

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DANIEL A. GUDLESKI, JR., : NO. 05-01,176  
Plaintiff :  
 : CIVIL ACTION - LAW  
vs. :  
 :  
 :  
PPL ELECTRIC UTILITIES, :  
Defendant : Preliminary Objections

**OPINION AND ORDER**

Before the Court are Defendant's preliminary objections, filed July 26, 2005. Argument thereon was held October 14, 2005.

The Complaint filed by Plaintiff on July 5, 2005, seeks monies allegedly owed to him by Defendant, his former employer, under Defendant's "Manager's Compensation Plan (GP400), Variable Pay Plan". Plaintiff contends (Count I) such monies are "wages" and due under the Wage Payment and Collection Law, 43 Pa.C.S. Section 260.1 et seq., or (Count II) the monies should be paid based on the principle of unjust enrichment. In its preliminary objections, Defendant asserts the legal insufficiency of both claims, and seeks their dismissal.<sup>1</sup>

The Wage Payment and Collection Law (WPCL) defines "wages" as follows:

**"Wages."** Includes all earnings of an employe, regardless of whether determined on time, task, piece, commission or other method of calculation. The term "wages" also includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employes' pay by the employer.

43 Pa.C.S. Section 260.2a. Further, "fringe benefits or wage supplements" are defined as follows:

**"Fringe benefits or wage supplements."** Includes all monetary employer payments to provide benefits under any employe benefit plan

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<sup>1</sup> Defendant also raises the fact that Plaintiff failed to attach to his Complaint a copy of the employment agreement upon which his claimed is based, specifically, the "Manager's Compensation Plan (GP400), Variable Pay Plan". Plaintiff admits the Complaint's insufficiency in this regard but inasmuch as Defendant has attached such to its brief in support of the preliminary objections, and upon agreement of counsel, the document will be deemed incorporated into the Complaint, thus rendering amendment unnecessary.

[under ERISA] ... ; as well as separation, vacation, holiday, or guaranteed pay; reimbursement for expenses; union dues withheld from the employee's pay by the employer; and any other amount to be paid pursuant to an agreement to the employee, a third party or fund for the benefit of employees.

Id. Defendant argues that any payments under the Variable Pay Plan are neither “wages” nor “fringe benefits or wage supplements”, citing Kafando v. Erie Ceramic Arts Company, 764 A.2d 59 (Pa. Super. 2000). The Court agrees.

In Kafando, the Court determined that amounts payable under a “gainsharing program” were based on the profitability of the company, the calculation of which were solely dependent upon company earnings and not related to any work performed by individual employees, and thus were not “wages” within the meaning of the WPCL. Further, the Court held the payments were not “fringe benefits or wage supplements” under the “guaranteed pay” or “any other amount to be paid pursuant to an agreement to the employee” language of Section 260.2a, as the conditions for payment had not been met in that case. In the instant matter, the “Variable Pay” Plaintiff seeks to recover is designed to compensate for departmental, not individual, performance.<sup>2</sup> Thus, it does not qualify as “wages”. Further, as in Kafando, the amounts sought by Plaintiff cannot be considered “guaranteed pay” or required “to be paid pursuant to an agreement” because the conditions for payment were not met. Specifically, the Plan indicates that employees who leave the company “before the variable award for that year is paid for reasons other than death, disability, conversion to part-time status or retirement” forfeit their right to receive such a payment. In his Complaint, Plaintiff states that he was terminated by Defendant, that he left on or about February 4, 2005, and that the amounts paid under the Variable Pay Plan would have been paid in March 2005. Thus, since Plaintiff left for a reason

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<sup>2</sup> This conclusion is drawn based on several sections of the Plan. First, in the Introduction paragraph on page 1 of the Plan, which follows an outline of the plan as including Base Pay, Variable Pay and Incentive Compensation Plan for Key Employees, it is stated that “[t]he Managers Compensation Plan is a pay for performance system designed to tie employee compensation to individual, departmental and corporate performance.” Further, the purpose of Base Pay is set forth, on page 1 of the Plan, as “intended to reward the accountabilities and competencies required in a position”, while the purpose of Variable Pay is set forth, on page 3 of the Plan, as “intended to reward annual contributions and achievement of annual objectives”, and employees are directed therein that they “should be focused on how they can contribute to the achievement of corporate financial objectives and departmental objectives” as it “not only increases the funding for management variable pay awards, but it will result in better performance for PPL.”

other than those enumerated in the plan, and before the amount sought under the Plan was due to be paid, he forfeited his right to such payment. It cannot, therefore, be considered a “fringe benefit or wage supplement”.<sup>3</sup> Dismissal of the WPCL claim is thus appropriate as it is clear from the Complaint itself that Plaintiff cannot make out such a claim.

With respect to the alternative theory of unjust enrichment, it is well settled that a remedy in equity may not be had where there exists an adequate remedy at law. Brown v. Gloeckner, 118 A.2d 449 (Pa. 1955). Here, since Plaintiff has a contract/statutory remedy, he may not pursue his claim in the alternative form of one for unjust enrichment. See Meehan v. Cheltenham Township, 189 A.2d 593 (Pa 1963)(adequate remedy at law for money damages divested equity court of jurisdiction over action for alleged unjust enrichment). Accordingly, this claim must also be dismissed.

**ORDER**

AND NOW, this 28<sup>th</sup> day of October 2005, for the foregoing reasons, Defendant’s preliminary objections are sustained and Plaintiff’s Complaint is hereby DISMISSED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Matthew Zeigler, Esq.  
C. Edward S. Mitchell, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson

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<sup>3</sup> Plaintiff’s reliance on Gautney v. Amerigas Propane, Inc., 107 F.Supp.2d 634 (E.D. Pa. 2000), is misplaced. In Gautney, the issue of whether the plaintiff therein forfeited a bonus based on having been discharged for misconduct was subject to a factual dispute, thus rendering summary judgment inappropriate, whereas in the instant matter, the fact of Plaintiff’s termination has been set forth in the Complaint and is accepted as true.