

SUPREME COURT OF LOUISIANA

NO. 97-C-1784

DIANNE BEARD

versus

**SUMMIT INSTITUTE FOR PULMONARY
MEDICINE AND REHABILITATION, INC.**

Knoll, J., dissenting

I find that the majority incorrectly applies La. R.S. 23:624, 631(A)(1)(b), and 632 to the facts of this case. While I agree with the majority's legal pronouncements enunciated regarding *resignation* of employment, I find that the majority errs in equating "resignation," with "abandonment" of employment. For the reasons explained hereafter, I find that the statutes relied upon are inapposite to the undisputed facts of the case which establish that Dianne Beard abandoned her position.

As pertinent herein, the application of La. R.S. 23:632(A)(1)(b) is premised "[u]pon the *resignation* of any laborer or other employee of any kind whatever. . . ." (Emphasis added). Likewise, La.R.S. 23:624 negates certain contracts by which the employee forfeits wages if discharged or "if the employee *resign[s]* their employment" (Emphasis added). Accordingly, it is clear that it is only if an employer refuses to pay wages upon discharge or *resignation* that the penalty provisions of La.R.S. 23:632 become operative.

In the present case, it is undisputed that Diane Beard did not resign her position as a licensed practical nurse at Summit Institute of Pulmonary Medicine, Inc. (Summit), a long term acute care hospital. To the contrary, the facts show that Beard walked off the job without reporting to the charge nurse that she was permanently leaving. As

shown in the affidavit of Renee Downey,¹ Summit's director of nursing, Beard abandoned her employment on June 25, 1995, when there was a critical shortage of nurses in the critical care unit and this action complicated an already bad situation. On the following day, Beard stated to Downey that she left because she did not like the aides assigned to her during her shift and acknowledged that she abandoned her position, leaving the shift shorthanded.

Against that factual backdrop, I note that Summit had a human resources policy, concerning "abandonment of position" that applied to Beard. Particularly, Item 4 of the policy states that "[a]n employee will be considered to have abandoned his/her position if he/she walks off the job without cause." Similarly, Item 6 of the policy provides that "[w]hen an employee abandons his/her position, all accrued benefits are forfeited." Although Summit's policy manual states that "[a]bandonment of position is considered a voluntary resignation without notice[.]" it is abundantly clear from contextual analysis that abandonment of position is clearly distinguished from resignation proceeded by notice. The former is subject to the forfeiture of all accrued benefits; the latter is not.

It is evident that there are strong policy reasons for upholding Summit's contractual provisions regarding abandonment of position without notice. As stated in the appellate court decision:

In any health care facility, it is essential to have proper staffing to provide the requisite patient care. An employee who leaves her position without notice severely undermines the employer's ability to give adequate care. The policy's purpose is to protect the patient.

Beard v. Summit Institute of Pulmonary Medicine and Rehabilitation, Inc., 29,603 (La. App. 2 Cir. 6/18/97), 697 So.2d 621, 623.

¹ This case is presented to us as a decision on a motion for summary judgment urged by Beard. Summit entered this affidavit into evidence in response to Beard's motion for summary judgment.

With this policy in mind, it is clear that Beard's employment was reasonably conditioned on her agreement that she would not abandon her commitment to provide critical nursing care. As such, I find that Summit's inclusion of a penalty provision, i.e., the forfeiture of accrued benefits, well serves this essential public policy and was a valid tool of enforcement. Simply stated, I find that Beard's reprehensible conduct deserved the invocation of the penalty provisions of Summit's human resources policy.

In stark contrast, I find that the majority decision does disservice to this much needed policy, and impermissibly extends clearly stated statutory law as a shield to protect Beard's irresponsible conduct. In my view, while the legislature enacted the statutes at issue to protect the employee's prompt payment of wages, the legislature did not intend to protect the reprehensible conduct of this employee by the enactment of these statutes. Summit is not trying to get out of promptly paying Beard's earned wages; this it has done. Summit is trying to protect itself from an employee abandoning a critical care patient.

I further note that Beard's entitlement to *vacation pay was conditioned* not only on performing her nursing duties, but also on her agreement not to abandon her position. Accordingly, I do not find that Beard earned her vacation pay, since she failed to fulfill all bargained for conditions of her employment contract with Summit. Therefore, I do not find that Beard's entitlement to vacation pay ever vested.

For these reasons, it is clear to me that although the result of resignation and abandonment are the same, i.e., voluntary termination of employment, the conduct is easily distinguishable. As I point out above, the law protects the employee who resigns their employment; it should not protect one who deserts the employer and the patient who was to be the recipient of critical care. Accordingly, I would affirm the decision

of the Court of Appeal, Second Circuit, and remand this case to the district court for trial on the merits. For these reasons, I respectfully dissent.