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Clarence Brown v. General Service Administration

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Civil rights--Title VII--Federal employees--Preemption of other remedies by the 1972 extension of a remedy for employment discrimination to federal employees under Title VII of the Civil Rights Act of 1964 and the requirement of exhaustion of administrative remedies under that Act


Analysis prepared October 27, 1975, by Professor Edward F. Sherman, Indiana University School of Law, Bloomington, Indiana 47401; telephone (812) 337-4140

Issues


2. Must a federal employee bringing an employment discrimination action against federal agencies and officers based on statutes other than Title VII of the Civil Rights Act of 1964 exhaust the administrative remedy of appeal to the Board of Appeals and Review of the Civil Service Commission provided in Title VII?

Background and Significance

In 1972, Congress extended a remedy for discrimination to federal employees under Title VII of the Civil Rights Act of 1964. Under the amended Title VII, a complaint of discrimination based on race, color, religion, sex, or national origin is processed according to established procedures by the agency in which the employee works. Upon notice of final adverse action by his agency, the complainant may appeal to the Board of Appeals and Review of the Civil Service Commission within 15 days, or bring a civil action in federal court within 30 days. A complainant who decides not to appeal to the Civil Service Commission or misses the short 15-day appeal period may have difficulty obtaining a lawyer and filing a civil suit within 30 days. In fact, Title VII has been amended to expand the period to file suit to 90 days for private employees, but not federal employees. A federal employee who, like the appellant in this case, fails to sue within 30 days may want to base his suit on other federal statutory remedies which do not have a 30-day filing requirement. These remedies may also be more attractive in view of the administrative remedy, particularly in permitting recovery of back pay for the full period of discrimination. The question is whether these remedies are still available, or whether Congress intended the Title VII remedy to be exclusive.

In June 1975, the Supreme Court held in Brown v. Railway Express Agency, Inc., 95 S. Ct. 1715, that a private employee charging racial discrimination in employment is not limited to Title VII remedy, but may sue under section 1 of the Civil Rights Act of 1866 which guarantees equal rights in the making and enforcing of contracts. Petitioner seeks to extend that holding to federal employees. He also seeks a determination that other statutory remedies which have not been so clearly defined in relation to employment discrimination are open to a federal employee who did not pursue a Title VII civil action.

The Court's decision, depending upon its rationale, might also affect non-federal employees. If the Court takes a restrictive view of the applicability and scope of the non-Title VII remedies, their potential as remedial vehicles for all employees could be curtailed. Conversely, a favorable rationale on these matters could open the door to greater availability of these remedies to all employees.
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Facts

Clarence Brown is a black employed by the General-Services Administration (GSA) Regional Office No. 2 in New York City since 1957. He was last promoted in 1966. When he was referred for promotion with two white employees in 1970, one of the whites was promoted. All were rated highly qualified. In 1971, a white employee was again selected over him for a promotion, although he was again rated highly qualified. He filed a complaint, and, 20 months after filing, was notified that the agency had found no discrimination. He did not file an appeal with the appeal board, and did not file suit until 11 days after the 30 day period was up. His complaint is based on five statutes and seeks promotion and back pay.

The district court dismissed the complaint and the Second Circuit affirmed. The court of appeals found that non-Title VII remedies have been preempted by Title VII, based in part upon a view of sovereign immunity expressed in a 1969 opinion written by Justice Blackmun, who, wrote the opinion in the Johnson case when he was on the Eighth Circuit. That case, Gnotta v. United States, 415 F. 2d 1271, held that a suit by a federal employee for promotion and back pay due to racial discrimination was forbidden by sovereign immunity as necessarily involving expenditures from the Treasury. The Second Circuit viewed Title VII as a limited waiver of sovereign immunity precluding other remedies which are violative of that doctrine. It also found that the remedy of going to the Civil Service Commission appeal board must be exhausted prior to suit.

Arguments

For Brown

The "arsenal of independent remedies" which existed before the 1972 amendment to the Civil Rights Act of 1964 were not repealed. The legislative history of that amendment indicates that the intent of Congress was to give federal employees the same rights concerning employment discrimination as are enjoyed by private employees.

The provision allowing suit without appealing to the Civil Service Commission appeal board was based on a congressional determination that such appeals are usually futile, as the board rarely reverses the agency decision. Exhaustion of administrative remedies is not required of state or private employees in employment discrimination cases under the Civil Rights Act of 1866, and should not be required of federal employees. The policies to be served by exhaustion are not met here.

For General Services Administration

Sovereign immunity applies to demands for promotion and back pay by federal employees, the relief demanded in this case, and thus the other remedies are barred by that doctrine. The amended Title VII is a limited waiver of sovereign immunity. The 30-day filing requirement was an explicit condition imposed by Congress on that remedy.

Even if overlapping remedies might otherwise be available to a federal employee, Brown cannot invoke them because he failed to exhaust administrative remedies. Although the usual exhaustion requirement is relaxed to the extent of permitting a civil action to be filed within 30 days after receiving the agency's decision without appealing to the board, appeal to the board is only excused if suit is filed within 30 days.

HINES v. ANCHOR MOTOR FREIGHT
(Docket No. 74-1025)

Labor law—Grievance procedures—Duty of union to represent aggrieved union member fairly and competently

On writ of certiorari to the United States Court of Appeals for the Sixth Circuit. Argument scheduled for the week of November 10, 1975

Analysis prepared on October 30, 1975, by Professor James P. Whyte, Jr., College of William and Mary, Marshall-Wythe School of Law, Williamsburg, Virginia 23185; telephone (804) 229-3000

Counsel for Petitioner: Niki Z. Schwartz, Cleveland, Ohio. Counsel for Respondent: Bernard S. Goldfarb, Cleveland, Ohio

Issue

Whether plaintiffs' damage suit against his employer and his union brought under section 301 of the Labor-Management Relations Act is barred by an arbitration award upholding plaintiffs' discharge from employment, even though the local union representing plaintiffs breached its duty of fair representation while processing plaintiffs' grievance and at the arbitration hearing.

Background and Significance

In 1967, the Supreme Court, in Vaca v. Sipes, 386 U.S. 71, recognized that an employee had a cause of action against both his employer and his union for an unjust discharge where the union failed to process a grievance completely through a grievance procedure to arbitration. The employee's damages were to be determined among the employer and the union. In essence, that case tended to free the employee from the constraints of collective bargaining which sometimes subjugate individual rights to the collective right as expressed in union action. Should Hines and the others joining him in the present suit be successful, unions will be held to a degree of competence in processing grievances and presenting cases at arbitration, in addition to the responsibility of taking worthy cases to arbitration. Employers, too, although blameless in faulty arbitration proceedings, will be held liable. However, the Court could decide to avoid the substantive issue and either remand the case for further factual determination or decide it on the narrow procedural grounds of the propriety of granting a summary judgment.

Facts

Plaintiffs are a number of former employees of Anchor Motor Freight. Defendants are Anchor, Teamsters Local Union 377, and the International Brotherhood of Teamsters. Plaintiffs were fired by Anchor for alleged dishonesty—falsifying motel receipts to obtain expense reimbursements greater than actually expended.