**NOT INTENDED FOR PRINT PUBLICATION**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

THOMAS J. EASTES,

Plaintiff,

v. CIVIL ACTION NO. 2:01-0763

VERIZON COMMUNICATIONS,
f.k.a. Bell Atlantic,

Defendant.

**ORDER**

Pending before the court are the plaintiff's motion for summary judgment [Docket 33], the defendant's cross-motion for summary judgment [Docket 39], and the defendant's motion to exceed page limitations [Docket 40]. For cause shown, the defendant's motion to exceed page limitations [Docket 40] is **GRANTED**. For the following reasons, the plaintiff's motion for summary judgment [Docket 33] is **GRANTED** to the extent that it seeks a ruling estopping Verizon from changing Mr. Eastes' official retirement date. The defendant's cross-motion for summary judgment [Docket 39] is **DENIED**. This case is **REMANDED** to the plan administrator for further consideration in accordance with this opinion.

## I. Background

The plaintiff in this case worked for Verizon from 1970 until 2000. This dispute arises out of the circumstances surrounding the plaintiff's departure from Verizon. Specifically, the parties disagree about Mr. Eastes' precise date of retirement.

Verizon, which was then known as Bell Atlantic, hired Mr. Eastes as an engineering assistant on May 5, 1970. Mr. Eastes gave his entire working life to Verizon. In March of 2000, he knew that thirty years of loyal service to what had been one of the nation's most respected companies carried the promise of a hard-earned pension. He then decided to determine exactly when he qualified for his full thirty year pension under Verizon's retirement benefits program. With the guidance of Verizon management, Mr. Eastes determined that on May 5, 2000, he would receive "full" retirement benefits for his thirty years of service. He and Verizon management further agreed that he had 25 accrued vacation days and 5 excused work days which would properly apply as credited days of employment. Verizon agreed that these credited days enabled Mr. Eastes to cease working for Verizon on March 23, 2000, yet officially retire on May 5, 2000. On March 15, 2000, Verizon management met with Mr. Eastes, conducted an exit interview, and filled out all of the necessary separation papers.

The first form, entitled "Bell Atlantic Concession Telephone Service Authorization Form," establishes that Mr. Eastes had requested a "change from active to retiree," and bears the signature of Mr. Eastes' supervisor, Mr. David Helper, in the box marked "approval." The second form is called a "Force Change Report." It names Mr. Eastes, gives his Social Security number, and lists two critical dates. Under "Retirement Date" it reads "5-5-00" and under "Pension Effec. Date" it reads "5-6-00." Further, under "# of Unused Vacation Days in the

Current Year" it reads "0" and under "# of Carry Over Vacation Days Remaining" it reads "0." This indicates that Verizon's representative agreed to credit Mr. Eastes' vacation days towards the May 5, 2000 retirement date. It also bears the signatures of both Mr. Eastes and Verizon's representative, Mr. Helper. At the bottom of this form, it reads "NOTE: The Retirement Date is the last day on the payroll (can be a work day or a vacation day)." Unmistakably, this form indicates that Verizon's representative, Mr. Helper, approved May 5, 2000 as Mr. Eastes' official date of retirement. Accordingly, this form also indicates Verizon's approval of Mr. Eastes' decision to use his accrued vacation time as credit for days worked in the computation of his effective date of retirement.

The next separation document is the "Bell Atlantic Exit Interview Form." This sheet indicates that Mr. Eastes departure is "voluntary." This form was completed by Verizon's representative, Mr. Helper, on March 15, 2000, yet it lists Mr. Eastes' "Date of Separation" as 5-6-00. An accompanying "Worksheet for Payment in Lieu of Vacation" lists Mr. Eastes' "Termination Date" as 5-5-00.

Next is the "Bell Atlantic Employee Exit Acknowledgement" (sic). This form delineates Mr. Eastes "continuing obligation" to protect trade secrets and other sensitive information. It further indicates that Mr. Eastes "returned . . . all documents and records containing trade secrets or proprietary information." This form, again, is signed by both Mr. Eastes and Verizon's representative, Mr. Helper, and is dated 3-15-00.

The final relevant document is the "Bell Atlantic Employee Separations Checklist." Once again, it lists Mr. Eastes' "Employee Separation Date" as 5-6-00 and is completed by Verizon's representative. This checklist indicates that on March 15, 2000, the date of the exit

interview, Verizon's representative completed the following required steps: (1) "Prepare to discuss post employment benefits eligibility" and (2) "Verify the amount of unused accrued vacation days employee is entitled to and prepare forms to ensure payment to employee for unused vacation." This checklist also contains a list of property that Mr. Eastes was required to return to Verizon. The dates listed for many of these items is March 23, 2000; presumably, Mr. Eastes had a week following his exit interview to gather his belongings and say his goodbyes. This form indicates that on March 23, 2000 Mr. Eastes returned his "Bell Atlantic Company ID," "All Keys (Buildings, Desk, Cabinets, vehicles, storage facilities, etc.)," "Access Cards," "Cellular Phones, Pagers, Beepers," "Computers, Laptops, Modems, Printers, Fax Machines," "Calculators (desktop & pocket)," "Equipment, Clothing, Tools," "Work Files, Personnel Files/Records," "Customer Lists/Sales Logs," "Employee Manuals/Handbooks," and finally, it indicates that Mr. Eastes "Retrieve[d] Voice Mail Messages before System is Purged."

These separation documents, considered together, indicate that Mr. Eastes had effectively completed his active employment with Verizon on March 23, 2000. He was never returning to work, and in fact no longer had access to the building. Both parties understood and agreed to this arrangement. Although the parties completed all necessary forms and Mr. Eastes in fact physically left the job in mid-March, the forms indicate that the official date of his retirement was to be May 5, 2000, and that his pension eligibility was slated to begin the following day. His supervisor, Mr. Helper, agreed to all of these arrangements on behalf of Verizon.

Accordingly, relying on these arrangements and the approval of Verizon management, Mr. Eastes left the company on March 23, 2000. Confident that his employment ties to Verizon had been officially severed, Mr. Eastes began working for another telephone company at this

time. Lesley Griffith, the plaintiff's former manager and Mr. Helper's supervisor, discovered that Mr. Eastes had taken a new job. Mr. Griffith believed that this new job was a violation of Verizon's company policies because Mr. Eastes was still technically on the company employment roster until May 5, 2000. Accordingly, Mr. Griffith informed the plaintiff that working for a competitor was a violation of Verizon's policies and required Mr. Eastes to choose between the following three options: (1) retirement as of March 24, 2000; (2) delay of his start date with the competitor until after May 5, 2000; or (3) termination for a violation of company policies. Verizon contends that Mr. Eastes chose the first option.

Accordingly, the Verizon Claims Review Committee (CRC) determined that Mr. Eastes retired on March 25, 2000, which equals 29 years, 10 months, and 20 days of service. Or, alternatively, as noted in the April 23, 2002 findings of the CRC, this time period amounts to 29.9167 years of service. *Verizon Exhibit A* at 327. Under either numerical expression, Mr. Eastes falls just short of thirty full years of service to Verizon.

Mr. Eastes felt that Verizon had reneged on its promise to record his retirement date as May 5, 2000. Accordingly, he filed suit against Verizon in the Circuit Court of Kanawha County, West Virginia, on July 9, 2001. Verizon removed the case to the Southern District of West Virginia on August 17, 2001. On November 27, 2001, the action was stayed pending exhaustion of the plaintiff's administrative remedies before the CRC. On December 14, 2001, his claim was duly submitted to the CRC, which denied his claim for a full pension by letter dated May 1, 2002. The case was then reinstated to the active docket of this court on October 6, 2003. On October 5, 2004, the plaintiff moved for summary judgment, in support of which he produced the "exit interview" documents discussed above. These documents had not been

considered by the CRC in its initial review of Mr. Eastes' claims. Accordingly, this court granted a lengthy continuance in this case to allow the CRC to conduct a full administrative review of all relevant documents.

The CRC reviewed Mr. Eastes' claim and all relevant documents and on December 6, 2004, the committee sent Mr. Eastes a letter affirming its prior denial and providing a review of its findings. The parties have filed cross motions for summary judgment and these motions are now ripe for determination.

**II. Standard of Review**

To obtain summary judgment, the moving party must show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Fed. R. Civ. P.* 56(c). In considering a motion for summary judgment, the court will not "weigh the evidence and determine the truth of the matter." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). Instead, the court will draw any permissible inference from the underlying facts in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

Although the court will view all underlying facts and inferences in the light most favorable to the nonmoving party, the nonmoving party nonetheless must offer some "concrete evidence from which a reasonable juror could return a verdict in his [or her] favor." *Anderson*, 477 U.S. at 256. Summary judgment is appropriate when the nonmoving party has the burden of proof on an essential element of his or her case and does not make, after adequate time for discovery, a showing sufficient to establish that element. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The nonmoving party must satisfy this burden of proof by offering more than a

mere "scintilla of evidence" in support of his or her position. *Anderson*, 477 U.S. at 252.

**III. Analysis**

A. Standard of Review Under ERISA

Mr. Eastes brings this action under § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(1)(B).[1] When addressing this type of claim, the court must first determine the appropriate standard of review. This determination is made by a *de novo* examination of the plan document itself to discern "whether the provision of benefits is prescriptive or discretionary." *Booth v. Wal-Mart Stores, Inc.*, 201 F.3d 335, 343 (4th Cir. 2000) (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)).

In this case, the Verizon Pension Plan for Mid-Atlantic Associates (Plan) clearly vests broad discretion in the Plan's administrators. Article XIV, section 14.4 of the Plan provides in pertinent part:

> Under the Plan, the Claims Administrator and the Appeals Administrator are fiduciaries to whom this Plan hereby grants full discretion, with the advice of counsel, to do the following: to make findings of fact; to interpret the Plan and resolve ambiguities therein; to make factual determinations; to determine whether a claimant is eligible for benefits; to decide the amount, form, and timing of benefits; and to resolve any other matter under the plan which is raised by the claimant or identified by the respective Claims or Appeals Administrator. The Claims Administrator has exclusive authority to decide all claims under the Plan, and the Appeals Administrator has exclusive authority to review and resolve any appeal of a denied claim. In the case of an appeal, the

[1] As an initial matter, the defendant makes a cursory argument to the effect that this type of ERISA claim may only be brought against the plan itself or the administrator of the plan, and not against the employer or plan sponsor. Curiously, Verizon cites to a footnote in an unpublished opinion by the Fourth Circuit Court of Appeals, namely *Gluth v. Wal-Mart Stores, Inc.*, 117 F.3d 1413, 1997 WL 368625, at *6 n.8 (4th Cir. 1997). Just like the defendant in *Gluth*, however, Verizon never moved to dismiss on this basis and has in fact actively defended this case since 2001. Verizon has accordingly waived any argument to dismiss on these grounds. *Id.* ("[B]ecause Wal-Mart proceeded in the litigation without moving for dismissal on that basis, Wal-Mart waived its right . . .").

> decision of the Appeals Administrator shall be final and binding upon all parties to the full extent permitted under applicable law, unless and to the extent that the claimant subsequently proves that a decision of the Appeals Administrator was an abuse of discretion.

*Verizon Exh. A* at 61. Article I, section 2.4 of the Plan specifies that Verizon's CRC has been the Appeals Administrator since January 1, 2001. *Id*. at 9. It is clear, therefore, that the Plan language grants extremely broad discretion to the CRC, including the discretion to make factual findings and interpret plan provisions. Accordingly, the appropriate standard of review of the CRC's factual findings is abuse of discretion.[2]

This core issue of this case, however, does not involve a mere finding of fact. Instead, it turns on a question of law, and questions of law are reviewed by the district court *de novo*. *Johannssen v. Dist. No. 1–Pac. Coast Dist., MEBA Pension Plan*, 292 F.3d 159, 169 (4th Cir. 2002) ("Such legal questions are appropriate terrain for the courts, not plan administrators, and when eligibility determinations turn on questions of law we have not hesitated to apply a *de novo* standard of review."); *Gauer v. Connors*, 953 F.2d 97, 99-100 (4th Cir. 1991) ("When an eligibility determination by plan administrators turns on a question of law, courts have not hesitated to apply a *de novo* standard of review." (quoting *Weil v. Ret. Plan Admin. Comm.*, 913 F.2d 1045, 1049 (2d Cir. 1990) *vacated on other grounds*, 933 F.2d 106 (2d Cir. 1991))). Specifically, the CRC denied benefits based on the determination that Mr. Eastes retired on March 25, 2000. The CRC based this determination on Verizon's payroll records and on the testimony of Mr. Helper and Mr. Griffith, all of which indicated that the recorded date of Mr. Eastes' retirement was March 25, 2000.

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[2] In addition, the plaintiff has presented no evidence to indicate a conflict of interest on the part of the Plan administrators. Accordingly, a modified abuse of discretion review is inappropriate.

This *factual* finding is not in dispute. The CRC was correct to recognize that Verizon had changed Mr. Eastes' recorded retirement date to March 25, 2000. Implicit in the denial of benefits to Mr. Eastes, however, is the assumption or determination that Verizon's actions were *lawful*. The key issue, therefore, is not simply a factual finding of what the records show, but whether it was lawful for Verizon to change the retirement date from the date in the original agreement (May 5, 2000) to the date recorded in the official company records (March 25, 2000). The CRC's determination, therefore, was founded on the *legal* assumption that Verizon's decision to change Mr. Eastes' retirement date was lawful. This legal determination falls outside of the CRC's discretionary authority, and is reviewed by the district court *de novo*. Based on a *de novo* review, I find that Verizon's actions were unlawful.

B. Application of Estoppel Principles

The doctrine of promissory estoppel bars Verizon from denying that Mr. Eastes retired on May 5, 2000. "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding, if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires." Restatement (Second) of Contracts § 90(1).[3] "Promissory estoppel, where reliance is shown, has the significance of consideration." *Elmore v. Cone Mills Corp.*, 23 F.3d 855, 867-68 (4th Cir. 1994) (Murnaghan, J., concurring) (citing *Allen M. Campbell Co., Gen. Contractors, Inc. v. Virginia Metal Indus., Inc.*, 708 F.2d 930, 931 (4th cir. 1983). In this case, justice requires this court to enforce

[3] While West Virginia has not explicitly adopted § 90 of the Restatement (Second) of Contracts, it has in fact embraced the doctrine of promissory estoppel as contained in the Restatement (Second) of Contracts § 139. *Everett v. Brown*, 321 S.E.2d 685, 689 (W. Va. 1984). Accordingly, I believe that West Virginia would follow the principles of § 90 as well.

Verizon's original promise to Mr. Eastes.

All of the records discussed earlier in this opinion support one conclusion: Mr. Eastes' official retirement date was May 5, 2000, and this date was approved by his employer. This approval is a promise. Verizon management promised Mr. Eastes that he could leave for a permanent "vacation" starting March 23, 2000, and agreed to record an official retirement date of May 5, 2000 for Mr. Eastes. Verizon should have reasonably expected that Mr. Eastes would consider the employment relationship terminated and that Mr. Eastes would behave accordingly. It is disingenuous for Verizon to argue to the contrary. Verizon management agreed to this arrangement and Mr. Eastes took all necessary steps to officially end his term of employment with Verizon. Mr. Eastes reasonably relied on Verizon's promise, believed that his employment with Verizon was over, and accordingly felt free to seek employment elsewhere.

At the time Mr. Eastes left Verizon, both parties agreed that he would not return to work. Besides turning in all company property, he signed an "Employee Exit Acknowledgement" (sic) that re-affirmed his duty to protect Verizon trade secrets. The primary, if not only purpose of this document, is to protect Verizon in the event that the signatory employee *seeks work elsewhere*. In mid-March, therefore, both parties agreed that Mr. Eastes was permanently severing the employment relationship, and Verizon took the necessary steps to protect itself in case he sought employment with a competitor.

Verizon argues that the "[u]se of estoppel principles to effect a modification of a written employee benefit plan would conflict with 'ERISA's emphatic preference for written agreements.'" *Coleman v. Nationwide Life Ins. Co.*, 969 F.2d 54, 58 (4th Cir. 1992) (quoting *Degan v. Ford Motor Co.*, 869 F.2d 889, 895 (5th Cir. 1989)). Indeed, federal courts have

widely held that the written terms of an ERISA plan may not be modified through application of estoppel principles. *See, e.g.*, *Coleman*, 969 F.2d at 59 ("[E]stoppel principles, whether denominated as state or federal common law, have not been permitted to vary the written terms of a plan."); *Black v. TIC Inv. Corp.*, 900 F.2d 112, 115 (7th Cir.1990) ("Yet even among courts that recognize the availability of estoppel in ERISA cases, there is real resistance to the use of that doctrine."). The reason for this reluctance is the danger that common-law modifications would begin to "override the explicit terms of an established ERISA benefit plan." *Coleman*, 969 F.2d at 59. These modifications could then threaten the policies underlying ERISA by leading to "conflicting employer obligations and variable standards of recovery." *Pizlo v. Bethlehem Steel Corp.*, 884 F.2d 116, 120 (4th Cir. 1989) (quoting *Holland v. Burlington Indus., Inc.*, 772 F.2d 1140, 1147 (4th Cir. 1985)).

In this case, however, the Plan itself is not being modified, interpreted, or disturbed in any way. *See, e.g.*, *Pizlo* 884 F.2d at 120 (finding that in certain instances promissory estoppel and other common-law claims "do not bring into question whether Plaintiffs are eligible for plan benefits" and therefore "are not preempted by ERISA because they do not 'relate to' an employee benefit plan"). Accordingly, the application of estoppel principles in this case does not implicate "conflicting employer obligations and variable standards of recovery," does not "determine whether any benefits are paid," and does not "directly affect the administration of benefits under the plan." *Id*. (quoting *Sorosky v. Burroughs Corp.*, 826 F.2d 794, 800 (9th Cir. 1987)). Nor am I encroaching on the CRC's discretionary authority under the Plan. I find only that equitable principles and traditional justice require Verizon to honor its original promise to Mr. Eastes. Notably, this promise was for a specific retirement date, and was not a promise that

Mr. Eastes would qualify for a certain level of benefits. If the promise had directly involved Mr. Eastes' qualifications for benefits, then it would implicate ERISA's overwhelming preference for written agreements. It was unlawful for Verizon to change Mr. Eastes' retirement date, and the correction of that violation has no effect on the Plan's terms or management under ERISA. Mr. Eastes' claim will therefore be remanded to the Plan administrator for a benefits determination in accordance with that original promise.

Furthermore, although Verizon now claims that the plaintiff was technically on vacation, both sides recognized that it was not a true vacation. Both parties agreed that Mr. Eastes was not still actively employed and would not be returning to work. Verizon itself states that the plaintiff "was 'taking' his accrued vacation and excused work days," with the word "taking" in quotations. *Verizon Memo*. at 3. Verizon knew and agreed that Mr. Eastes was permanently departing. On March 15, 2005, Verizon management agreed that Mr. Eastes' employment was complete and that although Mr. Eastes would be officially retired on May 5, 2000, he was no longer an active employee with Verizon. He turned in his keys, purged his voice-mail, gave up his access to company files, and severed all remaining vestiges of his employment. Any reasonable person in Mr. Eastes' position would have assumed that he was free to seek other employment. Accordingly, it offends notions of justice and fair play for Verizon to assert that Mr. Eastes "violated company policy" by accepting employment with another phone company. Verizon is hereby estopped from making this assertion and from modifying the original agreement, which established Mr. Eastes' official retirement date as May 5, 2000. Importantly, this original agreement pertained only to Mr. Eastes' official date of retirement, and not to his eligibility for benefits. The appropriate remedy is therefore to remand this case to the Plan

administrators for further consideration. Accordingly, I **FIND**, based on a *de novo* review of the question of law presented in this case, that the CRC's denial of Mr. Eastes' benefits rested on a clearly erroneous legal assumption and **REMAND** to the CRC for further determinations in accordance with this opinion.

**IV. Conclusion**

I therefore **FIND** that Verizon is estopped from asserting that Mr. Eastes retired prior to May 5, 2000. Accordingly, I **FIND** that Verizon's Claims Review Committee based its denial of benefits on an unlawful legal determination. The plaintiff's motion for summary judgment [Docket 33] is **GRANTED** to the extent that it seeks a ruling estopping Verizon from changing Mr. Eastes' official retirement date and the defendant's motion for summary judgment [Docket 39] is **DENIED**. This case is **REMANDED** to the Plan administrators for consideration in accordance with my finding that Verizon is estopped by their promise from asserting that Mr. Eastes retired before May 5, 2000.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party, and **DIRECTS** the Clerk to post this unpublished opinion at **http://wvsd.uscourts.gov.**

ENTER: March 1, 2005

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE