

IP 98-0671-C T/K Hawkins v General Motors
Judge John D. Tinder

Signed on 07/09/03

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LAWRENCE HAWKINS, SR.,)	
)	
Plaintiff,)	
)	
vs.)	IP 98-671-C-T/K
)	
GENERAL MOTORS)	
CORPORATION, et al.,)	
)	
Defendants.)	
)	

ENTRY ON MOTION FOR RELIEF FROM JUDGMENT OR ORDER¹

The Plaintiff filed a motion entitled “Plaintiff’s Motion for Relief from Judgment or Order.” The court had decided, on September 30, 2002, in its Entry on Defendants’ Motions for Summary Judgment (“September 30 entry”) that the motion for summary judgment of the Defendant General Motors Corporation (“GM”) should be granted on all of the Plaintiff’s claims. No judgment was entered because claims remained against the Defendant Allison Engine Company, Inc. (“Allison”). Because the September 30 entry did not dispose of all claims in this case, it “is subject to revision,” Fed. R. Civ. P. 54(b), and not subject to the more stringent standards of Federal Rules of Civil Procedure 59 or 60. Thus, GM’s motion is treated as a motion to reconsider the entry.

¹This Entry is a matter of public record and is being made available to the public on the court’s web site, but it is not intended for commercial publication either electronically or in paper form. Although the ruling or rulings in this Entry will govern the case presently before this court, this court does not consider the discussion to be sufficiently novel or instructive to justify commercial publication of the Entry or the subsequent citation of it in other proceedings.

The Plaintiff is correct that the September 30 entry did not explicitly address his breach of contract claim against GM. Because of this, he seeks reinstatement of that claim. Reinstatement would be inappropriate, however, for the following reasons.

The breach of contract claim is preempted by Section 301 of the Labor Management Relations Act for the same reasons that the state law claims for fraud and constructive fraud are preempted, see September 30 entry at 3-6 (quoting *Vorhees v. Naper Aero Club, Inc.*, 272 F.3d 398, 403 (7th Cir. 2001)). The breach of contract claim appears to be based on an interpretation of the collective bargaining agreement (“CBA”).² The failure to directly address the breach of contract claim was inadvertent.

But preemption does not resolve the Plaintiff’s breach of contract claim against GM, as the claim should be treated as a Section 301 claim. See *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220-21 (1985). As such, however, the claim runs into a statute of limitations problem.³

²The Plaintiff alleges GM breached an agreement in which it made him a temporary supervisor and gave him the right to return to the bargaining unit. The Plaintiff was part of the bargaining unit and covered by the CBA when he entered into this agreement. In addition, the CBA contains provisions regarding the ability of a salaried employee to restore seniority if transferred back to the bargaining unit, and seniority affects the damages to which the Plaintiff claims he is entitled. Thus, an interpretation of the CBA would be necessary to determine the breach of contract claim and that claim is therefore a Section 301 claim. See, e.g., *Ulrich v. Goodyear Tire & Rubber Co.*, 884 F.2d 936, 938 (6th Cir. 1989); *McCarty v. Reynolds Metals Co.*, 883 F. Supp. 356, 362 (S.D. Ind. 1995).

³This applies to the fraud and constructive fraud claims which also should be treated as Section 301 claims.

GM contends that the claims against it are hybrid Section 301 claims for which the six-month statute of limitations applies. The Plaintiff responds that this limitations period does not apply because he has not claimed that the union breached its duty of fair representation. However, this court has concluded that the state law claims appear to be based on an interpretation of the CBA and are therefore Section 301 claims. And, because the CBA contains a grievance procedure, Section 301 claims against GM are not actionable unless the Plaintiff can establish that the union breached its duty of fair representation. See *Filippo v. N. Ind. Pub. Serv. Corp., Inc.*, 141 F.3d 744, 748 (7th Cir. 1998); see also *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 163-64 (1983); *Greenslade v. Chicago Sun-Times, Inc.*, 112 F.3d 853, 868 (7th Cir. 1997). Thus, the court concludes that the Plaintiff's breach of contract and other state law claims against GM are hybrid Section 301 claims and therefore subject to the six-month limitations period. See *Jones v. Gen. Elec. Co.*, 87 F.3d 209, 211-12 (7th Cir. 1996).

The Plaintiff cites *Jones* as support for his assertion that a longer limitations period applies in a case like this which allegedly involves a written employment contract. His reliance is misplaced. In *Jones* the court assumed without deciding that a longer state limitations period applied. The court then determined that the two-year statute of limitations was the most analogous, and concluded that under that limitations period the case was time-barred. *Jones*, 87 F.3d at 212-13. The parties had disputed whether the case was a hybrid Section 301 case: The defendant argued that it was and that a claim should have been made against the union; the plaintiff argued that because of the plant closure, the union became "defunct" and had no duty of representation. *Jones*, 87 F.3d

at 212. The court did not decide the issue because even assuming that the case was a “straightforward” Section 301 case, the plaintiff’s claim was untimely. *Id.* Therefore, *Jones* does not offer guidance as to whether the Plaintiff’s claim against GM is a hybrid Section 301 claim such that the six-month limitations period applies.

The Plaintiff cites to *Smith v. Chrysler Corp.*, 938 F. Supp. 1406 (S.D. Ind. 1996), as acknowledging “that a ten year statute of limitations based on a written contract might apply as the Employees argue.” *Id.* at 1416. That statement was made in addressing a retaliation claim under the Employee Retirement Income Security Act rather than Section 301. *Id.* at 1412, 1416-17. Thus, reliance on *Smith* is misplaced.

The Plaintiff relies on *Burton v. General Motors Corp.*, IP95-1054-C-G/H (S.D. Ind. Apr. 26, 1998), in which Judge Godich rejected the argument that a six-month statute of limitations applicable to hybrid Section 301 cases applied to the plaintiffs’ state law claims for breach of contract, fraud, constructive fraud and tortious interference with contract. The court, however, said the statute of limitations argument was moot because the plaintiffs failed to demonstrate exhaustion of the grievance and arbitration procedures. *Burton*, Ord. of 4/26/98 at 35-38. Thus, the court did not have to consider which limitations period was applicable.

The *Burton* court did say, though, that “[w]here a claim depends not only on a collective bargaining agreement but also on alleged separate unwritten employment contracts, the statute of limitations to be applied is the two-year limitations period[.]” *Burton*, Ord. of 4/26/98 at 34-35. For support the court cited *Smith*, 938 F. Supp. at

1415-16, which in turn relied on *Jones*. However, as noted, the *Jones* court did not actually decide that a longer statute of limitations period rather than the six-month limitations period applied to a claim which depended on both a CBA and a separate employment agreement. *Jones*, 87 F.3d at 212. Therefore, the reliance on *Burton* is misplaced.

The Plaintiff's action against GM accrued, at the latest, on December 1, 1993, the effective date of the sale to Allison of the division in which the Plaintiff worked. This action was filed on May 18, 1998, beyond the six-month limitations period. Thus, all the Plaintiff's state law claims against GM which are treated as Section 301 claims are time-barred and GM is entitled to summary judgment on all claims against it. The Plaintiff's Motion for Relief from Judgment or Order is **DENIED** and judgment will be entered in favor of GM.

Further, this now appears to resolve all claims in this case. The Plaintiff brought a claim against the Defendants the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW"), and Local 933 of the UAW. Specifically, Count VI of the Amended Complaint alleges that the UAW and Local 933 were named as parties so the court could grant equitable relief to the Plaintiff by ordering them to transfer him back to the bargaining unit with full restoration of all rights and benefits based on his seniority. (Am. Compl. ¶ 60.) The claim certainly appears derivative of the claims against the other Defendants in the case. Thus, resolution of all other claims in favor of the other Defendants would indicate that judgment should be entered in favor of the UAW and Local 933 on the claim against them as well.

Accordingly, the Clerk shall enter judgment in favor of GM, the UAW and Local 933.
The claims against Allison have been dismissed by agreement of the parties.

ALL OF WHICH IS ENTERED this 9th day of July 2003.

John Daniel Tinder, Judge
United States District Court

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