

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD FLYNN	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 02-8032
	:	
OSRAM SYLVANIA, INC.	:	
Defendants.	:	

MEMORANDUM AND ORDER

YOHN, J.

October_____, 2003

Plaintiff, Richard Flynn, sues defendant for monies due as a result of his termination from employment with Sylvania Lighting Services, Inc. (“SLS”), a wholly owned subsidiary of defendant Osram Sylvania, Inc., on or about July 22, 2002. Presently before the court is defendant’s motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. For the reasons stated below, defendant’s motion will be granted in part and denied in part. More specifically, I will enter summary judgment on plaintiff’s claims for accrued vacation pay, reimbursement for out-of-pocket expenses incurred during his employment, severance pay, and for detrimental reliance. However, I will deny defendant’s motion for summary judgment on the remainder of plaintiff’s claims, i.e. for payment of his earned bonus and an accounting for the bonus monies owed.

BACKGROUND

The following facts are not in dispute. Plaintiff, Richard Flynn, was the branch manager of the Mid-Atlantic branch of SLS, which is in the business of performing lighting retrofit, relamps and lighting maintenance services at its customers’ locations. As a branch manager,

Flynn was eligible to receive incentive payments (bonuses) under the terms of Osram's bonus plan, which reads in pertinent part:

A Branch Manager whose termination results from a reduction in force, transfer, leave of absence, death, or retirement shall receive a full proportionate share of the annual bonus calculated for each full month of employment.

A Branch Manager whose termination during sales incentive plan year results from resignation, release without prejudice, release for cause, or discharge for misconduct, will forfeit any future bonus earnings. Payment for any incentive earned for the partial period will be determined by the bonus committee.

Def. Br. in Supp. of Mot. for Summ. J. 10. Flynn was also covered by Osram's severance pay plan, which provides that employees will receive severance payments if their permanent termination results from: "a substantial, permanent workforce reduction; the elimination of the employee's position with the Company; a reorganization of the Company; . . . or for such other reasons as the Committee may, in its sole discretion, deem appropriate." Def. Br. in Supp. of Mot. for Summ. J. 18. Employees are also required to execute an agreement and general release form.

During his tenure at SLS, Flynn developed a reputation for being someone with whom it was difficult to work, as he acknowledged in a letter to his supervisor. Flynn Dep. Ex. 7. In October, 2001, Flynn was reprimanded for violating the company's harassment policy and was required to attend training on supervisory skills, enter an employee assistance program and execute a copy of the harassment policy. SLS National Operations Manager James Colantoni received numerous complaints from one of Flynn's major customers about the service it was receiving, and Colantoni spoke to Flynn about these complaints. Colantoni arranged for two managers of other branches to visit Flynn's branch in June, 2002 to evaluate operational concerns

there and to advise Colantoni of how to assist Flynn. On July 18, 2002, Flynn was removed as branch manager and was offered the choice of accepting a project coordinator position or terminating his employment. A severance package was offered to Flynn in the event he did not accept the new position, under which he would be entitled to seven weeks pay. The severance package also listed the amount of vacation time Flynn was owed, but did not mention anything about bonuses or reimbursement of out-of-pocket expenses. Flynn called another branch manager, Brian Pivar, to tell him what happened. Pivar then called Colantoni to advise him of the conversation. Colantoni thereafter decided to withdraw the offer to Flynn of the project coordinator position, and to make his termination effective July 19. This was communicated to Flynn on July 22. The same severance package was offered to Flynn after this termination. A few weeks after Flynn's dismissal the support staff of the Mid-Atlantic branch was laid off and the territory was divided and reassigned to other branches. The position vacated by Flynn was never filled or even posted.

Flynn never accepted the severance package because neither it nor the general release form upon which the severance pay was conditioned mentioned reimbursement for Flynn's out-of-pocket business expenditures or the bonus monies he claimed to be owed. Flynn was eventually paid for the accrued vacation days defendant believed it owed him. Flynn was not, however, paid for out-of-pocket expenses, nor did he receive any payments for bonuses. Since Flynn did not sign the agreement and general release form, he never received any severance pay. Thus, Flynn brought the instant action, asserting claims for breach of contract, violation of the Pennsylvania Wage Payment and Collection Act ("WPCL"), 43 PA. CONS. STAT. ANN. § 260.1 *et seq.* (West 2003), and detrimental reliance. Plaintiff seeks the seven weeks of severance pay he

was offered, payment for accrued but unpaid vacation time, reimbursement for out-of-pocket business expenses, the bonus monies he believes he is owed, and an accounting from defendant to determine the exact amount of the bonus monies owed.

STANDARD OF REVIEW

Either party to a lawsuit may file a motion for summary judgment, and the court will grant it “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “Facts that could alter the outcome are ‘material,’ and disputes are ‘genuine’ if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct.” *Ideal Dairy Farms, Inc. v. John Lebatt, LTD.*, 90 F.3d 737, 743 (3d Cir. 1996) (citation omitted). When a court evaluates a motion for summary judgment, “[t]he evidence of the non-movant is to be believed,” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), and “all justifiable inferences are to be drawn in [the non-movant’s] favor.” *Id.* Additionally, “[s]ummary judgment may not be granted . . . if there is a disagreement over what inferences can be reasonably drawn from the facts even if the facts are undisputed.” *Ideal Dairy*, 90 F.3d at 744 (citation omitted). However, “an inference based upon a speculation or conjecture does not create a material factual dispute sufficient to defeat entry of summary judgment.” *Robertson v. Allied Signal, Inc.*, 914 F.2d 360, 382 n.12 (3d Cir. 1990).

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on

unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. *Williams v. Borough of W. Chester*, 891 F.2d 458, 460 (3d Cir.1989) (citing *Celotex v. Catrett*, 477 U.S. 317, 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish prima facie each element of his claim. *Celotex*, 477 U.S. at 322-23. The non-movant must show more than “[t]he mere existence of a scintilla of evidence” for elements on which he bears the burden of production. *Anderson*, 477 U.S. at 252. Thus, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citations omitted).

DISCUSSION

Because this is a diversity action, the court will apply federal procedural law as reflected in Rule 56 of the Federal Rules of Civil Procedure, which establishes the standard for summary judgment, but state substantive law—in this case, Pennsylvania contract law. *Erie v. Tompkins R.R. Co.*, 304 U.S. 64 (1938). Although the parties to the present litigation do not specify a particular state’s juris as being that from which the court should glean the applicable principles of contract law, one of Flynn’s claims is for violation of the Pennsylvania Wage and Payment Collection Law (“WPCL”), 43 PA. CONS. STAT. ANN. § 260.1 *et seq.* (West 2003), implying that Flynn believes Pennsylvania law governs this suit. Compl. ¶ 32. Because defendant does not contest this supposition, I will apply Pennsylvania contract law. Notably, however, the application of Pennsylvania law—as opposed to the law of any other state—is unlikely to be of

great significance.¹

I. No Genuine Issue of Material Fact

Plaintiff has failed to produce any evidence in support of a number of his claims, such that there are no genuine issues of material fact which require a trial on those claims.

A. Plaintiff's Claim for Accrued Vacation Pay

Flynn claims he was owed fifty-eight hours of accrued, but unpaid, vacation for the year 2002 and forty such hours for 1999. Compl. ¶ 30. Defendant claims that Flynn was only owed 18.48 hours of vacation time for 2002, but admits that he was owed forty hours for 1999. Def. Br. in Supp. of Mot. for Summ. J. 21-23. Defendant has since paid plaintiff for the 58.48 hours it does not dispute. Piper Aff. Exh. A. In support of its contention, defendant has produced its records of Flynn's vacation time, *Id.*, as well as the vacation pay policy in effect at the time of Flynn's termination. *Id.* Flynn has not disputed defendant's calculation of how much vacation time he had used during 2002 before his dismissal. Rather, his argument is dependent on whether the vacation pay policy requires proration of the yearly vacation entitlement, or rather, as plaintiff claims, employees are entitled to the full annual amount at the time of termination. Flynn has produced a vacation pay policy dated January 1, 2000, which supports his case.

¹ Where jurisdiction is based on diversity, as in this case, the district court must apply the choice of law rules of the forum state. *See St. Paul Fire & Marine Ins. Co. v. Lewis*, 935 F.2d 1428, 1431 n.3 (3d Cir. 1991) (citing *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). Under Pennsylvania choice of law rules, no choice of law analysis is necessary in cases in which there is no relevant substantive divergence between two bodies of competing law. *See Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695, 702 (Pa. Super. Ct. 2000) (“Pennsylvania choice of law analysis first entails a determination of whether the laws of the competing states actually differ. If not, no further analysis is necessary.”). Because the fundamental principles of contract law are generally similar from one state to the next, a choice of law analysis in this instance is unnecessary.

Colantoni Dep. Exh. 12. Defendant, however, has made clear that the policy upon which plaintiff relies, was superceded by a new policy on January 1, 2001. Def. Br. in Supp. of Mot. for Summ. J. 21-22; Piper Aff. Exh. A; Supplemental Piper Aff. Exh. A. Plaintiff has not produced documentary evidence to refute, or even cast doubt on, defendant's proof that the vacation pay policy in effect at the time of Flynn's dismissal required proration of the yearly vacation entitlement. Rather, he has simply relied on his own testimony and the outdated vacation pay policy. Such evidence is insufficient to create a genuine issue of fact. Therefore, summary judgment is warranted and granted on Flynn's claim for unpaid vacation time.

B. Plaintiff's Claim for Reimbursement for Out-of-pocket Expenses

Flynn claims he is owed reimbursement for out-of-pocket expenses incurred for his employer, defendant, in the amount of \$1200.² Compl. ¶ 30. Defendant claims plaintiff only spent \$791.26 of his own money, for which he would normally be entitled to reimbursement. Def. Br. in Supp. of Mot. for Summ. J. 24. Plaintiff has provided no evidence that he actually expended more than this amount out-of-pocket. Despite these agreed upon expenditures, defendant has shown that plaintiff is not entitled to reimbursement because he failed to reconcile charges on the company credit card ("procard") that totaled more than \$791.26. *Id.* Plaintiff has not specifically challenged defendant's assertion that its reimbursement policy proscribes reimbursement for out-of-pocket expenses when unreconciled procard expenditures exceed the

² Flynn's claim for reimbursement actually varies. In his response to defendants' statement of undisputed facts, Flynn asserts that "[h]e is still owed \$3,256.26 reimbursement for unreimbursed office expenditures." Pl. Resp. to Def.'s Statement of Material Facts 15. This is the first time plaintiff mentions this figure, and he does so without any support. It appears Flynn has mistaken the amount charged to his procard and paid by defendant with his own out-of-pocket expenditures for which he would be entitled to reimbursement.

out-of-pocket expenditures. Nor has he produced evidence that his out-of-pocket expenditures actually exceeded his unreconciled procard charges.³ Rather, Flynn relies on two unsupported arguments.

First, plaintiff asserts that the defendant had a policy of reimbursing office expenditures even without supporting documentation, “[s]o long as there was a reasonable or satisfactory explanation for lack of or missing documentation.” Pl. Resp. to Def.’s Statement of Undisputed Material Facts 15. Flynn has provided no evidence of such a policy by defendant. Second, Flynn claims that proper documentation was in his office at the time of his dismissal, and was never returned to him despite numerous requests. *Id.* at 16. Flynn then goes on to assert that defendant could easily verify the undocumented expenses by contacting the appropriate vendors. *Id.* Plaintiff clearly misunderstands his burden of production. As explained earlier, the non-moving party, in this case the plaintiff, has the burden of producing evidence to establish prima facie each element of its claim. *Celotex*, 477 U.S. at 322-23. Hence, it is *plaintiff’s responsibility* to contact the appropriate vendors to verify the charges made, and not defendant’s. Plaintiff has failed to produce even a scintilla of evidence that he is entitled to reimbursement for out-of-pocket expenses. Therefore, summary judgment is warranted and granted on Flynn’s claim for unreimbursed out-of-pocket expenses.

C. Plaintiff’s Claim for Severance Pay

Plaintiff claims he is entitled to seven weeks of severance pay, totaling approximately \$10,000. Compl. ¶ 30. Defendant offered Flynn seven weeks of severance pay each time his

³ Flynn has produced additional receipts, which would reconcile some of the previously unreconciled procard charges. Pl. App. in Supp. of Answer and Opp’n to Def. Mot. for Summ. J. Ex. K. However, the total of unreconciled procard charges still exceeds \$791.26.

termination was effectuated, but acceptance of the package required Flynn to sign a general agreement and release, and Flynn never did so. Flynn contends that defendant breached the implied covenant of good faith and fair dealing by requiring him to waive his claims to the bonuses he earned in order to obtain the severance pay. Pl. Br. in Opp'n to Def.'s Mot. for Summ. J. 22-23. Defendant raises the defense that ERISA preempts this claim for severance pay. Def. Br. in Supp. of Mot. for Summ. J. 19-20. Plaintiff does not deny that defendant's severance plan is an ERISA plan. Rather, he relies on the fact that "he did not assert a cause of action under ERISA" to support his argument that ERISA does not preempt his Pennsylvania common law and statutory law claims. Pl. Br. in Opp'n to Def.'s Mot. for Summ. J. 25. Plaintiff misunderstands the nature of ERISA preemption.

First, the court must determine whether the severance plan exists under ERISA and thus whether claims for benefits must be brought under its exclusive remedies. See 42 U.S.C. § 1002(3). It is undisputed that defendant's severance plan is an ERISA plan. The crucial inquiry, then, is what effect this status has on plaintiff's non-ERISA claims, i.e. his common law contract and WPCL claims. As this court recognized in a nearly identical case to the instant one, the Third Circuit decisions in *1975 Retirement Plan for Eligible Employees of Crucible, Inc. v. Nobers*, 968 F.2d 401 (3d Cir. 1992), and *McMahon v. McDowell*, 794 F.2d 100 (3d Cir. 1986) are dispositive. See *Grabski v. Aetna, Inc.*, 43 F. Supp. 2d 521, 527 (E.D. Pa. 1999). The court in *McMahon* ruled that plaintiff's claim for severance benefits pursuant to the WPCL was preempted by ERISA, *McMahon*, 794 F.2d at 106, and it ruled in *Nobers* that plaintiffs' state law breach of contract claims were similarly preempted by ERISA. *Nobers*, 968 F.2d at 406. As the court concluded in *Grabski*, since defendant's severance plan is at the heart of each of plaintiff's

state law claims, they are both preempted by ERISA. Therefore, summary judgment is warranted and granted on Flynn's claim for severance pay.

D. Plaintiff's Claim for Detrimental Reliance

Plaintiff claims that he detrimentally relied on statements made by representatives of defendant that Flynn would receive ten-twelfths of his annual bonus, his third quarter bonus, and a severance package. Compl. ¶ 34-36. However, Flynn has since admitted that he did not "rely" on these statements, or any other representations made by defendant at the time of his termination, in any way. Def. Br. in Supp. of Mot. for Summ. J. 23; Flynn Dep. 280-84. Therefore, summary judgment is warranted and granted on Flynn's claim for detrimental reliance.

II. Genuine Issues of Material Fact

Plaintiff has produced sufficient evidence in support of the remainder of his claims, such that there are genuine issues of material fact which require a trial on those claims. Hence, summary judgment on Flynn's related claims for payment of his earned bonus and an accounting for the bonus monies owed is denied.

Flynn claims he is owed various bonuses he earned while employed, totaling approximately \$69,000, because his termination was not "for cause." Compl. ¶ 29-30. In order to determine the exact amount of the bonuses owed, plaintiff seeks an accounting from defendant. Compl. ¶ 37-39. Plaintiff asserts that his termination qualifies as a transfer, or in the alternative, came as the result of a planned reduction in force. Pl. Br. in Opp'n to Def. Mot. for Summ. J. 7-11. Defendant contends that Flynn's termination was for cause, and that he is therefore not entitled to any of the bonuses he would have earned. Def. Br. in Supp. of Mot. for

Summ. J. 11-13, 17-19.

A. *Plaintiff's Claim for Payment of his Earned Bonus and an Accounting for the Bonus Monies Owed*

Defendant's bonus plan provides that "[a] Branch Manager whose termination results from a reduction in force, transfer, leave of absence, death, or retirement shall receive a full proportionate share of the annual bonus calculated for each month of employment." Def. Br. in Supp. of Mot. for Summ. J. 10. It is undisputed that when Flynn was terminated on July 18, he was offered a project coordinator position. Def. Br. in Supp. of Mot. for Summ J. 13. Defendant contends that plaintiff was never actually transferred, though, because "that offer was withdrawn and Flynn never commenced the job." *Id.* Of course, basic contract law dictates that an offeror cannot withdraw an offer after the offeree has accepted the offer. The acceptance completes the formation of the contract and, in this case, effectuates the transfer. Although defendant denies that Flynn commenced the job, there is evidence that Flynn not only verbally accepted the offer for transfer when it was originally offered to him, Flynn Dep. 157-58, Farrell Dep. 70, but that he also then emailed an acceptance of the offer three days later, but before the offer was withdrawn. Pl. Br. in Opp'n to Def. Mot. for Summ. J. 8, Farrell Dep. 70-71. Hence, there is a genuine issue of material fact concerning whether Flynn's termination was the effect of a transfer, and whether he was therefore entitled to a proportionate share of the annual bonus.

Flynn argues, in the alternative, that his termination was the result of a planned reduction in force, thereby qualifying him for the bonuses he earned. Pl. Br. in Opp'n to Def.'s Mot. for Summ. J. 10-11. As discussed above, defendant's severance plan provides that employees will receive severance pay if they are terminated as a result of "a substantial, permanent workforce

reduction; the elimination of the employee's position with the Company; a reorganization of the Company; . . . or for such other reasons as the Committee may, in its sole discretion, deem appropriate." Def. Br. in Supp. of Mot. for Summ J. 18. It is undisputed that defendant offered plaintiff a severance package that would pay him seven weeks of his salary. This fact alone permits the inference that defendant terminated plaintiff as a planned reduction in force. Plaintiff further supports this conclusion by providing evidence that tends to contradict defendant's assertion that plaintiff was dismissed for cause. In order to "defeat a summary judgment motion based on a defendant's proffer of a [valid] reason [for termination], a plaintiff who has made a prima facie showing of [an alternate intent] need only point to evidence establishing a reasonable inference that the employer's proffered explanation is unworthy of credence." *Sempier v. Johnson & Higgins*, 45 F.3d 724, 728 (3d Cir. 1995). For example, plaintiff produced evidence that he consistently earned among the highest bonus awards, Colantoni Dep. 18-22, and received high accolades for his branch's accomplishments. Colantoni Dep. 24-27. Plaintiff's prior praise, when considered in conjunction with the facts that defendants closed the branch Flynn managed shortly after his termination, reassigned its territory to other branches, and laid off the administrative staff at the branch, would support the inference that plaintiff was terminated because of a planned reduction in force. Hence, there is a genuine issue of material fact that precludes granting of summary judgment. Defendant's motion for summary judgment on plaintiff's claim for his earned bonuses is denied.

Since plaintiff's claim for payment of his earned bonus will proceed, it logically follows that his claim for an accounting for the bonus monies owed must proceed, so a determination of the exact monies owed (if any) can be made. Therefore, summary judgment on plaintiff's claim

for an accounting for the bonus monies owed is denied.

CONCLUSION

Defendant's motion for summary judgment will be granted in part and denied in part. Plaintiff has failed to show that there is a genuine issue of material fact concerning his claims for accrued vacation pay, reimbursement for out-of-pocket business expenses, severance pay or detrimental reliance. Therefore, summary judgment is granted on these claims. In contrast, plaintiff has showed that there are material issues of genuine fact concerning his claims for payment of his earned bonuses and an accounting for the bonus monies owed. Hence, summary judgment is denied on these claims. An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RICHARD FLYNN
Plaintiff,

v.

OSRAM SYLVANIA, INC.
Defendants.

:
:
:
:
:
:
:

CIVIL ACTION
NO. 02-8032

ORDER

And now, this ____ day of October, 2003, upon consideration of defendant Osram Sylvania, Inc.'s motion for summary judgment and accompanying brief and statement of facts, plaintiff's brief in opposition to defendant's motion for judgment and statement of facts, and defendant's reply to plaintiff's brief in opposition, it is hereby ORDERED that the defendant's motion is GRANTED in part and DENIED in part. Judgment is ENTERED in favor of Osram Sylvania, Inc. on plaintiff's claims for accrued vacation pay, reimbursement for out-of-pocket business expenses, severance pay or detrimental reliance. Summary judgment is DENIED on plaintiff's claims for payment of his earned bonuses and an accounting for the bonus monies owed.

William H. Yohn, Jr., Judge