St. John's Law Review

Volume 43, July 1968, Number 1 Article 37

Judiciary Law § 751: Sanctions Appear To Be Effective

St. John's Law Review

state and notice of service arriving while the plaintiff's attorney was away from her office, made compliance with the statute impossible. The court held, therefore, that failure to file within ten days was excusable and was not jurisdictional or prejudicial.

Thus the court continues the policy of permitting extensions of time when just cause is shown. The degree of "just cause" one must show varies with the degree of prejudice resulting to the other party by the extension of time.[163] Thus where the degree of prejudice is slight or non-existent, the courts have been very liberal in granting extensions of time.[164]

The court in *Rodriguez* points out that the special proceeding initiated by plaintiff in this case—"an application for an order to direct the commissioner to accept the late filing"—is not needed or warranted. In the future, an extension of time may be applied for by an application ex parte or by a motion on notice made in the very action initiated by the service of the summons.

JUDICIARY LAW

Judiciary Law § 751: Sanctions appear to be ineffective.

In *Board of Education of City of New York v. Shanker*,[165] the court held that where an employee organization wilfully disregards an order enjoining its members from striking, a fine will be imposed for criminal contempt. In accordance with Section 751 of the Judiciary Law, the United Federation of Teachers was fined $150,000 and the president of the organization fined $250 and sentenced to fifteen days in jail.

Violation of a court injunction has long been recognized as a form of criminal contempt.[166] Prior to September 1, 1967, however, the maximum punishment for this violation was $250 and thirty days in jail.[167] In order to remedy the ineffectiveness of this penalty against employee organizations as defined in Section

---

[163] 2 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶2004.03 (1967).

[164] *E.g.*, Clarson Constr. Co. v. Vespa, 21 Misc. 2d 149, 196 N.Y.S.2d 362 (Sup. Ct. Queens County 1960); Van Dyne v. Sabo, 110 N.Y.S.2d 625 (Sup. Ct. Kings County 1951); *In re* Luckenback's Will, 196 Misc. 782, 96 N.Y.S.2d 244 (Surr. Ct. Kings County 1949).

[165] 54 Misc. 2d 941, 283 N.Y.S.2d 548 (Sup. Ct. N.Y. County 1967).

[166] *See* People *ex rel.* Stearns v. Marr, 181 N.Y. 463, 74 N.E. 431 (1905); People *ex rel.* Davis v. Sturtevant, 9 N.Y. 263 (1853); Spohrer v. Cohen, 3 Misc. 2d 248, 149 N.Y.S.2d 493 (Sup. Ct. Nassau County 1956).

[167] N.Y. JUDICIARY LAW § 751.

201 of the Civil Service Act,[168] Section 751 of the Judiciary Law was amended. It provides that while individual contempt remains the same, in the case of the employee organization,

> the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court in an amount equal to one fifty-second (1/52) of the total amount of annual membership dues of such employee organization or ten thousand dollars whichever is lesser. . . .[169]

In light of the fact that this new provision was in effect at the time the United Federation of Teachers decided to strike, serious doubt is cast on the provision's prospective effectiveness. Recent developments, such as the strike of the Sanitation Workers, corroborate that $10,000 may be of little consequence to the financially sound organization.

Apparently, in order to restrain public service organizations from striking, either a fine proportionate to the organization's wealth or increased imprisonment against the officers is necessary.

---

[168] Section 201(6) basically interprets the term "employee organization" to mean "an organization of any kind having as its primary purpose the improvement of terms and conditions of employment of public employees . . . ." The Condon-Wadlin Act, although recently repealed, enacted into statute the established common-law prohibition against strikes. N.Y. Sess. Laws 1958, ch. 790. Its substitute, the Taylor Act, includes this anti-strike provision. It states: "No public employee or employee organization . . . shall cause, instigate, encourage, or condone a strike." N.Y. CIVIL SERVICE LAW § 210.

[169] N.Y. JUDICIARY LAW § 751.