

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROBERT J. PATNAUDE,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-3-B
)	
TOWN OF WINTHROP,)	
)	
Defendant)	

***RECOMMENDED DECISION ON DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT***

The defendant, the Town of Winthrop, has moved pursuant to Federal Rule of Civil Procedure 56(c) for a summary judgment on all counts of the plaintiff, Robert J. Patnaude’s, complaint in the above-captioned matter. Patnaude, a former employee of the Town, alleges that the Town: breached the implied covenant of good faith and fair dealing contained in his employment contract (Count I); has been unjustly enriched by his services (Count II); is liable to him pursuant to a theory of *quantum meruit* (Count III); violated the Fair Labor Standards Act, 29 U.S.C. §§ 201 - 219 (1985 & Supp. 1997) (FLSA) (Count IV); and violated its statutory duty to pay him all compensation due within a reasonable time of his demand for payment (Count V). Concluding that no genuine issues exist with respect to any material fact, the Court recommends that the Town’s motion for a summary judgment on all of the above counts be granted.

I. Summary Judgment

A summary judgment is appropriate only “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). An issue is genuine, for these purposes, if “the evidence is

such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “A material fact is one which has the ‘potential to affect the outcome of the suit under applicable law.’” *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (quoting *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993)). The Court views the record in the light most favorable to the nonmovant. *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995).

II. Background

This matter arises out of Patnaude’s termination from employment with the Town on June 1, 1993. He claims that the Town failed to compensate him for the overtime hours he worked in his capacity as deputy chief of the Town’s ambulance service. The Town contends that because it employed Patnaude in a salaried executive capacity pursuant to an employment agreement, he is not entitled to any additional compensation.

Patnaude was hired by the Town to serve as deputy chief of its ambulance service on July 9, 1989. In accepting the position, he signed a memorandum of agreement that stated he was to be employed as a salaried employee subject to the terms and conditions set forth in the Town’s personnel policy. Some of Patnaude’s duties as deputy chief of the Winthrop ambulance service, as specified in a job description given to him by the Town, included: maintaining discipline and morale within the emergency medical services department; performing the duties of an emergency medical technician (EMT) as required; preparing reports and correspondence related to the billing of services rendered by the emergency medical service; organizing and assigning duties in the department; preparing yearly performance evaluations of all subordinate employees; delegating authority to subordinates; organizing and directing departmental training and

meetings; submitting written reports and recommendations to the chief in cases of disciplinary infractions by members of the department; assisting the chief in investigating and processing employee grievances; and assisting the chief in preparing and administering the department's budget.

The Town contends, and Patnaude does not directly dispute, that prior to accepting his position, Patnaude discussed his compensation package with the chief of the ambulance service, Joseph E. Young, Sr. Young claims that he told Patnaude that, as deputy chief, he would not be paid for overtime work but that, pursuant to the personnel policy, he would accrue one hour of compensatory time, or "comp time," for each hour of overtime he worked. Young also claims that Patnaude was informed by him that he would not be able to "cash in" his accrued compensatory time off for additional compensation. Patnaude does not dispute Young's characterization of this conversation. He notes, however, that he never was informed that he would lose the comp time he earned that he did not claim prior to being terminated.

Because his supervisor also served as the Town's chief of police, Patnaude received little direct supervision of his job duties and essentially conducted the day-to-day management of the ambulance service. He supervised and directed the work of approximately thirty employees, and had the authority to hire, fire, promote, and otherwise discipline the employees, subject to final approval by the chief. Although Patnaude principally exercised supervisory authority over the department's other employees, he also served from time to time as a paramedic, responding when necessary to ambulance calls. Of the 7,842.5 hours he worked as deputy chief, however, only 484.5 hours were spent by Patnaude serving as an EMT.

It is the Town's policy to pay all of its employees subject to the overtime provisions of the FLSA on an hourly basis, and to pay all those exempt from the provisions on a salary basis. Prior to accepting his position as deputy chief, Patnaude worked as a part-time paramedic for the Town. When Patnaude worked for the Town as a paramedic, he was paid \$7.30 per hour plus overtime pay at a rate of \$10.95 per hour for all hours he worked in excess of forty hours per week. This arrangement was the same for all paramedics employed by the Town. During the period that Patnaude served as deputy chief, however, he was paid a weekly salary of approximately \$383.00. This arrangement was pursuant to the memorandum of agreement entered into between Patnaude and the Town on July 9, 1989. The agreement specifically references the Town's written personnel policy, which states that salaried employees are entitled to comp time, but not to overtime pay, for time worked in excess of forty hours per week, unless the contract specifically provides otherwise. Pursuant to its personnel policy, the Town allowed Patnaude to take compensatory time off from work whenever he worked in excess of forty hours per week. The Town insists that it has never been its practice to provide payment in lieu of such comp time to those employees exempt from the overtime provisions of the FLSA.

On June 1, 1993, Patnaude's employment with the Town was terminated. The Town claims that it soon thereafter paid all amounts of money owed him. In a letter subsequently sent by Patnaude to the Town, however, he claimed that the Town had failed to compensate him for 344.5 hours of comp time he had accrued. After the Town refused his request for compensation of some kind, Patnaude initiated this lawsuit. Patnaude claims that he conferred a benefit on the Town for which he deserves compensation. He points out that there is nothing in the Town's written personnel policy that addresses how compensatory time is to be paid to a terminated

employee, nor is there anything in the policy defining what compensatory time is or how it is to be taken in the event an employee is terminated.¹

III. Discussion

A. Whether the Town is entitled to a summary judgment on Patnaude's claim for breach of an implied covenant of good faith and fair dealing

The Town contends that it is entitled to a summary judgment on the first count of Patnaude's complaint, the claim for breach of an implied covenant of good faith and fair dealing. Although he does not claim that the Town breached any express contractual obligation it owed him, Patnaude avers that he is owed some form of compensation for the overtime hours he worked prior to being fired. The Town contends that, under Maine law, an implied covenant of good faith and fair dealing may not be read into an employment contract such as Patnaude's, and that, in any event, Patnaude has failed to present any evidence that the Town treated him unfairly or that it acted in bad faith.

The Court initially finds as a matter of law that an express contract for employment between Patnaude and the Town existed in this case. Although Patnaude states in his complaint that he was employed pursuant to a contract, he now appears to challenge such a finding in his response to the Town's motion. The Court is satisfied by his prior admission, however, as well as by the undisputed evidence of the memorandum of agreement, the job description, and the personnel policy that governed the parties' relationship in this matter, that an express contract existed between the parties.

¹ The Town's personnel policy states that "[n]o employee shall be allowed to accumulate unreasonable amounts of compensatory time for purposes of taking excessive time off without explicit written approval of the Town Manager."

In Maine, an employment contract of indefinite duration may be terminated at will by either party. *Broussard v. CACI, Inc.-Federal*, 780 F.2d 162, 163 (1st Cir. 1986) (applying Maine law); *Bard v. Bath Iron Works Corp.*, 590 A.2d 152, 155 (Me. 1991). One exception to this rule is “that parties to an employment contract of indefinite duration ‘may enter into an employment contract terminable only pursuant to its express terms--as ‘for cause’ --by clearly stating their intention to do so.” *Bard*, 590 A.2d at 155 (quoting *Larrabee v. Penobscot Frozen Foods, Inc.*, 486 A.2d 97, 99-100 (Me. 1984)). There appears to be no evidence of such a provision in the contract at issue, however, and neither party claims that this exception applies to the instant case.

A review of Patnaude’s job description, the memorandum of agreement entered into between him and the Town, as well as the Town’s personnel policy, discloses that Patnaude was employed by the Town for an indefinite period as deputy chief. Maine’s Law Court has “consistently refused to recognize implied promises in employment contracts of indefinite duration.” *Struck v. Hackett*, 668 A.2d 411, 420 (Me. 1995) (quoting *Bard*, 590 A.2d at 156 (citations omitted)). In light of the above evidence, and in view of this standard, the Court concludes that no equitable relief may be awarded Patnaude, and therefore recommends that a summary judgment be entered in favor of the Town on Count I of the complaint.

B. Whether the Town is entitled to summary judgments on Patnaude’s claims based on unjust enrichment and quantum meruit

In Counts II and III of his complaint, Patnaude claims that he conferred a benefit on the Town by working hours in excess of a forty-hour work week, and that the Town has been unjustly enriched as a result. Patnaude claims that because it is a question of fact whether a true

contract may be said to have existed between him and the Town, he may recover under these two equitable theories because the Town has a legal and moral duty to pay him. The Town contends that it is entitled to a summary judgment on each of these counts because a contract did in fact exist between it and Patnaude, and because he received all the compensation that was owed him.

“[U]njust enrichment describes recovery for the value of the benefit retained when there is no contractual relationship, but when, on the grounds of fairness and justice, the law compels performance of a legal and moral duty to pay.” *Top of the Track Associates v. Lewiston Raceways, Inc.*, 654 A.2d 1293, 1296 (Me. 1995) (quoting *A.F.A.B., Inc. v. Town of Old Orchard Beach*, 639 A.2d 103, 105 n.3 (Me. 1994)). A theory of unjust enrichment applies only in the absence of any quasi-contractual relationship. *Danforth v. Ruotolo*, 650 A.2d 1334, 1335 n.2 (Me. 1994). Because the Court concludes, as noted above, that a contract in fact existed between the parties, Patnaude’s unjust enrichment claim may be dismissed as being without merit. Patnaude may not recover through any equitable remedy that which he cannot recover through the express terms of his employment contract with the Town. Accordingly, his claim regarding unjust enrichment cannot withstand the Town’s motion for a summary judgment because such a theory is inapplicable in a contract setting. The Court therefore recommends that a summary judgment be entered in the Town’s favor on Count II of Patnaude’s complaint.

With respect to the doctrine of *quantum meruit*, the Law Court has stated:

It is a settled principle of contract law that when one renders services to another at the request, or with the knowledge and consent, of the other, and the surrounding circumstances make it reasonable for him to believe that he will receive payment therefor from the other, and he does so believe, a promise to pay will be inferred .

...
Id. at 1335 (quoting *Bourisk v. Amalfitano*, 379 A.2d 149, 151 (Me. 1977) (citations omitted).

Such an equitable remedy typically is available in cases when the recovery of services or materials provided under an implied contract is sought. *See Aladdin Elec. Assoc. v. Town of Old Orchard Beach*, 645 A.2d 1142, 1145 (Me. 1994). Under this theory, a claimant is required to prove that he rendered services to a party at the party's request or with its knowledge and consent, and that the circumstances in which he rendered the services made it reasonable for him to expect that he would receive compensation. *Danforth*, 650 A.2d at 1336. The Court concludes that such a remedy is unavailable in the instant case in view of its prior determination that an express, rather than an implied, contract governed the parties' relations.

The interpretation of unambiguous terms of a contract is a question of law for the Court's determination. *Top of the Track Associates*, 654 A.2d at 1296 (citation omitted). The memorandum of agreement, personnel policy, and job description governing Patnaude's employment with the Town reflect that he was employed as a salaried employee for an indefinite period of time. The terms of the contract reveal that, at the time of his termination, Patnaude could not have had any reasonable expectation that he was entitled to additional compensation for the overtime work he performed prior to his termination. Thus, like his unjust enrichment claim, Patnaude's equitable claim based on *quantum meruit* is inapplicable to the instant case. Patnaude received what he bargained for, and the agreement he entered into with the Town precludes further recovery. Accordingly, the Court recommends that a summary judgment be entered on Count III of Patnaude's complaint, as well.

C. Whether the Town is entitled to a summary judgment on Patnaude's claim pursuant to the Fair Labor Standards Act

In Count IV of his complaint, Patnaude alleges that the Town's failure to pay him for the overtime hours he worked violated the FLSA. The Town contends that the claim is barred by the applicable statute of limitations or, in the alternative, that it is entitled to a summary judgment on this count because Patnaude was employed in an executive capacity and, thus, was exempt from the Act's overtime provisions.

The FLSA incorporates the limitations period set forth in the Portal-to-Portal Act of 1947, 29 U.S.C. § 255 (1985), which is two years unless the alleged illegal conduct was "willful," in which case the period is three years. *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 129 (1988). To make out a claim for a willful violation, a plaintiff must prove that the employer either knew or showed reckless disregard as to whether its conduct was prohibited by the statute. *Id.*

In the case at bar, Patnaude's cause of action pursuant to the FLSA accrued on or about June 1, 1993, the date on which he was terminated from the Town's employment. *See Knight v. Columbus, Ga.*, 19 F.3d 579, 581 (11th Cir. 1994) (cause of action accrues on the payday following the work period for which the entitlement to overtime pay is claimed). Thus, the applicable statute of limitations in this case began to run on or about June 1, 1993, and expired, at the latest date, on June 1, 1996, but more likely on June 1, 1995. Patnaude offers no evidence to support his allegation that the Town's violation of the FLSA was willful. Even if Patnaude's claim qualified for the three year period of limitations instead of the two, he still would have filed his FLSA too late for purposes of the Act's deadline. Patnaude did not assert his claim until

December 5, 1996, when he filed suit in the Kennebec County Superior Court.² Accordingly, Patnaude's claim pursuant to the FLSA is barred by the Act's statute of limitations. The Court thus recommends that a summary judgment in favor of the Town be granted on this count of Patnaude's complaint, as well.

D. Whether the Town is entitled to a summary judgment on Patnaude's claim pursuant to 26 M.R.S.A. §§ 626, 626-A

In the final count of his complaint, Patnaude alleges that he is entitled to relief pursuant to Maine's wage payment statute, 26 M.R.S.A. § 626 (Supp. 1996).³ The statute essentially provides that an employee leaving his employment must be paid in full within a reasonable time after his demand. A companion statute, 26 M.R.S.A. § 626-A (Supp. 1996), provides certain penalties for an employer who violates section 626 or other similar statutes. The Town contends that a summary judgment should be granted in its favor on this count because it paid Patnaude all the compensation due him upon his termination.

The Court agrees with the Town's contention that, pursuant to its contract with Patnaude, it paid him all the compensation he was owed. As discussed above, the Court concludes that there is no genuine issue as to whether Patnaude is owed any additional compensation for his

² The Court is unpersuaded by Patnaude's contention that the later dates of November 20, 1995, and January 1996, should apply as the dates on which he filed suit under the Fair Labor Standards Act, 29 U.S.C. §§ 201 - 219 (1985 & Supp. 1997). Such dates apparently relate to a prior suit filed by Patnaude in the Maine District Court. The Court is satisfied, based on its review of the record, that a proper FLSA claim was not articulated by Patnaude until December 5, 1996, when he filed suit in the Maine Superior Court.

³ 26 M.R.S.A. § 626 (Supp. 1996) provides in relevant part:

An employee leaving employment must be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid,

unused comp time. Patnaude does not adequately counter the evidence of the express provisions of his contract with the Town to withstand the Town's motion on this count. Nor does he dispute the Town's contention that, upon his termination, he promptly was paid all the salary due him. The record discloses that what Patnaude now seeks would be above and beyond what his contract of employment provided for. Accordingly, the Court recommends that a summary judgment in favor of the Town be granted on this count, as well.

IV. Conclusion

For the foregoing reasons, the Court recommends that a summary judgment in the defendant's favor be **GRANTED** on all counts of the plaintiff's complaint.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated this 29th day of August, 1997.