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U.S. DISTRICT COURT
NEW HAVEN, CT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

EDWIN VINCENT JR.
Plaintiff,

CIVIL ACTION NO.

VS.

FRANCISCO ORTIZ, and
CITY OF NEW HAVEN
Defendants

7 CV 129A MRK

AUGUST 27, 2007

COMPLAINT

INTRODUCTION AND JURISDICTION

1. This is an action for money damages and injunctive relief to redress the deprivation of rights secured to the plaintiff, Edwin Vincent Jr., by the Constitution and laws of the United States and the State of Connecticut. Defendant Francisco Ortiz, the Chief of Police, and the plaintiff's employer, the City of New Haven, imposed a one-day unpaid suspension on the plaintiff, who is a New Haven police officer, and removed him from the police department dive team without any just and reasonable cause, without due process of law, and in violation of his equal protection rights, on September 2, 2004.

The actions of the defendants violated Mr. Vincent's constitutional rights to Equal Protection of the Laws and Due Process of law, guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Title 42 U.S.C. §1983 and 1988.

2. This Court has jurisdiction over the plaintiff's claims pursuant to Title 28 U.S.C. §§1331, 1343(3) and 1367(a) and Title 42 U.S.C. §§1983 and 1988.

PARTIES

3. The plaintiff, EDWIN VINCENT JR., is an adult male citizen of the United States and State of Connecticut, residing in Killingworth, Connecticut. At all times mentioned in this action, he was employed by the City of New Haven, Department of Police Services. The plaintiff is a patrol officer.

4. The defendant, FRANCISCO ORTIZ, is and was, at all times relevant to this complaint, the Chief of Police for the City of New Haven. As the Chief of Police, defendant Ortiz is responsible for all disciplinary actions of police department employees, and for ensuring that all investigations of employee conduct and alleged misconduct are carried out in a lawful and constitutional manner. At all times relevant to this complaint, defendant ORTIZ was acting in his official capacity. He is sued, however, only in his individual capacity.

5. The defendant, CITY OF NEW HAVEN is a municipal corporation organized under the laws of the United States. The City is the employer of the plaintiff.

FACTUAL ALLEGATIONS

6. The plaintiff has been employed as a New Haven police officer since April, 1988.

7. During all times relevant to this complaint, the plaintiff has been a member of a collective bargaining unit, A.F.S.C.M.E. Council 15, Local 530, which represents the sworn, non-managerial employees of the New Haven Police Department. During the 19-year course of his employment with the City of New Haven, the terms and conditions of his employment have been the subject of successive collective bargaining agreements ("union contracts".)

8. At all times relevant to this complaint, a collective bargaining agreement was in effect between the City of New Haven and the plaintiff's union which governed the terms and conditions of the plaintiff's employment, including but not limited to compensation, supplemental compensation for additional duties, such as membership in specialized units, accrual and use of sick time, disciplinary proceedings and standards for imposing discipline.

9. Pursuant to the union contract, discipline can only be imposed for "good cause."

10. Pursuant to the terms of union contract, police officers, including the plaintiff, were entitled to accrue a certain number of sick days each year, and they were also

entitled to save unused sick time up to a certain maximum number of days. In 2004, bargaining unit members earned 15 sick days a year and were entitled to accumulate 150 days, or 1200 hours, of sick time.

11. The plaintiff reached his maximum of 1200 unused sick time hours as of 2000.

12. Pursuant to the union contract in effect in 2004, police officers were entitled to use their own sick days for a family member's illness and medical documentation was only required for a period of absence in excess of three consecutive days.

13. In early 2004, elected and other officials in the City of New Haven began making public statements that the City was going to "crack down" on alleged abuse of sick time by municipal employees.

14. As part of the aforesaid crackdown, City officials began providing monthly lists of employee use of sick time to each department head and asked each department to review use of sick time.

15. The City did not provide the department heads with any criteria for determining what constituted abuse of sick time.

16. In the spring of 2004, Captain Stephen Verrilli was the supervisor of the patrol division of the New Haven police department and was responsible for its day-to-day operations, including reviewing use of sick time by patrol officers.

17. Defendant Ortiz, and/or other employees of the New Haven police department, acting under his direction and as his agent, directed Captain Verrilli to provide him with the names of patrol officers who had used "excessive" numbers of sick days during the first half of 2004.

18. Ortiz did not provide Captain Verrilli with any criteria for determining what constituted "excessive" use of sick days, nor did he provide the plaintiff and other patrol officers with notice as to what would constitute "excessive" use of sick time.

19. Defendant Ortiz did not direct Verrilli to conduct any individual investigation with respect to the use or alleged "excessive use" of sick time by any police department employees and Verrilli did not conduct any such individualized investigation.

20. Verrilli made a decision to report to Ortiz the names of patrol officers who had used more than 7.5 days of sick time during the first half of 2004.

21. Plaintiff is informed and believes that police officers who were members of units other than the patrol unit were not reported to the Chief of Police if they had used more than 7.5 days of sick time in the first half of 2004.

22. On or about July 13, 2004, Verrilli sent a memo to defendant Ortiz that the plaintiff had abused sick time, in violation of the union contract, because he had taken ten (10) sick days since January 1, 2004. A copy of the memo is attached as Exhibit A.

23. Prior to the issuance of the memo, the plaintiff was never notified that he was the subject of an investigation for alleged abuse of sick time, nor was he given any opportunity to explain his use of sick time during the first half of 2004, nor was he asked to provide any medical documentation, nor was he notified that he was subject to discipline for using more than his contractual 15 days of sick time in the first half of the calendar year.

24. During the first half of 2004, the plaintiff had used three sick days when his wife was hospitalized on two occasions in May and June, 2004, and had used another sick day when his daughter was ill at college during the winter of 2004.

25. The plaintiff was not afforded an opportunity to meet with Captain Verrilli after the issuance of the July 13, 2004, memo, to explain his use of sick time or to provide medical documentation.

26. After receiving a copy of Captain Verrilli's memo from his union representation, the plaintiff did, however, obtain a letter from his wife's employer corroborating the days that the plaintiff's wife had been hospitalized in May and June, 2004, and provided that letter to Captain Verrilli on or about July 23, 2004.

27. On or about August 24, 2004, the plaintiff was ordered to appear at a disciplinary hearing with defendant Ortiz on August 31, 2004.

28. The plaintiff appeared at the hearing with his union representative.

29. During that hearing, the plaintiff's union representative attempted to give defendant Ortiz a copy of the letter from his wife's employer that he had previously provided to Captain Verrilli but Ortiz refused to read the letter. The plaintiff was not asked to provide any medical documentation of his wife's hospitalizations or his daughter's illness, or any other explanation for his use of sick time.

30. On September 2, 2004, defendant Ortiz issued a disciplinary memorandum to the plaintiff stating that he had abused sick time and that he would be suspended for one day, without pay, and would be permanently removed from the police department's underwater rescue and recovery team ("dive team").

31. Defendant Ortiz imposed the one-day suspension on September 8, 2004, a day when the plaintiff also was scheduled to work an extra-duty job.

32. At the time the disciplinary action was imposed by defendant Ortiz, the plaintiff had been a member in good standing of the New Haven police department dive team for a number of years. The plaintiff was the most experienced scuba diver on the team. As a member of the dive team, the plaintiff was required to participate in training exercises on a regular basis and was entitled to additional compensation for those training days if he was not scheduled to work. The plaintiff was also entitled to annual emergency unit compensation because of his membership on the dive team.

33. Other police officers employed by the City of New Haven had used more sick time than the plaintiff during the first half of 2004 but were not subject to suspension and other discipline.

34. The plaintiff filed a timely grievance, through his union, of the disciplinary action imposed on him by defendant Ortiz and the City of New Haven.

35. The grievance was submitted to binding arbitration as provided by the union contract and applicable state law.

36. On August 7, 2007, the panel of three arbitrators sustained the plaintiff's grievance and determined that there was not good cause for the suspension and for removing him from the dive team.

FIRST COUNT (AS TO DEFENDANT ORTIZ)

1. - 36. Paragraphs 1 through 36 are realleged and incorporated herein by reference as Paragraphs 1 through 36 of the First Count.

37. The actions of defendant Ortiz, his agents and employees, were arbitrary and capricious.

38. The actions of defendant Ortiz, his agents and employees, violated the plaintiff's rights to procedural and substantive due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Title 42 U.S.C. § 1983 and 1988.

39. The actions of defendant Ortiz, his agents and employees, violated the plaintiff's rights to equal protection of the laws, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Title 42 U.S.C. § 1983 and 1988.

40. The actions of defendant Ortiz were wilful and intentional, and taken in reckless disregard of the plaintiff's constitutional rights.

41. As a direct and proximate result of the actions of defendant Ortiz, as described herein, the plaintiff has suffered economic and other losses, including but not limited to loss of earnings and other employment-related compensation and benefits, other economic losses, emotional distress, psychological pain and suffering, embarrassment and humiliation, damage to his reputation in the community, and deprivation of his constitutional rights.

SECOND COUNT (AS TO THE CITY OF NEW HAVEN)

1. -36. Paragraphs 1 through 36 of the First Count are realleged and incorporated herein by reference as Paragraphs 1 through 36 of the Second Count.

37. The actions of the defendant City of New Haven were arbitrary, capricious and fundamentally unfair.

38. The actions of the City of New Haven violated the plaintiff's rights to equal employment opportunity, equal protection of the laws and procedural and substantive

due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Title 42 U.S.C. § 1983 and 1988.

39. The actions of the City were wilful and intentional, and taken in reckless disregard of the plaintiff's constitutional rights.

40. As a direct and proximate result of the actions of defendant City, as described herein, the plaintiff has suffered economic and other losses, including but not limited to loss of earnings and other employment-related compensation and benefits, other economic losses, emotional distress, psychological pain and suffering, embarrassment and humiliation, damage to his reputation in the community, and deprivation of his constitutional rights.

WHEREFORE, the plaintiff claims judgment against the defendants as follows:

1. A declaratory judgment that defendant ORTIZ violated the plaintiff's civil and constitutional rights;
2. A declaratory judgment that the defendant CITY OF NEW HAVEN violated the plaintiff's civil and constitutional rights;
3. An injunction requiring the City of New Haven to reinstate the plaintiff to the dive team, and to compensate him for all of his financial and other lost benefits arising out of the disciplinary action taken on September 2, 2004;

4. Compensatory damages, including but not limited to financial compensation for loss of employment and related benefits, and damages for emotional distress;
5. Punitive damages against defendant Ortiz in an amount this Court shall consider to be just and fair;
6. Attorney fees and the cost of this action;
7. Such other relief as this Court shall consider to be fair and equitable.

CLAIM FOR JURY TRIAL

The plaintiff claims trial by jury in this case.

THE PLAINTIFF, EDWIN VINCENT JR.

By

A handwritten signature in black ink, appearing to read 'Diane Polan', written over a horizontal line.

DIANE POLAN

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Plaintiff's Attorney

6-1

New Haven Department Of Police Service
 One Union Ave, New Haven CT 06519

REPORT CONCERNING VIOLATION OF DEPARTMENT RULE/ORDER

EMPLOYEE ON REPORT: Officer Edwin Vincent

Division: Uniform Services

REPORTED BY: Captain Stephen Verrelli

Date: July 13, 2004

DIVISION: Uniform Services

RULE/ORDER VIOLATED: General Order 75-1, Section 2, Article 1 (Abusive of Sick Leave)

DATE OF VIOLATION: June 30, 2004

EMPLOYEE NOTIFIED OF VIOLATION ON:

BY: Captain Stephen Verrelli (Forwarded Report)

SUMMARY OF VIOLATION:

That during the year 2004, the office of the Community Policing Resource Coordinator (Uniform Services O.I.C.), as a matter of regular duties monitors the use of sick time by all Uniform Services Division personnel. Regular attendance of its personnel is essential to operations, moral and provides efficient staffing for the department and the communities it serves. Maintaining proper use of sick time as in accordance with the rules and regulations of the department is the responsibility of all its personnel while the overuse of sick leave without medical exemption or the absence from duty that is indicative of abuse shall be reported to the Chief of Police.

In monitoring the use of sick time in 2004, reference was made to all Shift Supervisors and District Managers that in some cases use of sick time was excessive, while patterns of sick leave were also commonplace in some of the personnel and improvement was expected.

Between the period of January 1, 2004 and June 30, 2004, Officer Vincent used 10 (ten) sick days, certainly excessive by any standard, which is far more than the contractual allowance for paid sick leave per year (15 days), and has demonstrated the following pattern of sick time leave:

- Of those 10 sick days used, 7 were used in conjunction with days off or time off.

EMPLOYEE'S VERSION OF VIOLATION:

Officer Vincent has not submitted any medical documentation to the Office of the Uniform Services O.I.C. in support of the extensive and/or pattern of sick leave.

CORROBORATION:

Attached: Attendance Controller
 Employees Sick Leave Accruals

Signature of Captain Stephen Verrelli

SUBMITTED BY: _____

EXHIBIT A