

BEFORE THE BOARD OF TRUSTEES
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS

In the Matter of:

JAN DAVID BENJAMIN

Petitioner.

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No.

DECISION IN ADMINISTRATIVE REVIEW

T. INTRODUCTION

Pursuant to 80 Ill. Admin. Code § 1650.619, et seq., an administrative review hearing was held on August 11, 1993, in Chicago, Illinois, to consider the claim of Teachers' Retirement System (TRS) member, Jan Benjamin, that TRS should refund \$2,286.36 to Mr. Benjamin for optional service credit he purchased on January 4, 1990, based upon Mr. Benjamin's contention that he was given "bad" advice by a TRS benefits counselor in light of the later enactment of Early Retirement Incentive legislation in January of 1993, which negated Mr. Benjamin's need to purchase optional service credit to receive the maximum TRS pension benefit available to him.

The Board of Trustees of the Teachers' Retirement System (TRS), final arbiter of this dispute at the administrative level, was represented at hearing by its Claims Hearing Committee which was comprised of the following Board members; Hugh Brown, Judy Tucker, and Gary Kline. The committee was advised in its deliberations by attorney, Ralph Loewenstein. The staff position of TRS was presented to the Claims Hearing Committee by Thomas Gray, TRS Assistant General Counsel. The claimant, Jan Benjamin represented himself. Also present at hearing was Wilma Van Scyoc, TRS General Counsel.

After hearing Mr. Benjamin's testimony, the positions of the respective parties, and considering all the hearing exhibits, it was the recommendation of the Claims Hearing Committee to the Board at large that the staff determination to deny Mr. Benjamin's refund request be upheld. The Board hereby adopts the decision of the Claims Hearing Committee to deny Mr. Benjamin's claim.

This decision may be appealed in accordance with the Illinois Code of Civil Procedure, Article III, Administrative Review, 750 ILCS 5/3-101 et seq., by the filing of a complaint and the issuance of a summons within 35 days from the date the claimant is served with a copy of this decision. The date of service is the day upon which the decision is deposited in the United States mail by TRS.

II. BACKGROUND

The claimant, Jan Benjamin, recently elected to retire pursuant to the terms of the S&S Early Retirement Incentive Program (ERI), 40 ILCS 5/16-133.4. Under the ERI Program, Mr. Benjamin was eligible to purchase up to five years of additional teaching service credit. (The more years of service credit a teacher has the greater the pension benefit payable).

To achieve the maximum pension benefit payable, a teacher needs a total of 38 years of service credit. There is no additional benefit available to a TRS member for exceeding 38 years of service credit.

On January 4, 1990, three years prior to passage of ERI legislation, Mr. Benjamin purchased two years of service credit for teaching performed in the State of Indiana. Thereafter, in conjunction with the ERI Program, Mr. Benjamin's employer, School District #205, negotiated an agreement with Mr. Benjamin's collective bargaining unit whereby the employer agreed to pay the employee contribution necessary to purchase ERI service credits on behalf of its employees. The employees in Mr. Benjamin's school district incurred no cost to participate in the ERI Program. Had Mr. Benjamin not previously purchased the Indiana service, he would have had the option to have his employer purchase additional service on his behalf pursuant to ERI and his collective bargaining agreement. Mr. Benjamin is now seeking a refund of his purchased Indiana service.

Mr. Benjamin contends that he detrimentally relied upon advice from a TRS benefits counselor in 1989 to purchase all the service credit available to him. Mr. Benjamin claims the TRS counselor was negligent in not foreseeing ERI and should have advised him to wait until just before the time he was to retire to determine if there were any new public retirement initiatives of which he could take advantage.

TRS' position is that pursuant to 40 ILCS 5/16-151, Refunds, TRS is statutorily barred from granting a partial refund to a member and that TRS was not negligent in 1989 as to the information it provided Mr. Benjamin in regard to his Indiana service credits.

III. ISSUES

The parties agree the sole issue in this review to be:

Is a partial refund available to a member who paid for optional service credit in the past, but currently finds that the same amount of service credit is available to him at no cost?

IV. STATEMENT OF FACTS

Prior to hearing, the parties agreed to the following statement of facts.

1. In 1959-60 and 1960-61, Jan David Benjamin taught in Evansville, Indiana, at North High School.
2. Beginning 1961-62 and until the present, Mr. Benjamin has been an active, contributing member of the Teachers' Retirement System of the State of Illinois ("TRS").
3. On July 19, 1974, Mr. Benjamin wrote to TRS, asking for information and forms necessary for him to obtain credit in TRS for the years taught in Indiana (letter from Mr. Benjamin to TRS is Exhibit "A" attached).

4. On July 9, 1975, TRS communicated with Mr. Benjamin that it had reviewed his verification affidavits for the Indiana service and had increased his TRS service credit by two years; this letter quoted the cost of purchasing the extra two years, either by lump sum or by payment schedule (see Exhibit "C" attached).
5. On July 18, 1975, TRS received from Mr. Benjamin a voluntary "schedule of payment" for the out-of-state service credit (see Exhibit "D" attached). Mr. Benjamin did not pay for the service under this plan.
6. In November of 1989, Mr. Benjamin received a benefit estimate in anticipation of retirement during a counseling session conducted by staff of TRS' Northern Area Office; the printed estimate form generated at this session notes that the estimate "assumes pending credit is purchased prior to retirement." (See Exhibit "E" attached.)
7. On January 4, 1990, TRS received from Mr. Benjamin a payment in the amount of \$2,286.36, in satisfaction of his account receivable for the pending Indiana service credit (see Exhibit "F").
8. In January 1993, the General Assembly of the State of Illinois enacted and the Governor signed into law Public Act 87-1265, containing early retirement incentive provisions at new sections 16-133.4 and 16-133.5 of the Pension Code, 40 ILCS 5/16-133.4 and 5/16-133.5. These early retirement incentive provisions are referred to collectively as the "5&5" bill.
9. The 5&5 bill provides certain eligible persons (a class that includes Jan David Benjamin) the opportunity to purchase up to five years of service credit and an equivalent amount of age, in order to facilitate early retirement.
10. Under the 5&5 bill, Mr. Benjamin could purchase sufficient years of service to take him, based on his record, to the amount of service credit (38 years) necessary for achieving a maximum retirement formula (75% of final average salary) under Section 16-133 of the Pension Code.
11. The purchase of a year of service credit under the 5&5 bill would cost 4 percent of Benjamin's highest salary -- a higher cost per year of service than the price he previously paid into TRS for his Indiana service; however, under the terms of an agreement with his local employing school district, the district would buy for Mr. Benjamin the service available to him under the 5&5 bill.
12. In early 1993 Mr. Benjamin conferred with Steve Calhoun of TRS' Northern Area Office as to the possibility of obtaining a refund for the purchase of his Indiana service; by letter dated February 2, 1993, Mr. Calhoun informed Mr. Benjamin that such a refund was not available to him (See Exhibit "G" attached.)
13. On March 17, 1993, Mr. Benjamin wrote to TRS General Counsel Joan Hancock, protesting the determination by Calhoun and stating that Mr. Benjamin had elected to appeal (see Exhibit "H" attached.)

14. On April 4, 1993, Joan Hancock wrote to Mr. Benjamin reiterating TRS' position and informing him of the date and procedures for his hearing. (See Exhibit "I" attached.)

V. RELEVANT STATUTES AND TRS RULES

The Board has determined the following statutory provisions and TRS rules to be relevant to the disposition of Mr. Benjamin's claim.

A) 40 ILCS 5/16-151, Refunds:

"§ 16-151. Refund. Upon termination of employment as a teacher for any cause other than death or retirement, a member shall be paid the following amount upon demand made not previous to 4 months after ceasing to teach:

(1) from the Members' Contribution Reserve, the actual total contributions paid by or on behalf of the member for membership service which have not been previously refunded and which are then credited to the member's individual account in the Members' Contribution Reserve, without interest thereon, and

(2) from the Employer's Contribution Reserve, the actual contributions not previously refunded, paid by or on behalf of the member for prior service and towards the cost of the automatic annual increase in retirement annuity as provided under Section 16-152, without interest thereon.

Any such amounts may be paid to the member either in one sum or, at the election of the board, in 4 quarterly payments.

Upon acceptance of a refund, all accrued rights and credits in the System are forfeited and may be reinstated only if the refund is repaid together with interest from the date of the refund to the date of repayment at the following rates compounded annually: for periods prior to July 1, 1965, regular interest; for periods from July 1, 1965 to June 30, 1977, 4% per year; for periods on and after July 1, 1977, regular interest. Repayment shall be permitted upon return to membership; however, service credit previously forfeited by a refund and subsequently reinstated may not be used as a basis for the payment of benefits, other than a refund of contributions, prior to the completion of one year of creditable service following the refund, except when repayment is permitted under the provisions of the "Retirement Systems Reciprocal Act" contained in Article 20."

- B) BD 111, Admin. Code § 1650.410, Refunds for Duplicate or Noncreditable Service

- a) In the event contributions to the System are made in error for service covered by another public employee pension system in Illinois, a refund of such contributions shall be made.
- b) If a member contributes to the System for optional teaching service, but is unable to claim all of this service at the date of retirement or death because the service is determined to be noncreditable (for example, when the member's service record at retirement or death causes the optional service to be excess service, based on the statutory limits on the allowed proportion of out-of-system to regular service), then a refund of contributions for such service shall be paid to the member or the member's beneficiaries. Regular interest as defined in Section 16-112 of the Act shall be paid for the period from the date of payment of contributions for optional teaching service to the end of the month in which the refund is processed.

VI. DISCUSSION AND ANALYSIS OF BOARD DECISION

The Board finds that Mr. Benjamin's claim is governed by 40 ILCS 5/16-151, Refunds, which states in relevant part:

Upon termination of employment as a teacher for any cause other than death or retirement a member shall be paid the following amount upon demand made not previous to 4 months after ceasing to teach.

Pursuant to section 16-151(1), TRS is only authorized to issue "total" refunds of contributions when a member terminates employment. There is no statutory authority to allow TRS to issue the partial refund requested by Mr. Benjamin.

Furthermore, were Mr. Benjamin to receive a contribution refund, his TRS pension benefit rights would be forfeited, as set forth in 40 ILCS 5/16-151(2) which states in relevant part:

(2) from the Members' Contribution Reserve, the actual total contributions paid by or on behalf of the member for membership service which have not been previously refunded and which are then credited to the member's individual account in the Members' Contribution Reserve, without interest thereon. . . .

Upon acceptance of a refund, all accrued rights and credits in the System are forfeited and may be reinstated only if the refund is repaid together with interest from the date of the refund to the date of repayment at the following rates compounded annually . . .

By administrative rule, TRS does provide an exception to the total refund provision of 40 ILCS § 5/16-151. Pursuant to TRS Rule No. 1650.410, Refunds for Duplicate or Noncreditable Service, 80 Ill. Admin. Code § 1650.410 are available when:

- a) In the event contributions to the System are made in error for service covered by another public employee pension system in Illinois, a refund of such contributions shall be made.
- b) If a member contributes to the System for optional teaching service, but is unable to claim all of this service at the date of retirement or death because the service is determined to be noncreditable (for example, when the member's service record at retirement or death causes the optional service to be excess service, based on the statutory limits on the allowed proportion of out-of-system to regular service), then a refund of contributions for such service shall be paid to the member or the member's beneficiaries.

However, these two limited exceptions wherein a partial refund can be made by TRS are not applicable to Mr. Benjamin's factual situation. Mr. Benjamin's contributions were not "made in error for service covered by another public employee pension system in Illinois", nor is Mr. Benjamin "unable to claim all of this service . . . because the service is determined to be noncreditable". All of Mr. Benjamin's service was creditable.

After reviewing the statutes and rules in question, the Board finds TRS' interpretation of its statutory mandate to be persuasive. Furthermore, as was stated by the Illinois Supreme Court in Homefinders, Inc. v. City of Evanston, 2 Ill.Dec. 565, 357 N.E.2d 785 (1976):

Since an administrative agency is a creature of the legislative body from which it derives its existence and authority, any of its acts or orders which are unauthorized by the enabling statute or ordinance are void. (at p. 572).

Under the circumstances, TRS had no choice under its enabling statute but to deny Mr. Benjamin a partial refund.

Mr. Benjamin conceded at hearing that TRS is governed by its statutory mandate but argues that TRS should be estopped from denying him a refund for the cost of his Indiana service based upon his claim that TRS gave him "bad" advice. However, the Board finds, that even if it had the power to issue equitable relief in this circumstance, which it has determined it does not, TRS fulfilled its benefit counseling obligations to Mr. Benjamin and is not responsible to Mr. Benjamin for unforeseen and unforeseeable changes to the Pension Code made by the Illinois General Assembly in the form of ERI legislation.

As stated in Denton Enterprises, Inc. v. Ill. State Toll Hwy. Auth., 32 Ill. Dec. 921, 396 N.E.2d 34 (1979):

Under Illinois law, the doctrine of equitable estoppel may be invoked only in cases where words or conduct of the party against whom the estoppel is alleged amount to a misrepresentation or concealment of a material fact. The party claiming the benefit of estoppel "must have relied upon the actions or representations of the other and must have had no knowledge or convenient means of knowing the true facts. Levin v. Civil Service Com. (1972). 52 Ill.2d 516, 524, 288 N.E.2d 331, leave to

appeal denied, 64 Ill.2d 596.

Consequently for plaintiffs to prevail on a theory of equitable estoppel it is incumbent upon them to prove that they had relied upon some act or representation of fact and had no knowledge or means of knowing the true facts. See Pantle v. Industrial Com. (1975), 61 Ill.2d 365, 371, 335 N.E.2d 491 (Denton at p. 927)

In the instant case, there was no misrepresentation or concealment of fact by TRS. There was absolutely no indication that the benefit information given to Mr. Benjamin in 1989 was inaccurate or improper. Nor was there any showing that in 1989, TRS knew that ERI legislation would be enacted in January, 1993.

Furthermore, Mr. Benjamin had good reason to purchase to purchase his Indiana service in 1989. Had the ERI Program not been enacted, Mr. Benjamin would have had to pay more for his Indiana service for each month that he delayed in its purchase given that interest charges on the purchase amount were accruing monthly. By purchasing the service at the time he did, there was a substantial savings to Mr. Benjamin which was negated only because his school district agreed to pick-up the employee share under ERI. Mr. Benjamin also increased his death and disability benefits through the purchase. Had Mr. Benjamin died during the period January, 1990, to January, 1993, his beneficiaries would have received a greater survivor benefit. Or, had he become disabled in this period, Mr. Benjamin would have received a greater disability benefit.

Mr. Benjamin argues further that his benefits counselor should have foreseen the possibility of the passage of ERI and was negligent in not doing so. However, the law of negligence is clear on this point. Failure to foresee a possibility of an occurrence is not actionable. [see Philips v. J. F. Martin Cartage, 1 Ill. Dec. 904, 356 N.E.2d 1237 (1976)]. The Board finds TRS does not have the ability nor the obligation to provide legislative forecasts to its members. TRS' only obligation is to provide its members with accurate account and benefit option information, which it did in this case.

IV. CONCLUSION

Based upon the foregoing, the Board hereby adopts the staff determination to deny Mr. Benjamin a partial refund for the two years of Indiana service credit he purchased in 1989, three years prior to the passage of ERI legislation by the Illinois General Assembly.