

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT CHRISTIANSTED

FELIX CANCEL	)	
	)	
Plaintiff	)	CIVIL NO. 1614/1981
	)	
vs.	)	ACTION FOR WAGES DUE
	)	
GOVERNMENT OF THE VIRGIN ISLANDS	)	
	)	
Defendant	)	

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FINCH, Judge

MEMORANDUM OPINION

This cause came on to be heard on June 3, 1982 upon plaintiff's Motion for Summary Judgment and defendant's Cross-Motion for Summary Judgment. This court having heard arguments and based on the following reasons, will grant plaintiff's motion for summary judgment.

FACTS

Plaintiff, Felix Cancel, a lieutenant on the police force, was appointed Acting Deputy Chief of Police on September 27, 1979 by then Commissioner Milton Branch of the Virgin Islands Department of Public Safety.

Plaintiff served in his "acting" capacity from September 27, 1979 to March 31, 1981, and received compensation as lieutenant at an annual salary of \$21,296.00.

The position of Deputy Chief of Police was unfunded from September 27, 1979 to October 1, 1980. On October 23, 1980 Act No. 4498 was approved and thereby provided funds for the position of Deputy Chief of Police, effective October 1, 1980, at an annual salary of \$23,500.00. Plaintiff, however, was not granted the salary of deputy chief of police. Although the position was funded, plaintiff was not paid the salary of deputy chief.

On December 29, 1980, Executive Order No. 242/81 was approved. This order granted a fifteen percent increase retroactive to October 1, 1980 to all non-union employees. The plaintiff was a member of this class of employees and, therefore, entitled to the 15% increase. Yet, plaintiff did not receive this 15% increase.

DISCUSSION

The first issue presented is whether plaintiff is entitled to compensation as the deputy chief of police when in an "acting" capacity.

Plaintiff takes the position that he is entitled to the salary of deputy chief once the position became funded, pursuant to Act. No. 4498 for the period October 1, 1980 to March 31, 1981.

The defendant takes the position that plaintiff is not entitled to compensation at the deputy chief salary because Section 4(a) of Executive Order No. 242/81 provides for only "acting" department or agency heads to receive the full salary of the position they are filling and the position filled by the plaintiff is not that of a department nor agency head.

Act No. 4498, approved on October 23, 1980, included in it a list of all classified, unclassified and temporary positions of the Government of the Virgin Islands. This list, which is styled a "Position Supplement," included the position of

Deputy Chief of Police for St. Croix.

Act No. 4498 also provides in pertinent part that: "notwithstanding any other provisions of law of law to the contrary, no person shall be paid less than the amount provided for his or her position in the Position Supplement".

Title 3 V.I.C. §552 (Suppl.) states:

"It is the policy of the Virgin Islands Government to provide equal pay for equal work ..."

Lt. Cancel was functioning as Deputy Chief, though in an "acting" capacity. Therefore, he should be compensated for any work done as deputy chief at the rate of compensation for deputy chief. In addition, since the position of deputy chief appears in the Position Supplement and since Act No. 4498 expressly provides for the payment of the salary called for in the Position Supplement, Lt. Cancel is therefore entitled to be paid the salary of deputy chief for the period October 1, 1980 through March 31, 1981. The Government of the Virgin Islands will be ordered to pay Lt. Cancel \$2,864.50 for the period he served as Acting Deputy Chief of Police.

Plaintiff next argues that he is entitled to the fifteen percent across the board increase from April 1, 1981 to present.

He opines that once he ceased serving in the position of "Acting Deputy Chief" and returned to his position as lieutenant his salary should have been increased by fifteen percent in accordance with Executive Order No. 242/81.

In oral argument, the Government conceded the fact that plaintiff is entitled to the fifteen percent increase.

Executive Order No. 242/81 dated December 29, 1980 granted a fifteen percent increase retroactive to October 1, 1980 to all non-union employees. Plaintiff was a member of the class of employees entitled to the fifteen percent increase. However, plaintiff to date has yet to receive the monies to which he is entitled.

Plaintiff's salary as lieutenant is \$21,296.00 yearly. By adding the fifteen percent increase, the salary would be \$24,490.40 yearly, an increase of \$3,194.40 yearly. This court finds that plaintiff is entitled to the fifteen percent increase to become effective for the period April 1, 1981 to present.

DATED:

12/2/82


Raymond L. Finch, Judge