

---

*320 N.J. Super.* Sang-Hoon Kim v. Monmouth College.  
Cite as, 320 N.J. Super. 157

---

---

726 A.2d 1017

SANG-HOON KIM, PLAINTIFF, v. MONMOUTH COLLEGE,  
EUGENE ROSI, WILLIAM DEMSPE, DEFENDANTS,

Superior Court of New Jersey  
Law Division (Civil)  
Monmouth County

Decided December 4, 1998.

SYNOPSIS

Professor brought action against college for discrimination and breach of employment contract. Following jury verdict for employee on breach of contract claim, professor's counsel returned checks tendered by college. College moved for declaration that

---

Sang-Hoon Kim v. Monmouth College. 320 N.J. Super.  
Cite as, 320 N.J. Super. 157

---

judgment was satisfied. The Superior Court, Law Division, Monmouth County, D'Amico, J.S.C., held that: (1) damages for lost past income were not "wages" that were subject to deduction of withholding taxes, and (2) professor was entitled to post-judgment interest.

Motion denied.

1. Internal Revenue  $\text{\textcircled{=}}4849$

Damages awarded to employee for lost past income in action for breach of employment contract were not "wages" that were subject to deduction of withholding taxes; damages were awarded for period of time during which employee was no longer employed, and employee had been terminated and had never been reinstated. 26 U.S.C.A. §§ 3121(a, b, d), 3401(a), 3501, 3502.

2. Interest  $\text{\textcircled{=}}39(3)$

Employee was entitled to post-judgment interest on award in action for breach of employment contract; employer withheld portion of funds from judgment improperly, causing counsel for employee to return checks and denying employee the use of the money awarded. R. 4:42-11.

---

*Andrew Dwyer*, for plaintiff.

*Joseph A. Manning*, for defendant Monmouth College.

D'AMICO, J.S.C.

Plaintiff Sang-Hoon Kim, Ph.D. was employed by defendant Monmouth College (now Monmouth University) as a professor of finance from 1987 until May 1993, when he was terminated. He has not been employed in any capacity by defendant since May 1993. He brought this action challenging his termination, alleging that in denying his application for tenure and then terminating him, defendant discriminated against him because of his national origin in violation of the New Jersey Law Against Discrimination.

---

320 N.J. Super. Sang-Hoon Kim v. Monmouth College.  
Cite as, 320 N.J. Super. 157

---

He also alleged that defendant breached its contract with him and the faculty union.

On February 9, 1998, the jury returned a verdict in favor of defendant as to the discrimination claim, but against defendant as to the breach of contract claim, unanimously awarding plaintiff \$150,000 in compensatory damages. On April 3, 1998, the verdict was reduced, and a judgment was entered awarding plaintiff \$60,000 in damages for "lost past income", \$10,763 in pre-judgment interest and \$8,986.17 in costs. The \$60,000 in damages for "lost past income" represented lost income for the period following plaintiff's termination until the date of the trial.

On July 16, 1998, defendant's counsel forwarded two checks to plaintiff's counsel: (1) a check for \$8,986.17, representing the costs awarded by the court, and (2) a check for \$44,034.21, representing the gross award of \$70,263 less federal income tax and FICA withholdings. On August 27, 1998, counsel for plaintiff returned the checks to defendant's counsel, objecting to the withholdings. Defendant now brings this motion to declare the judgment satisfied.

[1] Defendant contends that the Internal Revenue Service places an affirmative duty on it to deduct the withholding taxes. Defendant primarily relies on Circular E, Employer's Tax Guide, Department of the Treasury Internal Revenue Service, Publication 15 (1998) which states that:

Withholding of income tax by an employer is required only on an employee's wages. Generally, the term wages includes all remuneration for services performed by an employee for an employer.

Defendant contends that plaintiff's award is subject to withholding because it constitutes "wages." Having offered plaintiff what defendant considers to be the proper amount, and plaintiff having refused the money, defendant demands that the judgment be marked satisfied.

Plaintiff objects to the withholdings, arguing that the \$60,000 award for "past lost income" does not constitute "wages" and is therefore not subject to withholding under the Internal Revenue

