
KATHRYN B. ZIGMONT,
Petitioner,
v.
BOARD OF TRUSTEES TEACHERS'
PENSION AND ANNUITY FUND,
Respondent.

Initial Decision: December 22, 1980 Final Agency Decision: January 14, 1981

Supreme Court of New Jersey Decision Appears at: 91 *N.J.* 580 (1983)

SYNOPSIS

Petitioner requested a hearing after the Board of Trustees of the Teachers' Pension and Annuity Fund rejected her request to purchase pension retirement credit for a period of maternity leave; the matter was then assigned to an administrative law judge.

The administrative law judge found that petitioner had been a member of the Teachers' Pension and Annuity Fund since 1965 and that in 1975 she had been incorrectly informed that she could not purchase credit for a period of maternity leave. The judge rejected petitioner's argument that her tardiness should be excused due to the incorrect information supplied to her. The judge determined that the Board of Trustees did not have the discretionary power to ignore the statutory mandates governing the pension system. Accordingly, the judge affirmed the denial of benefits.

Upon review, the Board of Trustees of the Teachers' Pension and Annuity Fund accepted the initial decision.

Richard Friedman, Esq., for Petitioner (Ruhlman & Butrym, Esqs., attorneys)

Sharon Joyce, Esq., Deputy Attorney General, for respondent (John J. Degnan, Attorney General of New Jersey, attorney)

Initial Decision

MONYEK, ALJ:

Kathryn B. Zigmont appealed from a decision of the Board of Trustees of the Teachers' Pension and Annuity Fund, denying her

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 *N.J.A.R.* 1

request to purchase pension credit for her maternity leave of absence from January 1, 1975 to September 1, 1976, on the grounds that she failed to initiate her requested purchase within one year from her return to active employment. Accordingly, the matter was transmitted to the Office of Administrative Law for determination as a contested case, pursuant to *N.J.S.A. 52:14F-1 et seq.*

Prior to the taking of testimony or the introduction of other proofs at the administrative judicial proceeding on September 22, 1980, the following stipulations were made by and between counsel for the respective parties:

1. Petitioner's date of birth was July 5, 1938.
2. Petitioner was first enrolled in the Teachers' Pension and Annuity Fund, when a teacher in North Plainfield on October 1, 1965.
3. Petitioner transferred employment to the Union County Regional High School on April 1, 1966, and has remained employed thereat.
4. Petitioner took a maternity leave of absence without pay from January 1, 1975 to September 1, 1976.
5. Petitioner's first inquiry to the Teachers' Pension and Annuity Fund, with respect to purchasing credit for the aforesaid maternity leave, was made on May 17, 1979.
6. On June 12, 1979, petitioner requested that necessary forms be forwarded to her by the Teachers' Pension and Annuity Fund to effectuate her requested purchase of pension credit.
7. Petitioner's employer certified her maternity leave of absence to the Division of Pensions by letter dated June 25, 1979.
8. Petitioner's request to effectuate the purchase was administratively denied by letter of the Division of Pensions dated July 10, 1979.
9. The Division of Pensions reiterated the aforesaid denial by letter dated October 26, 1979.
10. Petitioner requested the Board of Trustees to consider her application for the purchase of credit for the aforementioned maternity leave of absence by letter dated November 5, 1979.
11. The Board of Trustees, at its December 13, 1979 meeting, denied petitioner's request for the purchase and so notified her by letter dated December 19, 1979.
12. Petitioner appealed the aforesaid denial by letter dated January 12, 1980.

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 *N.J.A.R.* 1

13. The Board of Trustees, at its February 14, 1980 meeting, approved petitioner's request for a hearing and the matter was referred to the Office of Administrative Law as a contested case.

The proofs were uncontroverted. Petitioner never communicated with the Board of Trustees of the Teachers' Pension and Annuity Fund or the Division of Pensions with respect to purchasing pension credit for her maternity leave of absence between January 1, 1975 and September 1, 1976, prior to May 1979. She claimed, however, that prior to taking her maternity leave she inquired of the Union County Regional High School Board of Education payroll clerk, Mrs. Mumford, whether her leave of absence period would be purchasable for pension credit and was advised by the clerk that it was not purchasable. Believing that to be the case she went on leave, returned upon the completion of the leave and resumed her teaching duties in September 1976. Thereafter, in April 1979 she attended a Teachers' Association meeting, at which the speaker was Mr. Olson from the Division of Pensions. Petitioner claimed that at the meeting Mr. Olson indicated that maternity leaves of absence were purchasable for pension credit if an application to purchase the credit was made within one year of the return to active employment. Accordingly, the following month, May 1979, petitioner commenced her inquiry regarding her purchase of pension credit, claiming that she had theretofore been misinformed by a representative of her employer.

The remainder of the presentation was documentary in nature and consisted of the following exhibits:

1. Copy of Division of Pensions Memorandum, dated May 17, 1979, indicating that petitioner, by telephone, inquired of the Division of Pensions about her out-of-time purchase of maternity leave credit; she alleged that due to incorrect and/or lack of information from her employer she was not properly informed about her right to purchase credit.
2. Copy of letter from petitioner to Division of Pensions dated June 12, 1979, requesting that forms be forwarded to her to effectuate the purchase of pension credit for her maternity leave.
3. Copy of letter, dated May 30, 1979, from Division of Pensions, Purchase Section, to petitioner as follows:

In reply to your recent inquiry regarding the purchase of credit for a leave of absence, please be advised that your file does not contain evidence of such leave and, therefore, we must request official certification.

The privilege of purchasing credit for an official leave of absence expires one year after the member's return to active employment. Please note that retirement credit for the leave of absence may be used in qualifying

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 N.J.A.R. 1

for Ordinary Disability benefits only after you have completed one year of membership in the system subsequent to your election to make the purchase and the payment of at least one-half of the total amount due. Please advise your employer to certify the following information and return to my attention as soon as possible. Upon receipt of this certification, we will process your request, and advise you of the cost to purchase.

- 1) Reason for the leave. *MATERNITY LEAVE*
- 2) Date on which the leave began. *1/1/75*
- 3) Date on which member returned to active employment *9/1/76*
- 4) Annual Salary currently in effect. *21,400.00*

Union County Regional High School Dist. 1

(NAME OF EMPLOYER)

Board Secretary

(PAYROLL TITLE)

6/25/79

(DATE)

4. Copy of letter dated July 10, 1979, from Purchase Section, Division of Pensions, to petitioner containing the following:

Your recent request for purchase of service credit is not permitted because the request for the purchase of credit for a leave for maternity was not made within one year after your return to active employment.

5. Copy of letter of Wallace B. Olson to petitioner dated October 26, 1979, containing the following:

With regard to your request to purchase maternity leave of absence from January 1, 1975 to September 1, 1976, I must confirm my previous advice and our most recent letter of July 10, 1979 and administratively deny your request to purchase this leave. This leave should have been requested for purchase within one year after your return to teaching. However, you advised that your employer informed you that this was not eligible for purchase at the time when you returned; and, therefore, you were not able to make a timely request as required by statute. Therefore, I recommend that you contact the Teachers' Pension and Annuity Fund Board of Trustees whose Secretary is Mr. A. Steven LaBrutte and request a determination by that Board regarding your right to purchase this leave.

6. Copy of letter from petitioner to A. Steven LaBrutte, Secretary, Teachers' Pension and Annuity Fund Board of Trustees, dated November 5, 1979, containing the following:

My request to purchase maternity leave of absence from January 1, 1975 to September 1, 1976 has been denied because I did not request it within one year after returning to teaching.

I would like my case to be reconsidered, as when I was about to go on maternity leave, I inquired at the Board of Education office as to paying into retirement. The secretary told me that maternity leave was not like sabbatical leave, which I just had had, and that I could not pay into it. In fact, I, as well as other teachers in my district, had no idea that this was possible until last year when Mr. Olson came and spoke to us about pensions and retirements. . . .

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 N.J.A.R. 1

7. Letter of A. Steven LaBrutte, Secretary, Teachers' Pension and Annuity Fund to petitioner, dated December 19, 1979, containing the following:

This letter is used to advise you that the Board of Trustees of the Teachers' Pension and Annuity Fund, at their meeting held on December 13, 1979, denied your request for the purchase of your maternity leave of absence from January 1, 1975 to September 1, 1976 based upon information received that you failed to initiate the purchase of your leave within 1 year on your return to active employment and the circumstances cited in your correspondence were not sufficient to warrant an exception to the statutory mandate limiting purchase to 1 year from the date of your return to active employment.

If you disagree with the determination of the Board of Trustees in this matter, you may request a formal hearing by sending a written statement to the Board, within 45 days from the date of this letter, informing the Board of your disagreement and all the reasons therefor.

8. Copy of letter from petitioner to A. Steven LaBrutte, Secretary, Teachers' Pension and Annuity Fund, dated February 14, 1980, containing the following:

I disagree with the decision of the Board of Trustees of the Teachers' Pension and Annuity Fund regarding my application to purchase maternity leave because I did not do so within a year upon my returning to work.

I request a formal hearing on the grounds that I was incorrectly informed by my school board office at the time of inquiry (sic) of my right to purchase this leave. I was told I was not able to purchase maternity leave toward retirement. In fact, no one in my school district knew of this right until Mr. Olsen (sic) of the Pension Fund informed my colleagues (sic) and me at a pension information meeting in 1979, which is when I initiated this procedure.

Although this has nothing to do with the issue at hand, I would like to be informed why I cannot purchase retirement for years of teaching for the military when you can for military service.

I appreciate your consideration in my request and thank you for your assistance.

9. Letter of Harold R. Burdge, Jr., Board Secretary, Union County Regional High School, District No. 1 Board of Education, dated September 18, 1980,

TO WHOM IT MAY CONCERN

Mrs. Zigmont has asked for verification that our Payroll Clerk, Mrs. Janet Mumford, told her in 1975 that she could not buy back credit in the pension fund for her maternity leave of absence.

Although this cannot be directly verified because Mrs. Mumford is deceased, I have personally witnessed Mrs. Mumford having made this statement on several occasions. Her claim was that you could only buy back credit for prior *service*.

I must sheepishly admit that until Mrs. Zigmont raised this issue, I too thought Mrs. Mumford was correct.

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 N.J.A.R. 1

I trust that this misinformation has not adversely inconvenienced either the pension fund or Mrs. Zigmont.

Accordingly, the issue presented for resolution may be stated as follows:

May pension credit for an authorized leave of absence without pay for maternity purposes be purchased where the request therefor is made more than one year after the return to active service?

N.J.S.A. 18A:66-8 provides:

In computing service, time during which such teacher was absent on an official leave without pay shall be credited if such absence was for a period of (1) less than 3 months or (2) up to a maximum of 2 years if the leave was due to the member's personal illness or maternity *and the period of leave is allowed for retirement purposes within 1 year following his return to service after the termination of such leave*, or (3) the period of leave was specifically allowed for retirement purposes by the provisions of any law of this State. The method of computation, the terms of purchase and credit granted shall be identical to those stipulated for the purchase of previous membership service by members of the fund as provided by Section 18A:66-9. (Emphasis supplied)

N.J.S.A. 18A:66-9 provides:

If a teacher who has withdrawn his accumulated deductions from the retirement system as provided in Section 18A:66-34 is reenrolled as a member, he may purchase credit for all of his previous membership 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. . . .

Although petitioner acknowledges that she did not initiate her purchase within the one year period mandated by *N.J.S.A.* 18A:66-8, she claims that her tardiness was attributable to: (a) the Board of Trustees' never directly notifying her of her obligation to do so and (b) the misinformation allegedly given her by a representative of her employer. Unfortunately, both of these arguments have not been recognized as valid by the decisional authorities of this State.

The Board of Trustees of the Teachers' Pension and Annuity Fund does not have the discretionary power to ignore the statutory mandates governing the pension system; neither does it have the arbitrary and unfettered discretion to allow indiscriminate deviations from the statutory scheme. The legal rights and obligations of both the petitioner and the Board of Trustees are derived from, defined by and limited to the applicable statutory provisions. The Board of Trustees has only those powers set forth in the statute, and although pension legislation is remedial in nature and thus, should be liberally construed, there is no room for construction or interpretation where both the facts and the law are clear and unambiguous, and there is no allegation of fraud, deceit, misstatement or misleading acts or words

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 N.J.A.R. 1

on the part of either the Board of Trustees or the Division of Pensions. *Matthews v. Board of Education of Irvington*, 31 N.J. Super. 292 (App. Div. 1954); *Casale v. Pension Commissioner of Newark*, 78 N.J. Super. 38 (Law Div. 1963). The statute in question is clear, unequivocal and unambiguous. The purchase of pension credit for an authorized leave of absence without pay must be effectuated within one year following the return to service after the termination of such leave. There is no room for construction or discretion unless petitioner was caused to change her position by reliance upon misinformation directly disseminated to her *by the pension system*. Such was not the case herein.

The decisional authorities of this State have consistently held that an employer's failure to disseminate information or the employer's conveyence of misinformation to an employee is not binding upon the retirement system. *In re Krah*, 130 N.J. Super. 366 (App. Div. 1974); *Bahrle v. Mirabelli*, 107 N.J. Super. 361 (Law Div. 1969). The employer's certifying agent is not the agent of the retirement system.

Although an employer has the duty and responsibility of informing its employees of their duties and obligations with respect to the retirement system, its acts or failures to act do not bind the retirement system. *Fromm v. Bd. Directors of Police, etc. Retirement System*, 81 N.J. Super. 138 (App. Div. 1968). As was held in *Krah, supra*, at 368, "We may not create judicially a difficult and onerous obligation (we deal here with hundreds of thousands of employees and thousands of certifying agents) where the Legislature chose not so to do. . . ."

Accordingly, based upon the testimony heard and evidence adduced, I make the following:

FINDINGS OF FACT

1. Stipulations numbered 1 through 13, inclusive, are hereby adopted as **FINDINGS OF FACT** as though set forth herein at length.
2. Petitioner failed to initiate her purchase of pension credit covering the period of her maternity leave, within one (1) year of her return to active service after the termination of her leave.
3. Petitioner's tardiness in the making of her application of purchase was not anyway due to the acts or omissions of the Board of Trustees of the Teachers Pension and Annuity Fund or the Division of Pensions.
4. Any alleged misinformation given to the petitioner was conveyed by a representative of her employer and not by the retirement system.

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 *N.J.A.R.* 1

CONCLUSIONS OF LAW

1. The certifying agent of petitioner's employer was not an agent or representative of the retirement system.
2. Any alleged misrepresentations made by the agent of petitioner's employer are not binding upon the retirement system.
3. The Board of Trustees of the Teachers Pension and Annuity Fund has neither the discretion nor the authority to deviate from the statutory mandate directing the time within which purchase of pension credit may be made in accordance with *N.J.S.A.* 18A:66-8.

I **CONCLUDE**, therefore, that petitioner did not make a timely application for the purchase of pension credit for her maternity leave between January 1, 1965 and September 1, 1966, and, thus, waived her right to purchase credit when the initial request was made in May 1979, more than 2 1/2 years after her return to employment; and, further, that the delay was in no way attributable to, occasioned by, or caused through the actions or inactions of anyone on behalf of the retirement system.

It is, therefore, **ADJUDGED** that the determination of the Board of Trustees of the Teachers' Pension and Annuity System denying petitioner's request to purchase pension credit for the period of time covered by her leave of absence without pay for maternity purposes be and is hereby **AFFIRMED**.

This initial decision may be affirmed, modified or rejected by the Board of Trustees of the Teachers' Pension and Annuity Fund, which by law is empowered to make the final decision in this matter.

**FINAL DECISION BY THE BOARD OF TRUSTEES TEACHERS'
PENSION AND ANNUITY FUND:**

The Board of Trustees of the Teachers' Pension and Annuity Fund, at its meeting on January 14, 1981, considered the following in Mrs. Zigmont's appeal:

- a. The transcript of the hearing conducted on September 22, 1980,
- b. All exhibits,
- c. Administrative law judge's decision dated December 22, 1980,
- d. Exceptions filed dated December 30, 1980

and by unanimous decision the Board of Trustees accepted the decision of the administrative law judge and affirmed the denial of Mrs. Zigmont's request to purchase her maternity leave between January 1, 1965 and September 1, 1966 due to the fact that it was not requested one year after her return to employment.

Zigmont v. Teachers' Pension and Annuity Fund
Cite as 7 *N.J.A.R.* 1

The Board of Trustees of the Teachers' Pension and Annuity Fund hereby adopts the findings of fact and conclusions of law of the administrative law judge consistent with its original determination and further adopts the recommendations contained in the administrative law judge's initial decision and incorporates the same herein by reference.