

BOARD OF EDUCATION, JOINT SCHOOL DISTRICT
NO. 1, CITY OF GREEN BAY, ET AL, GREEN
BAY, WISCONSIN, and EDWIN OLDS, Superin-
tendent,

Petitioners,

Decision No. 9095-G

- vs -

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Respondent.

Decision With Respect To The Issue Of Interest

The original decision of this Court in this action was filed on December 20th, 1972. That decision affirmed the decision and order of the Wisconsin Employment Relations Commission dated September 16th, 1971, and made no reference to the subject of interest. In the said decision of the Court dated December 20th, 1972, the Court requested that the proper order consistent with that decision be prepared by the Attorney General and be submitted to the Court for signature.

The judgment as drafted by the Attorney General, including a provision as to interest, was signed by the Court on January 24th, 1973, and it contains the provision that the Board of Education, Joint School District No. 1, City of Green Bay, Et Al, Green Bay, Wisconsin, its officers and agents, including Edwin Olds, Superintendent, shall forthwith

"(2) Make whole Norbert McHugh, Louis Hutzler, Darrel Molzahn and Ann McHugh for any loss of wages and other benefits which each of them may have suffered as a result of their discriminatory discharge, by payment to each of them a sum of money equivalent to that each would normally have earned as wages, from May 12, 1969, to the date of an unconditional offer of reinstatement to each of them, together with other benefits each may have earned during said period, less any earnings which each of them may have received during said period, plus interest thereon at the legal rate from the date of September 16, 1971."

On April 12th, 1973, a hearing was held on the motion of the petitioners seeking an order expunging the above-quoted paragraph from the judgment. The reason for the motion is that the petitioners objected to the inclusion of interest in the judgment. At that time, the petitioners contended that negotiations would have to be carried on with counsel for the employees who were included in the judgment, to determine the amount that should be paid to each employee under the Commission's order of September 16th, 1971, and the Court's judgment of January 24th, 1973. As a result of the hearing on the said motion, it was decided that the Court should withhold its decision regarding the allowance of interest, and the parties agreed to conduct negotiations and to make efforts to determine the amounts that should be paid to each of the employees in question.

Subsequently, the attorneys for the parties engaged in a considerable amount of letter-writing, with originals or copies of numerous letters being sent to the Court, dealing with the claims of the respective employees. The attorneys also held some conferences and meetings at various times during the process of attempting to agree upon the amounts properly due to each of said employees. One of the conferences attended by the parties and their attorneys was conducted in the Court's chambers, with the presiding Judge present and participating, on April 25th, 1974, in an effort to settle the various claims. The results of this conference are mentioned in the fifth paragraph of an affidavit on file, dated July 26th, 1974, made by Charles D. Hoornstra, one of the attorneys for the Commission.

On September 30th, 1974, the Court conducted a hearing on a motion brought by the Commission for an order remanding this case to the Commission, with leave to adduce evidence on the question of the extent of the petitioners' compliance with the Commission's order of September 16th, 1971, and with the Court's judgment of January 24th, 1973, respecting two of the employees: Norbert McHugh and Louis Hutzler.

As a result of this hearing, the Court entered an order of remand, whereby it was ordered that this case be remanded to the Commission, with leave to the petitioners, as well as to the Green Bay Employees Local 1672-B, to adduce evidence on the question of the extent of the petitioners' compliance with the Commission's order of September 16th, 1971, and the Court's judgment of January 24th, 1973, regarding the employees Mr. McHugh and Mr. Hutzler.

It was further ordered, pursuant to sec. 111.07 (7) of the Statutes, that after taking such evidence, the Commission shall modify its findings as to facts or make new findings of fact, as appropriate, and shall file with the Court its recommendations, if any, for the modification or setting aside of the Commission's original order.

Under date of August 21st, 1975, the Commission made supplemental findings of fact, including detailed findings as to the claim of Mr. Hutzler, as set forth in paragraphs 2 through 8, inclusive, of said supplemental findings.

Under date of August 21st, 1975, the Commission also made a supplemental order wherein it ordered that the petitioners shall immediately pay the following sums of money to Louis Hutzler:

- "(a) The sum of \$1,750.87 as the difference between what Hutzler would have earned and what he actually earned for the calendar year of 1969, as well as the legal rate of interest thereon from September 16, 1971, through the date of compliance herewith.
- "(b) The sum of \$301.92 as the amount to liability Hutzler incurred in order to have his health insurance continued, as well as the legal rate of interest thereon from September 16, 1971, to the date of compliance herewith."

The said supplemental order also contained a further provision, requiring the petitioners to pay certain sums of money to the Wisconsin Retirement Fund on behalf of Louis Hutzler's account, which apparently are not material to the present decision of the Court.

It appears that since August 21st, 1975, the date of the supplemental findings of fact and supplemental order of the Commission, the parties have been unable to resolve the issue with regard to the award of interest, which was included in the judgment of January 24th, 1973.

This decision is being written for the purpose of finalizing litigation in this matter. The only issue remaining to be decided is whether Mr. Hutzler is entitled to interest on his claim from September 16th, 1971, the date of the original order of the Commission, as provided in the judgment of the Court dated January 24th, 1973. It is the understanding of the Court that the other employees, Norbert McHugh, Darrel Molzahn and Ann McHugh, who were involved in this action, have settled their claims; so, the issue as to entitlement to interest is limited to Mr. Hutzler only.

Upon the basis of Laycock v. Parker (1899), 103 Wis. 161, 79 N. W. 327, the Court finds that Mr. Hutzler is not entitled to interest on his claim commencing with the date of September 16th, 1971, as provided in said judgment. In accordance with the ruling of the Laycock case, supra, the Court finds, upon the entire record here, that the petitioners could not ascertain how much they ought to pay to Mr. Hutzler "with reasonable exactness" as of September 16th, 1971. It was not simply a mere difference of opinion among the parties as to the amount of principal that should have been paid effective September 16th, 1971. The Court is satisfied, from the entire circumstances of this case, that as of the date of September 16th, 1971, there was no reasonably certain standard of measurement by the correct application of which the petitioners could have ascertained the amount that was owing to Mr. Hutzler on that date.

As pointed out in Dahl v. Housing Authority of the City of Madison, 54 Wis. 2d 22, the Laycock case, supra, makes the test: "Is there a reasonably certain standard of measurement by the correct application of which one can ascertain the amount he owes?"

According to the Dahl case, supra, this test has been phrased to read ". . . entitled to recover such interest on all such items of damage from the time that the probable pecuniary amount or money value thereof could have been computed . . . to a reasonable certainty . . ." [Necedah Mfg. Co. v. Juneau County (1932) 206 Wis. 316, 335, 237 N.W. 277, 240 N. W. 405.]

It is pointed out in the Dahl case, supra, that the test has more recently been stated as ". . . before interest can be recovered, the amount claimed must be fixed or determined or readily determinable . . ." [California Wine Assoc. v. Wisconsin Liquor Co. (1963) 20 Wis. 2d 110, 132, 121 N. W. 2d 308.]

In the Dahl case, supra, it was held:

"The question of whether damages in a particular case are thus liquidable, meaning measurable or computable or determinable, is not always easily decided, but it remains the test."

The above wordings of the test and the above-cited cases are noted with approval in the case of Congress Bar & Restaurant v. Transamerica Ins. Co. (1969), 42 Wis. 2d 56, 70, 71, 165 N.W. 2d 409.

It is clear from the Wisconsin decisions on the issue of interest that as long as there is a "genuine dispute" about the amount that is due, the petitioners should not have to pay interest until the amount has been determined. Upon the entire record in this case it is clear that there was in fact a genuine dispute (not simply a dispute) about the amount that was due to Mr. Hutzler as of the date of September 16th, 1971, as well as of the date of January 24th, 1973, when the judgment as drafted by the Attorney General was signed by the Court.

On the basis of the entire record here, it is the opinion of the Court, in accordance with the general rule, that there was not a fixed and determinate amount which the petitioners could have tendered to Mr. Hutzler as of September 16th, 1971, or January 24th, 1973, and thereby have stopped interest. The amount to be paid to Mr. Hutzler was not readily determinable. It was not sufficiently certain to justify the allowance of interest thereon.

Under all of the circumstances in this case the judgment of the Court, dated January 24th, 1973, insofar as it included the provision for interest on Mr. Hutzler's claim effective September 16th, 1971, is not an appropriate decree. In paragraph 2 of the supplemental findings of fact of the Commission dated August 21st, 1975, the Commission made the finding

"That on August 15, 1973, the School Board offered Louis Hutzler reinstatement; and that, however, the School Board and Hutzler, as well as AFSCME, have not been able to reach an agreement with respect to the sums of money due and owing Hutzler to make him whole in accordance with the Commission's Order."

In the supplemental order of the Commission dated August 21st, 1975, the petitioners were ordered to pay the following sums of money to Mr. Hutzler:

- "(a) The sum of \$1,750.87 as the difference between what Hutzler would have earned and what he actually earned for the calendar year of 1969, as well as the legal rate of interest thereon from September 16, 1971 through the date of compliance herewith.
- (b) The sum of \$301.92 as the amount to liability Hutzler incurred in order to have his health insurance continued, as well as the legal rate of interest thereon from September 16, 1971 to the date of compliance herewith."

It is the conclusion of the Court that Mr. Hutzler is entitled to interest on the sums of money mentioned above, only from the date of August 21st, 1975, and only to the date of payment of such total sum to him by the petitioners.

The fact that the city of Green Bay, a petitioner here, is a unit of government does not excuse it from the obligation to pay interest on Mr. Hutzler's claim as specified above. In the case of Milwaukee v. Firemen Relief Assoc., 42 Wis.(2d) 23, the Supreme Court held, at page 41, that the obligation of a unit of government to pay interest on liquidated obligations is identical to the obligation of other persons or business entities. The city of Green Bay, a petitioner in the instant case, is obliged to pay interest on the sums specified in the supplemental order of the Commission dated August 21st, 1975.

Therefore, in accordance with the motion of the petitioners, that portion of the judgment dated January 24th, 1973, in paragraph 2, on page 3, which reads "plus interest thereon, at the legal rate, from the date of September 16th, 1971" is hereby expunged, and that portion of the judgment is hereby changed and corrected to read "plus interest thereon, at the legal rate, from the date of August 21st, 1975," meaning interest on the total sum of \$2,052.79 which the petitioners were ordered to pay to Mr. Hutzler, in the supplemental order of August 21st, 1975, until the date of payment of such principal by the petitioners to Mr. Hutzler.

Counsel for the petitioners shall forthwith prepare and submit to the Court, for signature, the proper order consistent with this decision.

Dated this 26th day of April, 1976.

By the Court,

Donald W. Gleason /s/

Circuit Judge.