

A Little Bit of Justice Can Be Prohibitive

(From my weekly Work & Life Column)

In employment law, one of the toughest challenges is to get a little bit of justice.

Lawyers get so many calls from people who never got their last paycheck, or their last raise, or their overtime differential - and usually it takes more money to pursue those claims than they're worth.

But Rosanne Simons recently won her little bit of justice, when a U.S. district judge in Minnesota said that her former employer owed her the \$1,456.55 he had neglected to contribute to her IRA account at work.

It took a year and a half of facing that employer, whose bill to fight her will almost certainly top \$100,000. And the U.S. Department of Labor let her down along the way.

But she had lawyers who stuck with her, partly because they were so convinced she would win that the court would order the other side to pay their fees.

Here's the story, based on court documents and interviews. Through its attorney, the company declined to comment.

In 2004, Simons was a customer service representative at Central Telephone Sales and Service in Plymouth when she stumbled on shortages in her IRA account.

Central Telephone was obligated to match employee contributions, up to 3 percent of their salaries.

On May 6, 2004, she wrote a letter to company President Frank Bagot Sr., saying she had noticed the lack of employer contributions. Bagot fired her that day.

Simons turned to federal regulators for help, filing a complaint with the Labor Department, which oversees such accounts.

The department's regional office in Kansas City sent Bagot a letter saying the agency determined that he had failed to deposit \$38,554.28 in employer contributions into the employees' accounts from 2001 to 2004. It's dated March 29, 2006.

But the letter concluded, "Despite your refusal to undertake the corrective action we deem necessary, we have decided that legal action by the department will not be commenced at this time."

"What kind of empty law is that?" Simons asked.

The department declined to elaborate for this column.

Simons eventually decided to sue Bagot.

Her firing added retaliation to the original financial complaint in a lawsuit filed by Simons' attorney, John Ella, at Mansfield, Tanick and Cohen in Minneapolis.

Several attempts to settle or mediate failed, so the case went to trial on Oct. 20.

The company argued that Simons was fired for disparaging Bagot's reputation and for performance issues.

Judge Ann Montgomery found the retaliation argument more persuasive, and she ruled for Simons.

Her Nov. 13 order gave Bagot a \$52,376.53 bill that included the IRA debt to Simons, lost wages for her and \$32,000 in attorneys' fees. Bagot has his own attorneys' fees on top of that.

But the money awarded Ella's firm is less than half its real \$68,623.50 bill.

Which gets us back to the "little justice" issue.

Montgomery said the real bill was unreasonable, out of proportion with the case.

And while Ella appreciated some pay, his view is this: "An award of [full] attorneys' fees is even more important when there's a relatively small dollar amount; otherwise, those claims don't get pursued."

Then, on Tuesday, the eve of the deadline to appeal, the two sides agreed to a settlement to stop the case from going further. The terms were not disclosed.

In the meantime, Simons has moved on, studying water quality science at St. Cloud Technical College. At 47, she's aiming for a career in water quality work, maybe for a municipal utility or a private company. She'll complete an associate's degree in June.