify or circumvent the legislative direction. It cannot deviate from the principle and policy of the statute. Abelson's, Inc. v. State Board of Optometrists, 5 N.J. 412, 424 (1950).

Inasmuch as there is no dispute as to the facts of this matter, said facts having heretofore been recited, I do not deem it necessary to make formal findings of fact.

I CONCLUDE that decedent was not a "member in service" at the time of her death and, accordingly, that petitioners are not entitled to the death benefits provided by N.J.S.A. 43:15A-41(c) and N.J.S.A. 43:15A-57.

After reviewing this Initial Decision, the Board of Trustees of the Public Employee's Retirement System on August 16, 1979 issued the following Final Decision:

The Board of Trustees of the Public Employee's Retirement System hereby adopts the Findings of Fact and Conclusion of Law of the administrative law judge.