No. SJC-13121
Massachusetts Supreme Judicial Court

Reuter v. City of Methuen

Decided Apr 4, 2022

SJC-13121

04-04-2022

BETH REUTER v. CITY OF METHUEN.

Deborah I. Ecker for the defendant. Anthony S. Augeri for the plaintiff. Ben Robbins & Martin J. Newhouse for New England Legal Foundation. Barry J. Miller, Molly C. Mooney, & Emily Miller for Northeast Human Resources Association, Inc. Raven Moeslinger for Massachusetts Employment Lawyers Association.

KAFKER, J.

Heard: October 6, 2021.

C*ivil action* commenced in the Superior Court Department on September 24, 2014. The case was heard by *John T. Lu*, J., and a motion for attorney's fees and costs was also heard by him.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Deborah I. Ecker for the defendant.

Anthony S. Augeri for the plaintiff.

The following submitted briefs for amici curiae:

Ben Robbins & Martin J. Newhouse for New England Legal Foundation.

Barry J. Miller, Molly C. Mooney, & Emily Miller for Northeast Human Resources Association, Inc.
1 *1

Raven Moeslinger for Massachusetts Employment Lawyers Association.

Present: Budd, C.J., Gaziano, Lowy, Cypher, Kafker, Wendlandt, & Georges, JJ.

KAFKER, J.

On the day the plaintiff, Beth Reuter, was discharged from employment, the city of Methuen (defendant or city) owed her $8, 952.15 for accrued vacation time. Rather than pay this amount on the day of her termination, as required by the Wage Act, G. L. c. 149, § 148 (Wage Act or act), the defendant paid her three weeks later. After a demand from the plaintiff's lawyer over a year after that, the defendant paid the plaintiff a further $185.42, which represented the trebled interest for the three weeks between the plaintiff's termination and the payment of the vacation pay. The present suit followed.

The issue is not whether the city violated the Wage Act in failing to pay the plaintiff for her vacation time on the day she was fired -- it clearly did. Rather, the parties dispute the proper measure of damages for the private right of action for Wage Act violations under G. L. c. 149, § 150, when the employer pays wages after the deadlines provided in the act but before the employee files a complaint. Given the strict time-defined payment policies underlying the Wage Act, and the liquidated damages provision providing for treble damages for "lost wages and other benefits," we conclude that an employer is responsible for treble the amount of the late wages, not trebled interest.
2 As the prevailing party, the plaintiff is also *2 entitled to attorney's fees and costs.[1]

[1] We acknowledge the amicus briefs submitted by the New England Legal Foundation; Northeast Human Resources Association, Inc.; and the Massachusetts Employment Lawyers Association.

1. *Background*.

a. *The plaintiff's termination and procedural history*.

The relevant facts are not disputed by the parties. Reuter worked as a custodian for the city's school department starting in 1988. In February 2013, the plaintiff was convicted of larceny over $250 in a single scheme under G. L. c. 266, § 30 (1). The defendant sent a letter formally terminating the plaintiff on March 7, 2013. At the time she was terminated, the plaintiff had accrued $8, 952.15 in unused vacation time.

The defendant sent four separate checks totaling this amount on March 28, 2013. The plaintiff unsuccessfully contested her termination before the Civil Service Commission and appealed to the Superior Court. On March 11, 2014, while that appeal was pending, the plaintiff's counsel sent the city a demand letter for $23, 872.40, which represented a trebling of the late vacation pay, plus $5, 986.10 for attorney's fees, minus setoff for the late payment. The plaintiff's termination was affirmed by the Superior Court on April 14, 2014. Shortly after, on July 24, 2014, the defendant responded to the demand letter with an
3 "unconditional check" for $185.42, which *3
represented a trebling of the twelve percent annual interest[2] on the plaintiff's vacation pay accrued during the three weeks between her termination and payment. The payment was made "without admitting any liability as to the payment of these wages. "

[2] The letter did not explain why this was the proper interest rate.

The plaintiff commenced the present action on September 24, 2014. She asserted an individual claim for the failure to pay her vacation pay on the day of her termination, as required by the Wage Act, G. L. c. 149, § 148. The plaintiff also alleged that the city engaged in a practice of failing to pay departing workers on time, and purported to bring a class claim on behalf of all city employees who were "involuntarily discharged" or "voluntarily left employment" in the prior three years. The defendant unsuccessfully moved to dismiss the complaint under Mass. R. Civ. P. 12 (b) (6), 365 Mass. 754 (1974), and then answered the complaint.

Following discovery, the plaintiff moved for class certification on November 8, 2017. A Superior Court judge denied certification on February 5, 2018, finding that the plaintiff's Wage Act claims
4 were not suited for class treatment.[3] *4

[3] The plaintiff did not appeal from the denial of class certification.

The case then proceeded to a bench trial on the plaintiff's individual claims before a different Superior Court judge on March 4, 2019. The trial judge issued an order noting that there were no disputed facts except as related to attorney's fees, and holding that the plaintiff was only entitled to treble twelve percent interest[4] for the three-week delay in receiving her vacation pay, which she had already received.

[4] Again, why this rate was selected was not explained, although it appears to have been stipulated to by the parties. It did not represent statutory prejudgment interest, which the clerk determined to be zero dollars given the plaintiff's failure to recover damages.

The judge also found that the plaintiff was entitled to attorney's fees. The plaintiff's counsel submitted records showing $75, 695.76 in fees and costs, including $12, 610 from the failed attempt to certify a class. Applying the "lodestar" method, the trial judge determined that the full amount was fair and reasonable, noting that the defendant had committed a "plain violation of the statute."

Judgment entered on the order. The defendant appealed from the award of attorney's fees, and the plaintiff cross-appealed from the judge's determination that she was not entitled to treble lost wages. We court transferred the appeal to this court on our own motion.

b. *The Wage Act*.

5 General Laws c. 149, § 148, provides *5 that employers must pay their employees "weekly or bi-weekly" within either six or seven days of the "termination of the pay period during which the wages were earned." However, "any employee discharged from such employment," such as the plaintiff, "shall be paid in full on the day of his discharge." *Id*. It also defines "wages" to include "any holiday or vacation payments due an employee under an oral or written agreement." *Id*. Combined, these two provisions make clear that a terminated employee is entitled to all accrued vacation benefits on the day of discharge. *Electronic Data Sys. Corp*. v. *Attorney Gen*., 454 Mass. 63, 67-68 (2009), citing Attorney General Advisory 99/1 (1999) ("Like wages, the vacation time promised to an employee is compensation for services which vests as the employee's services are rendered. Upon separation from employment, employees must be compensated by their employers for vacation time earned").

The scope, requirements, and enforcement mechanisms of the act have varied greatly since it was first enacted, but in interpreting it, we have always recognized it was intended "for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages." *Commonwealth v. New York Cent. & H.R.R.R*., 206 Mass. 417, 424 (1910). See *Melia v. Zenhire, Inc*., 462 Mass. 164, 171 & nn.6-8 (2012) (describing history of Wage Act and
6 noting "the *6 Legislature has highlighted [its] fundamental importance . . . by repeatedly expanding its protections"). Because of the potentially severe financial consequences of even a minor violation, the act not only "protect[s] wage earners from the long-term detention of wages by unscrupulous employers" (citation omitted), *id*. at 170, but also "impose[s] strict liability on employers," who must "suffer the consequences of violating the statute regardless of intent" (quotation and citations omitted), *Dixon v. Maiden*, 464 Mass. 446, 452 (2013), quoting *Somers v. Converged Access, Inc*., 454 Mass. 582, 592 (2009) .

Originally, the Wage Act empowered only government officials to bring civil or criminal proceedings for violations. See St. 1887, c. 399, § 2. Despite strict liability and the threat of fines, and later even imprisonment, the Legislature eventually decided, however, that government action alone was insufficient to enforce the Wage Act. In 1993, the Legislature enacted the private action provision of § 150, giving an employee the right to "institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief and any damages incurred, including treble damages for any loss of wages and other benefits" for violations of § 148 and
7 other labor laws. St. 1993, c. 110, § 182. *7 See *Lipsitt v. Plaud*, 466 Mass. 240, 246-247 (2013) (1993 act transferred enforcement authority from Department of Labor and Industries to Attorney General, and "the Legislature contemporaneously created the private right of action as a means further to ensure rigorous enforcement of the Wage Act").[5] The amendment also provided that a prevailing employee was "entitled to an award of the costs of the litigation and reasonable attorney fees." St. 1993, c. 110, § 182. This provision ensured "rigorous enforcement" of the Wage Act by encouraging cases to be brought by "private attorneys general" (citations omitted). *Ferman v. Sturgis Cleaners, Inc*., 481 Mass. 488, 494-495 (2019).

[5] Government enforcement remains a vital part of the act and is now entrusted to the Attorney General under the first paragraph of G. L. c. 149, § 150. Section 148 itself

> provides that violators "shall be punished or shall be subject to a civil citation or order as provided in [§] 27C." Section 27C imposes various punishments, including fines and imprisonment, the degree of which depends on whether the violator acted willfully and whether the violator is a repeat offender. As we have recognized, " [t]he Attorney General's right to enforce G. L. c. 149 and the right of private citizens to enforce provisions of that chapter represent parallel and distinct enforcement mechanisms." *DePianti v. Jan-Pro Franchising Int'l, Inc.*, 465 Mass. 607, 612 (2013).

We interpreted the treble damages provision in § 150, as it was phrased in the 1993 act, as punitive damages limited to cases where the employer's conduct was "outrageous," and therefore discretionary rather than mandatory. *Wiedmann v. The Bradford Group, Inc.*, 444 Mass. 698, 710
8 (2005). Three years *8 later, the Legislature further amended § 150 and other labor laws to expressly provide that the employee "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits." St. 2008, c. 80, § 5. Like the equivalent provision of the Federal Fair Labor Standards Act, the provision of liquidated damages recognized the reality underlying the Wage Act: that a late-paid worker can face consequences "so detrimental to maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers . . . that [treble] payment must be made in the event of delay in order to insure restoration of the worker to that minimum standard of well-being." *George v. National Water Main Cleaning Co.*, 477 Mass. 371, 376 (2017), quoting *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 707 (1945). While these consequential damages can be severe to the worker, they are also generally "too obscure and difficult of proof for estimate other than by liquidated damages." *George*, *supra*, quoting *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 583-584 (1942). Like the rest of the Wage Act, the liquidated damages provision applies without regard to the employer's intent. *George*, *supra* at 379 (Legislature declined to qualify liquidated damages provision with "good faith exception" as Congress did for Fair Labor Standards Act).

2. *Discussion*.

a. *Standard of review*.

9 Whether the *9 plaintiff was entitled under G. L. c. 149, § 150, to treble the amount of late-paid wages or trebling of interest as the trial judge ordered is an issue of statutory interpretation, which we review de novo. *Rosenberg v. JPMorgan Chase & Co.*, 487 Mass. 403, 408 (2021). "[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated." *Id.* at 414, quoting *Harvard Crimson, Inc. v. President & Fellows of Harvard College*, 445 Mass. 745, 749 (2006). We conclude that the statute calls for treble the amount of late-paid wages.

b. *The private right of action and the remedy*.

We begin with the express language of the Wage Act. For discharged employees the statute is clear and emphatic: "any employee discharged from such employment," such as the plaintiff, "shall be paid in full on the day of his discharge." G. L. c. 149, § 148. The statute leaves no wiggle room. Payment, including vacation pay, is to be made in "full" on the "day" of the discharge. *Id.* As explained above, prompt payment of all wages owed is necessary for employees who often live paycheck to paycheck and who may not be able to
10 pay rent or other *10 necessities. See *George*, 477 Mass. at 376; *New York Cent. & H.R.R.R.*, 206 Mass. at 424. The consequences of late payments

may therefore be severe for such employees. For all of these reasons, late payments constitute clear violations of the statute.

Employees not paid in full on time may bring a private action "for injunctive relief, for any damages incurred, and for any lost wages and other benefits." G. L. c. 149, § 150. Here, we recognize that the word "lost" creates some ambiguity. A late payment is not the same as a lost payment. This language, however, must be read with the over-all context and purpose of the act in mind. The act is directed at prompt payment of wages. As explained above, any delay may have severe consequences for employees, and therefore the statute does not tolerate or in any way condone delay. Thus, we conclude that "lost wages" encompass all late payments under the Wage Act.

The remedy is also explicit. The employee "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits." G. L. c. 149, § 150. The remedy is thus expressly focused on trebling the lost wages and other benefits. The remedy is also specifically described as a liquidated damages remedy. As we explained in *George*: "The retention of a workman's pay may well result in damages too obscure and difficult of
11 proof for estimate other than by *11 liquidated damages." *George*, 477 Mass. at 376, quoting *Overnight Motor Transp. Co.*, 316 U.S. at 583-584.

One amicus claims that imposing treble damages for late-paid wages would create perverse incentives for employers because the recovery would be the same whether they quickly corrected the mistake or let the matter proceed to a lawsuit without paying at all. By imposing strict liability, however, the Legislature has decided that employers rather than employees should bear the cost of such delay and mistakes, honest or not. See *George*, 477 Mass. at 379; *Dixon*, 464 Mass. at 452. The Legislature has chosen the stick rather than the carrot to encourage compliance with the act and to address a history of nonpayment and wage theft.

We recognize that this rule puts employers in a difficult position when immediately terminating employees for misconduct as in the instant case. Because wages and other benefits are due to employees on the day they are discharged, and it may be unclear how much an employee must be paid on short notice, employers would be liable for treble damages if they miscalculated the amount owed.

However, the Legislature appears to have considered the differences between involuntary discharges and other separations from employment, and apparently the consequences of differential treatment. Section 148 expressly
12 distinguishes between an *12 "employee leaving his employment," who must "be paid in full on the following regular pay day or, in the absence of a regular pay day, on the following Saturday," and an "employee discharged from such employment," who must "be paid in full on the day of his discharge." In the former case, the employer does not control when an employee quits and may not have advance notice. The employee also controls when he or she leaves and likely has secured replacement employment or otherwise considered the consequences of a short delay in receiving his or her pay. Therefore, the act provides a reasonable grace period for employers to provide the employees' pay, including vacation pay. In the latter case, the employer decides if and when to terminate an employee, while the employee has no control over when it will happen and may not know ahead of time. The Legislature's command is clear: if you choose to terminate an employee you must be prepared to pay him or her in full when you do so. *Electronic Data Sys. Corp.*, 454 Mass. at 71. This may mean that employees who, like the plaintiff, have engaged in illegal or otherwise harmful conduct may have to be suspended rather than terminated for a short period of time until the employer can comply with

§ 148. See *Dixon*, 464 Mass. at 451 n.6 (invalidating ordinance that withheld vacation payments to employees terminated for "fault" as inconsistent with § 148); *Knous v. Broadridge Fin. Solutions, Inc.*, 991 F.3d 344, 345-346 (1st Cir. 2021) *13 (employee was not discharged for purposes of Wage Act when he was told to leave office and to stop all work, but rather on day that his pay and benefits ended).

c. *Interest*.

Finally, we address the trial judge's conclusion that interest is the proper measure of damages for late payment of wages. The problem with this interpretation is that it is unsupported by the language of the statute and inconsistent with its purpose.

There is no language in § 150 in any way suggesting that the payment of interest is the proper remedy for violation of the act. While we have considered whether twelve percent prejudgment statutory interest is appropriate under G. L. c. 231 § 6B, 6C, or 6H, when back pay is awarded under the Wage Act, see *George*, 477 Mass. 371, an award of interest under all these statutes is in addition to an award to the claimant, and does not provide the primary source of recovery.

Awarding only interest for late payment is also inconsistent with the fundamental purpose of the act. As explained above, the statute expects and demands the prompt payment of wages to employees who rely on such payments "to pay for the family's housing, transportation, food and clothing, tuition, and medical expenses." *George*, 477 Mass. at 380. Much more is therefore at stake than the loss of the time value and depreciation of sums owed. These damages are likely to be *14 concentrated in the immediate aftermath of their nonpayment, when the employee has not had a chance to secure replacement income and expenses incurred in reliance on the payments come due.[6]

6 This is especially true of discharged employees, who have not planned or otherwise agreed to the termination of their employment.

The idea that interest is an appropriate remedy for late payments derives from an influential trial court decision: *Dobin vs. CIOview Corp.,* Mass. Sup. Ct., No. 2001-00108 (Middlesex County Oct. 29, 2003). In that case, the trial court drew a negative inference from a single sentence in § 150: "The defendant shall not set up as a defen[s]e a payment of wages after the bringing of the complaint." *Id*. The trial court concluded that this sentence created a partial defense by negative implication for precomplaint payments of late wages. *Id*. See *Clermont v. Monster Worldwide, Inc.*, 102 F.Supp.3d 353, 357-359 (D. Mass. 2015); *Littlefield vs. Adcole Corp.,* Mass. Sup. Ct., No. ESCV201500017 (Essex County June 18, 2015).

We conclude that this interpretation is incorrect. We interpret this particular provision simply to mean what it expressly states: the defendant shall not set up as a defense the payment of wages after the filing of a complaint. The sentence at issue is also preceded by a sentence that directly *15 addresses defenses generally, stating that "no defen[s]e for failure to pay as required . . . shall be valid" except "the attachment of such wages by trustee process or a valid assignment thereof or a valid set-off against the same, or the absence of the employee from his regular place of labor *at the time of payment*, or an *actual tender to such employee at the time of payment* of the wages so earned by him" (emphases added). G. L. c. 149, § 150.

We decline to adopt the negative implication drawn by the Dobin court for a number of reasons. As a preliminary matter, "the maxim of negative implication -- that the express inclusion of one thing implies the exclusion of another -- 'requires great caution in its application.'" *Halebian v. Berv*, 457 Mass. 620, 628 (2010), quoting 2A N.J. Singer & J.D. Shambie Singer, Sutherland

Statutory Construction § 47.25, at 429 (7th ed. 2007). "[T]he maxim will be disregarded where its application would thwart the legislative intent made apparent by the entire act." *Halebian*, *supra*, quoting 2A N.J. Singer & J.D. Shambie Singer, Sutherland Statutory Construction, *supra* at § 47.25, at 433-435. See *Commonwealth v. Garvey*, 477 Mass. 59, 65 (2017).

Also, the negative implication that was drawn in the trial court decisions and that the defendant seeks to draw here does not in any way support the payment of interest. As explained above, interest
16 is not in any way mentioned in the statute. *16 Additionally, if the sentence were to provide a defense to payment by negative implication, it should logically provide a total defense, not a partial defense that allows for the recovery of interest.[7]

> 7 This is borne out by the history of the provision. The Legislature added the language establishing the alleged defense in 1891. St. 1891, c. 239, § 2. At the time, there was no private right of action, and the act was enforced by the "chief of the district police, or any state inspector of factories and public buildings." St. 1887, c. 399, § 2. Whatever the Legislature intended in 1891 by providing that postcomplaint payment was *not* a defense to prosecution by government officials, it could not, as the trial court in the Dobin decision stated, have created a partial defense to the treble damages provision or intended to address the amount of damages recoverable under the private right of action, none of which existed until over a century later. St. 1993, c. 110, § 182.

More importantly, a reading of § 150 allowing a defense for late payments made before litigation is commenced would essentially authorize, and even encourage, late payments right up to the filing of a complaint. As many, if not most, terminated employees lack the financial and other wherewithal to hire lawyers, it would appear to encourage nonpayment as well as late payment. Thus, the entire purpose and thrust of § 148 and § 150 cut against this interpretation.

For all these reasons, we choose not to read more into the sentence at issue than what it expressly states.

d. *Response to concurrence*.

Although the issue was not raised, briefed, or
17 argued by any party or amicus in this case, *17 or raised as a possibility in any of the cases of which we are aware, Justice Georges suggests in his concurrence that other plaintiffs may be entitled to recover not only treble lost wages as liquidated damages but also other damages incurred. Indeed, from the time the plaintiff sent her pre-action demand letter to the city, she has consistently claimed that the proper remedy is simply treble the amount of late-paid wages, and the action proceeded for seven years through trial on that understanding. The concurrence thus seeks essentially to opine on an issue that has not been raised or in any way decided here without the benefit of any briefing. This we decline to do.

e. *Attorney's fees*.

Our disposition of the plaintiff's cross appeal makes our consideration of the defendant's appeal significantly simpler; the plaintiff has established that prevailing employees are entitled to treble the amount of late wages, not just treble interest as found by the trial judge. This is a significant victory and an important clarification of existing law. The plaintiff is now clearly the "prevailing" party for the purposes of recovering attorney's fees and costs under § 150.

The one remaining issue is whether the plaintiff should receive all her fees and costs stemming from the unsuccessful efforts to certify a class, considering that the motion for class certification
18 was denied and the plaintiff did not appeal. *18 See *Barfield v. New York City Health & Hosps. Corp.*, 537 F.3d 132, 151-153 (2d Cir. 2008) (affirming reduction of attorney's fees and costs to

plaintiff who succeeded on individual Fair Labor Standards Act claim but failed to certify collective action); *Cullens v. Georgia Pep't of Transp.*, 29 F.3d 1489, 1494-1495 (11th Cir. 1994) (holding successful plaintiffs were not "catalyst" for benefits to class where class certification had been denied). But see *Davis v. Board of Sch. Comm'rs of Mobile County*, 600 F.2d 470, 475 (5th Cir. 1979), modified, 616 F.2d 893 (5th Cir. 1980) (instructing lower court to consider fact that "the plaintiffs have performed a valuable service for the class . . . which they sought to represent" in determining fees and costs); *Baker v. John Morrell & Co.*, 263 F.Supp.2d 1161, 1197-1198 (N.D. Iowa 2003), aff'd, 382 F.3d 816 (8th Cir. 2004) (holding fees incurred on unsuccessful class certification effort were recoverable because, at time complaint was filed, "plaintiff's counsel reasonably believed that a class action was a viable and efficient means of addressing" violations). The trial judge did not address this issue in his order granting all of the plaintiff's fees and costs, and we have neither the record nor the briefing necessary to decide this question. We therefore remand to the trial court the question whether the plaintiff is to be compensated for some or all of her attorney's fees for the unsuccessful legal work performed regarding class
19 *19 certification, and for an explanation by the trial judge of his exercise of discretion in deciding this question.

3. *Conclusion*.

The statutory language and purpose of the Wage Act require prompt payment of wages and the trebling of those wages as liquidated damages when they are paid late. The remedy for late payment is therefore not the trebling of interest payments on those wages as found by the trial judge, but the trebling of the late wages. As the plaintiff is the prevailing party, she is also entitled to attorney's fees, subject to reconsideration of the fees related to class certification as provided in this decision. The case is remanded for further proceedings consistent with this opinion.[8]

8 The plaintiff has requested appellate attorney's fees in her brief. See *Fabre v. Walton*, 441 Mass. 9, 10 (2004) . As the prevailing party in this appeal, the plaintiff is "statutorily entitled to recover reasonable appellate attorney's fees and costs" under the Wage Act. *Ferman*, 481 Mass. at 496-497, quoting *Fernandes v. Attleboro Hous. Auth.*, 470 Mass. 117, 132 (2014). Therefore, the plaintiff "may file a request for appellate attorney's fees and costs with this court." *Ferman*, *supra* at 497.

20 *So ordered*. *20

GEORGES, J. (concurring). I agree with the court's conclusion that late-paid wages are "lost wages" for purposes of the Wage Act. I write separately, however, to express my concern that the court's opinion mistakenly may imply that employees suing for "lost wages and other benefits" may not also sue for "any damages incurred." G. L. c. 149, § 150. While the employee's complaint in this case did not implicate the relationship between the Wage Act's liquidated damages clause and its authorization of suit for "any damages incurred," parts of the court's opinion nonetheless could be understood as addressing, and settling, that issue in a manner that subsumes the latter provision into the former.

In explaining why the employee, Beth Reuter, is entitled to treble her entire late-paid wages, and not merely treble the forgone interest on those wages, the court asserts that "consequential damages" are "generally 'too obscure and difficult of proof for estimate other than by liquidated damages.'" *Ante* at ___. Shortly thereafter, it uses the same quotation in a slightly different context. The quotation the court relies upon is from *George v. National Water Main Cleaning* Co., 477 Mass. 371, 376 (2017) . In that case, we answered a certified question from the United States District Court for the District of Massachusetts as to whether statutory prejudgment interest (under G.
21 L. c. 231, § 6B or 6C) could be added to an *21 award of "liquidated (treble) damages" under G.

L. c. 149, § 150. See *George*, *supra* at 372. In holding in *George* that prevailing plaintiffs could be awarded both liquidated damages and statutory prejudgment interest, however, we did not address the relationship between the Wage Act's provision on liquidated damages and its authorization of suit for "any damages incurred." Nonetheless, I believe that many workers reasonably could understand the court's opinion as now implying that, in vindicating Wage Act rights, workers may be awarded only one type of monetary relief, or, put another way, that the act's liquidated damages clause effectively swallows its authorization of suit for "any damages incurred."

General Laws c. 149, § 150, provides that a worker who suffers a violation of the Wage Act may commence "a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits." An employee who prevails on such a claim "shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees." *Id*. The Legislature therefore seemingly has made two distinct choices in its formulation of G. L. c. 149, § 150, authorizing complaints "for any damages incurred, *and* for any lost wages and other benefits" (emphasis added), meaning that an aggrieved worker apparently may
22 choose to sue for both. The *22 Legislature also did not include the words "any damages incurred" in the liquidated damages clause, which provides only that successful plaintiffs "shall be awarded treble damages, as liquidated damages, *for any lost wages and other benefits* and shall also be awarded [attorney's fees]" (emphasis added). *Id*.

Had the Legislature intended that the liquidated damages clause cover all possible damages, including "any damages incurred," it could have signaled that in several ways. Instead, the Legislature placed the phrase "any damages incurred" in a separate provision, apart from the provision on liquidated damages, and we cannot regard that choice as meaningless. See *Rowley v. Massachusetts Elec. Co.*, 438 Mass. 798, 802 (2003) ("If that was the legislative intent, the wording of the statute could have easily reflected it. It does not" [footnote omitted]).

General Laws c. 149, § 150, moreover, applies to far more than just G. L. c. 149, § 148, the substantive section of the Wage Act; it facilitates the vindication of rights created by a host of other statutes, many of which do not directly concern wages.[1] See, e.g., G. L. c. 149, § 150 (authorizing
23 suit for, *23 inter alia, violations of Domestic Violence and Abuse Leave Act, G. L. c. 149, § 52E; section regulating behavior of staffing agencies, G. L. c. 149, § 159C; and provision entitling public employees to serve as organ donors without penalty from their employers, G. L. c. 149, § 33E). For example, an employee suing a staffing agency for "knowingly issu[ing] . . . false, fraudulent or misleading information," see G. L. c. 149, § 159C *(e)* (1), might have suffered lost wages as the result of the employer's actions. But such a plaintiff well might have suffered other harm as a result of that fraud. Nowhere does G. L. c. 149, § 150, state or suggest that such an employee could not also then sue for "any damages incurred"; the provision simply says that employees may commence "a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits."

[1] General Laws c. 149, § 150, provides that an "employee claiming to be aggrieved by a violation of [G. L. c. 149, §§ 33E, 52E, 148, 148A, 148B, 148C, 150C, 152, 152A, 159C, or 190,] or [G. L. c. 151, § 19,] may . . . institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, *for any damages incurred*, and for any lost wages and other benefits" (emphasis added).

Reading the consequential damages provision out of G. L. c. 149, § 150, would harm vulnerable workers in two primary ways: by making the likelihood of being made whole by a Wage Act

suit dependent on the amount of one's lost wages, and by creating incentives for employers to be less attentive to the prompt payment of lower-income workers. *24

If workers who seek recompense for "lost wages and other benefits" may not also do so for "any damages incurred," their damages will be capped at treble their late-paid wages. This would mean that many workers who face catastrophe due to an employer's withholding of wages would have virtually no chance of being made whole by a Wage Act complaint. For example, a late paycheck could lead to missed mortgage payments and foreclosure on one's home, missed tuition payments and subsequent disenrollment, or significant health issues stemming from an inability to pay for crucial medication. Without the ability to sue for consequential damages, compensation for Wage Act plaintiffs would correspond not to the harm they had suffered, but simply -- and solely -- to the size of their paychecks. That cannot be what the Legislature intended; as the court notes, we have "always recognized" that the Wage Act "was intended 'for the protection of employees, who are often dependent for their daily support upon the prompt payment of their wages'" (citation omitted). *Ante* at__.

Moreover, if workers who suffer lost wages could not also sue for "any damages incurred," G. L. c. 149, § 150, would create perverse incentives for employers to be far more attentive to the prompt payment of higher-earning employees. Take, for example, a situation in which an unscrupulous employer realizes that a terminated employee has not been paid on time, *25 but also is aware that this employee might file a complaint only for "lost wages and other benefits," and not for consequential damages. The employer could well decide to withhold payment in the hope that the employee lacked the wherewithal or resources to file a complaint; after all, aside from possible attorney's fees, the employer's liability would be roughly the same (i.e., treble the late paycheck), regardless of whether the employee was paid immediately or only after months or years of litigation. In purely economic terms, the less that employee earned, the more rational taking such a risk would be.

Here, Reuter did not seek damages for "any damages incurred"; her complaint asserted only the violation of the requirement in G. L. c. 149, § 150, of timely payment of wages due to terminated employees. The question before the court thus was the proper measure of damages for wages paid late, but before an employee files a complaint seeking damages for "lost wages and other benefits," and I wholeheartedly join the court's resolution of that issue. I write separately to point out that, despite language in the court's opinion that may suggest that the court, sub silentio, has decided whether employees suing for, and receiving, damages for "lost wages and other benefits" may not also sue for "any damages incurred," the court has not done so in this case. For reasons I have touched upon in this concurrence, I read G. L. c. 149, § 150, to permit employees to *26 seek two separate forms of relief, based both on the language used in the statute and on the clear legislative purpose of the Wage Act, which fully supports this reading. But at a minimum, this remains an unresolved issue for the court to address in a different case, where that issue is raised directly. *27