

Truelove v. Northeast Capital & Advisory, Inc.

95 N.Y.2d 220, 738 N.E.2d 770, 715 N.Y.S.2d 366, 2000 N.Y. Slip Op. 08648

New York Court of Appeals · October 17, 2000

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3 No. 99: William B. Truelove Jr. v. Northeast Capital & Advisory Inc.

3 No. 99

William B. Truelove Jr.,

Appellant, v. Northeast Capital & Advisory Inc.,

Respondent.

2000 NY Int. 104

October 17, 2000

This opinion is uncorrected and subject to revision before publication in the New York Reports.

Phillip G. Steck, for appellant.

Mark T. Walsh, for respondent.

[95 NY2d 222] LEVINE, J.:

Plaintiff William B. Truelove, Jr. brought this action against his former employer, defendant Northeast Capital & Advisory, Inc., under article 6 of the Labor Law to recover the unpaid balance of a bonus he was awarded in December 1997, payable in quarterly installments through the following year. His complaint alleges that his bonus constituted "wages" within the meaning of Labor Law § 190 (1) and that, following his resignation after the first bonus payment, defendant violated

Labor Law § 193 by enforcing an express condition in the bonus plan predicated payment of each quarterly installment on continued employment. We agree with Supreme Court and the

Appellate Division that plaintiff's bonus does not fall within the definition of wages protected by Labor Law article 6.

Defendant, a small investment banking firm, hired plaintiff in June 1996 as a financial analyst in a non-revenue generating position. Plaintiff elected a compensation plan under which he was to receive an annual salary of \$40,000 and be eligible to participate in a bonus/profit sharing pool. Plaintiff's offer of employment stated that a "bonus, if paid, w[ould] reflect a combination of the individual's performance and Northeast Capital's performance."

The terms of the bonus plan were further clarified in two memoranda by defendant's Chief Executive Officer. The memoranda explained that a bonus/profit sharing pool would be established only if the firm generated a certain stated minimum of revenues and that the pool, once established, would be calculated pursuant to a graduated percentage schedule of firm revenues. The memoranda further stipulated that bonus/profit [95 NY2d 223]sharing distributions would be allocated in the CEO's sole discretion and would be paid in quarterly installments, with each payment contingent upon the recipient's continued employment at the firm. Employees were required to have an "acceptable" performance rating to participate in the bonus/profit sharing pool.

At the end of 1997, defendant established a bonus/profit sharing pool of \$240,000 based upon firm revenues of

approximately \$1.6 million for that year. Defendant's CEO allocated \$160,000 of that pool to plaintiff. Defendant paid plaintiff an initial bonus installment of \$40,000, but refused to make any further payments after plaintiff's resignation.

Plaintiff brought this suit under Labor Law article 6, alleging that his bonus fell within the definition of wages set forth in Labor Law § 190 (1). Plaintiff claimed that defendant's failure to pay him the three remaining bonus installment payments for 1997 violated Labor Law § 193 , which provides that "[n]o employer shall make any deduction from the wages of an employee, except" under certain limited circumstances not relevant here. Supreme Court granted summary judgment to defendant on the ground that plaintiff's bonus did not constitute wages within the meaning of Labor Law article 6. The Appellate Division affirmed (268 2 648). We granted leave to appeal and now affirm.

Article 6 of the Labor Law sets forth a comprehensive set of statutory provisions enacted to strengthen and clarify the rights of employees to the payment of wages (see , Mem of Indus Commr, June 3, 1966, Bill Jacket, L 1966, ch 548, at 4). An employer who violates the requirements of Labor Law article 6 is subject to civil liability and criminal penalties (see , Labor Law §§ 198 and 198-a). The dispositive issue in this case is whether plaintiff's bonus constitutes "wages" within the meaning of the Labor Law.

Although New York has provided statutory protection for

workers' wages for more than a century (see , People v Vetri , 309 NY 401, 405), the Legislature first defined the term "wages" in the 1966 enactment of Labor Law article 6 (L 1966, ch 548).

Labor Law § 190 (1) defines "wages" as "the earnings of an employee for labor or services rendered , regardless of whether the amount of earnings is determined on a time, piece, commission or other basis" (emphasis supplied). Courts have construed this statutory definition as excluding certain forms of "incentive compensation" that are more in the nature of a [95 NY2d 224]profit-sharing arrangement and are both contingent and dependent, at least in part, on the financial success of the business enterprise (see ,

International Paper Co. v Suwyn , 978 F Supp 506, 514; Tischmann v ITT/Sheraton Corp. , 882 F Supp 1358, 1370; see also , Magness v Human Resource Servs., Inc. , 161 AD2d 418, 419). We arrive at the same conclusion with respect to plaintiff's bonus compensation arrangement.

The terms of defendant's bonus compensation plan did not predicate bonus payments upon plaintiff's own personal productivity nor give plaintiff a contractual right to bonus payments based upon his productivity. To the contrary, the declaration of a bonus pool was dependent solely upon his employer's overall financial success. In addition, plaintiff's share in the bonus pool was entirely discretionary and subject to the non-reviewable determination of his employer. These factors, we believe, take plaintiff's bonus payments out of the statutory

definition of wages.

Unlike in other areas where the Legislature chose to define broadly the term "wages" to include every form of compensation paid to an employee, including bonuses (see

Unemployment Insurance Law §§ 517 , 518), the Legislature elected not to define that term in Labor Law § 190 (1) so expansively as to cover all forms of employee remuneration. We therefore agree with those courts that have concluded that the more restrictive statutory definition of "wages," as "earnings for labor or services rendered," excludes incentive compensation "based on factors falling outside the scope of the employee's actual work" (Tishmann v ITT/Sheraton Corp. , supra , 882 F Supp , at 1370). In our view, the wording of the statute, in expressly linking earnings to an employee's labor or services personally rendered, contemplates a more direct relationship between an employee's own performance and the compensation to which that employee is entitled. Discretionary additional remuneration, as a share in a reward to all employees for the success of the employer's entrepreneurship, falls outside the protection of the statute.

The legislative history of the statute confirms our conclusion. As we previously noted, prior to the recodification of the Labor Law regulating the payment of wages in 1966 (L 1966, ch 548), the statute did not provide a definition of the term "wages." Then, as now, an employer was subject to both civil and criminal liability for failing to pay "wages" as required by the

statute (see , former Penal Law § 1272 [the predecessor statute to

Labor Law § 198-a]; former Labor Law § 196 [the predecessor [95 NY2d 225]statute to Labor Law § 191]).

In People v Vetri (304 NY 401,

supra), this Court had to determine whether "vacation pay" was wages protected by the statute. The Court construed the term "wages" narrowly and held that "vacation pay" did not fall within that term, absent clear statutory language establishing that the Legislature intended otherwise. The Court rejected a broader construction of the term that would have encompassed "all of the benefits, monetary or otherwise, which an employee derives from a master and servant relationship" (id. , at 407).

Thereafter, when the Legislature enacted article 6 of the Labor Law in 1966 and provided the first statutory definition of the term "wages," it intentionally followed Vetri 's restricted view of wages for purposes of civil and criminal liability, specifically excluding from the definition wage supplements such as "health, welfare and retirement benefits, and vacation, separation or holiday pay" (L 1966, ch 548; see also , Bill Jacket, L 1966, ch 548, at 3 ["The bill specifically excludes fringe benefits from the term wages * * * in accord with the holding of the Court of Appeals * * * (in) People v Vetri "]).

The Legislature subsequently amended the statute in 1972 by removing the wage supplement exclusion and providing certain statutory protections for the kind of fringe benefits commonly found in regular terms of employment (see , L 1972, ch

328). Nonetheless, the basic Vetri view -- which rejected a broad view of wages as encompassing "all of the benefits, monetary or otherwise, which an employee derives from a master and servant relationship" (309 NY, at 407) -- has remained intact throughout the legislative history. That strongly militates against the broad interpretation of "wages" urged by plaintiff.

Finally, we reject plaintiff's argument that he had a vested right to the bonus payments once defendant declared that a bonus would be paid and calculated the amount of that bonus. In

Hall v United Parcel Serv. (76 2 27, 36), we held that an "employee's entitlement to a bonus is governed by the terms of the employer's bonus plan." Here, the bonus plan explicitly predicated the continuation of bonus payments upon the recipient's continued employment status. Because plaintiff resigned shortly after he received his first quarterly payment, he was not entitled to receive the remaining three payments.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

[95 NY2d 226] Order affirmed, with costs. Opinion by Judge Levine. Chief Judge Kaye and Judges Smith, Ciparick, Wesley and Rosenblatt concur.

Decided October 17, 2000