

[Cite as *Cranston v. Kent State Univ.*, 2005-Ohio-3329.]

IN THE COURT OF CLAIMS OF OHIO

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JAY CRANSTON, M.D.	:	
Plaintiff	:	CASE NO. 2000-13099
v.	:	Judge Fred J. Shoemaker
	:	<u>DECISION</u>
KENT STATE UNIVERSITY	:	
Defendant	:	
: : : : : : : : : : : : : : : : : :		

{¶ 1} Plaintiff brought this action to recover the value of unpaid sick time and compensatory time that he accrued prior to resigning from his employment with defendant, in lieu of termination. The case was submitted to the court upon stipulated facts and trial briefs.

{¶ 2} In *Jay Cranston, M.D. v. Kent State University*, Court of Claims No. 98-09427 (*Cranston I*), Judge J. Warren Bettis on March 14, 2000, entered judgment in favor of plaintiff on the issue of liability. The decision was based upon stipulated facts. Thereafter, the case was scheduled for trial on August 10-11, 2000, on the issue of damages. On August 9, 2000, the parties filed a stipulation of dismissal.

{¶ 3} Plaintiff, Jay Cranston, M.D., refiled this action on December 26, 2000. On September 11, 2002, the parties filed "modified joint stipulations."

{¶ 4} The facts of this case are contained in the following stipulations filed by the parties:

{¶ 5} ****

{¶ 6} "6. At the time of the termination of his employment by Kent State University, Dr. Cranston had accumulated unpaid sick

leave totaling 2,262.05 hours. The University did not have a procedure to allow annual payment of unused sick leave.

{¶ 7} "7. Dr. Cranston was not paid for any accumulated and unused sick leave.

{¶ 8} "8. Dr. Cranston and Dr. Grezgorek and Dr. Rynearson - two former University psychologists - would testify that between 1972 and 1988, the University's health services department maintained an unwritten policy of granting compensatory time to its physicians under a system in which (a) three hours of accumulated compensatory time equaled one hour of 'real time' and (b) unused compensatory time accumulated. Dr. Cranston would testify that he maintained personal records in which he documented 3,968 hours of compensatory time between 1972 and 1988.

{¶ 9} "9. The University has no record of this unwritten policy and can neither confirm nor deny that it existed in the health services department between 1972 and 1988. In any event, though, no such policy was ever approved by the University's board of trustees; University physicians do not currently accumulate compensatory time; the University has never had a written compensatory time policy for physicians; and the University maintained no records of any compensatory time accumulated by Dr. Cranston.

{¶ 10} "10. Dr. Cranston was not paid for any accumulated and unused compensatory time."

{¶ 11} Plaintiff claims that defendant was required to compensate him upon separation for all accrued but unused compensatory and sick time.

{¶ 12} In *Cranston I*, Judge Bettis made the following determination:

{¶ 13} "***, the parties have stipulated that, at the time of plaintiff's separation, he had positive balances in his compensatory time and sick leave accounts. The court finds that pursuant to R.C.

124.18, 124.38, and defendant's policy manual, defendant is liable to plaintiff for any accrued compensatory time and sick leave benefits."

{¶ 14} In *Cranston I*, Judge Bettis found that, at the time of separation, plaintiff had positive balances in his compensatory time and sick leave accounts and that defendant was liable to plaintiff for payment of those balances to the extent that R.C. 124.18, 124.38 and plaintiff's policy manual, provided for such payment.

{¶ 15} For the reasons that follow, and in consideration of the stipulated evidence in this case, the court finds that plaintiff is not entitled to compensation for any of his accrued time as a matter of law.

{¶ 16} First, R.C. 124.18, which permits the state to pay employees for accrued but unused compensatory time applies only to non-exempt employees. There is no dispute in this case that plaintiff was employed by defendant as an overtime-exempt professional.

{¶ 17} Next, R.C. 124.384, which permits the state to pay employees for accrued but unused sick time upon separation applies only to "employees whose wages are paid directly by warrant of the auditor of state." In this case, the parties have stipulated that plaintiff was not paid by warrant.

{¶ 18} Additionally, R.C. 124.39, which permits the state to pay employees for accrued but unused sick leave, applies only to employees who retire. Here, plaintiff resigned his position in lieu of termination; he did not retire.

{¶ 19} Finally, while Judge Bettis in *Cranston I* cited defendant's "policy manual" in support of its conclusion that defendant was liable to plaintiff for accrued and unused compensatory and sick time, he acknowledged that defendant's policy manual made no provision for payment in the event of separation.

Indeed, under the "Constitution of Kent State University" the power to approve and/or initiate university policy is reserved to the board of trustees. The parties have stipulated that the board of trustees has never initiated or adopted a sick leave and compensatory time policy consistent with plaintiff's allegations in this case. Moreover, the official university policy in effect at the time of plaintiff's resignation permits payment of accrued but unused sick leave only upon retirement. As stated above, plaintiff did not retire. No official policy statement regarding compensatory time was admitted into evidence. Although plaintiff testified that there was an unwritten policy permitting University Health Service employees to accumulate one hour of compensatory time for every three overtime hours worked, plaintiff has not demonstrated to the court that there was any policy permitting those employees to be compensated for such time upon termination.

{¶ 20} In light of the above, the court finds that plaintiff is not entitled to monetary damages in this case. Judgment shall be rendered in favor of plaintiff in the total amount of \$25, representing the filing fee paid by plaintiff.

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JAY CRANSTON, M.D.	:	
Plaintiff	:	CASE NO. 2000-13099
v.	:	Judge Fred J. Shoemaker
KENT STATE UNIVERSITY	:	<u>JUDGMENT ENTRY</u>
Defendant	:	

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This case was submitted to the court for decision based upon trial briefs and stipulations of fact. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$25, representing the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

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LP/cmd
Filed June 8, 2005
To S.C. reporter June 29, 2005