

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000022-MR

COURTNEY EDWARDS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS J. KNOFF, JUDGE
ACTION NO. 99-CI-003242

UNITED PARCEL SERVICE CO.

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BUCKINGHAM, COMBS, and SCHRODER, Judges.

COMBS, JUDGE: Courtney Edwards appeals the Jefferson Circuit Court's dismissal of his civil rights action brought under state law. Having reviewed the record, the arguments presented, and the well-reasoned opinion of the trial court, we conclude that the court did not err by ordering the action dismissed as the claim upon which it is based is subject to federal preemption principles. We affirm.

We adopt as our own the thorough and well-reasoned opinion prepared by the trial court:

This matter comes before the Court on a motion to dismiss brought by Defendant,

United -Parcel Service, Inc. d/b/a United Parcel Service Co.
(Air) (C-R) (hereinafter "UPS").

Courtney Edwards was a pilot employed by UPS as an airline captain. His employment was terminated on June 6, 1994, based upon the results of an FAA required random drug test taken by Edwards on May 12, 1994. The results of the test showed that the urine specimen contained glutaraldehyde, an adulterating agent found in products such as UrinAid, to mask evidence of drugs in a urine test.

Edwards filed a grievance under the collective bargaining agreement ("CBA") between UPS and the Independent Pilots Association, Edwards' union representative. The grievance proceeded to arbitration, and an arbitrator upheld his termination under the CBA in 1995. The particular provision of the CBA at issue provided that UPS could terminate any pilot for just cause for refusing to submit to an FAA required drug test or failing a drug test, provided the testing conformed with FAA regulations and the UPS Drug Testing Program. The arbitrator found that deliberate adulteration of a urine specimen was effectively the same as a refusal to be tested, which is a dischargeable offense under the negotiated CBA.

On June 19, 1996, Edwards (who is black) brought suit in federal court against UPS seeking to vacate the arbitration award and alleging breach of contract (CBA), and racial discrimination under Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq. ("Title VII"). The federal court dismissed Edwards' (sic) Title VII claim in 1997 for lack of jurisdiction, and Edwards did not appeal said dismissal.

On June 2, 1999, Edwards brought this civil rights action against UPS, alleging racial discrimination under KRS 344.040 of the Kentucky Civil Rights Act. Edwards' (sic) allegation is based upon two similarly situated white pilots who tested positive for drugs but were allowed to continue in the employment of UPS.

UPS filed a notice of removal to federal court on June 28, 1999. The federal court remanded the case back to this Court on August 18, 1999, as Edwards' (sic) complaint only alleged a state law civil rights claim. On September 15, 1999, UPS filed a motion to dismiss. On October 5, 1999, Edwards filed a response to the motion. UPS was given leave to file a reply on October 19, 1999, and on October 22, 1999, Edwards filed a sur-reply.

UPS sets forth the following two arguments in its motion to dismiss: (1) Edwards' (sic) state law civil rights claim is barred by res judicata since his Title VII claim based on the same allegation of racial discrimination was dismissed in federal court; and (2) Edwards' (sic) state law claim is preempted by the Railway Labor Act, 45 U.S.C. §§ 151 et seq. ("RLA").

The doctrine of res judicata requires a final adjudication on the merits and identity of parties and subject matter. Vega v. Kosair Charities Committee, Inc., Ky. App., 832 S.W.2d 895 (1992); Haeberle v. St. Paul Fire and Marine Insurance Company, Ky. App., 769 S.W.2d 64 (1989). The doctrine is not only applicable "to the issues disposed of in the first action, but to every point which properly belonged to the subject of the litigation in the first action and which in the exercise of reasonable diligence might have been brought forward at the time." Egbert v. Curtis, Ky. App., 695 S.W.2d 123 (1985).

Edwards' (sic) previous federal Title VII claim was dismissed on August 15, 1997, for lack of subject matter jurisdiction. The dismissal was based upon Edwards' (sic) failure to exhaust his administrative remedies in that he never obtained a right-to-sue letter from the EEOC. A dismissal based upon a court's lack of subject matter jurisdiction is not an adjudication on the merits as required for res judicata purposes. As stated in Davis v. Powell's Valley Water District, Ky. App., 920 S.W.2d 75 (1995):

Both Fed.R.Civ.P. 41(b) and CR 41.02(3) indicate that an action's dismissal for lack of jurisdiction does not constitute "an adjudication upon the merits" of an action. Therefore, the earlier dismissal of appellants' federal court action for lack of subject matter jurisdiction did not constitute an adjudication upon the merits of that action, and res judicata did not attach to the issues raised therein or preclude appellants from raising the same issues in the instant action.

Id. at 77.

UPS cites Rivers v. Barberton Board of Education, 143 F.3d 1029 (6th Cir. 1998), to show that the 6th Circuit has now joined other circuits in holding that a right-to-sue letter is merely a condition precedent and not a jurisdictional requirement. However, at the time the federal court dismissed Edwards' Title VII claim in 1997, obtaining a right-to-sue letter was considered jurisdictional in the 6th Circuit. [See the August 15, 1997 federal opinion citing Jones v. Truck Drivers Local 299, 748 F.2d 1083 (6th Cir. 1984)]. Consequently, there was no adjudication on the merits, and the federal court's dismissal of Edwards' (sic) Title VII claim does not bar his claim under the Kentucky Civil Rights Act.

Next, UPS argues that Edwards' (sic) state law civil rights claim is preempted by the RLA and must be submitted to arbitration under 45 U.S.C., § 184, since it involves interpretation of the CBA. Both parties agree that the Sixth Circuit has used the following test to determine when preemption is appropriate. A court must determine whether the proof of the state law claim requires interpretation of the CBA's terms. If the right claimed by the plaintiff is created by state law and does not involve

contract interpretation, preemption is not required. DeCoe v. General Motors Corporation, 32 F.3d 212 (6th Cir. 1994). Preemption is appropriate if the claim is based upon a matrix of facts which are inextricably intertwined with the grievance machinery of the CBA and the RLA. Stephens v. Norfolk and Western Railway Company, 792 F.2d 576 (6th Cir. 1986).

In this case, Edwards was terminated after an FAA required random drug test. His urine specimen was found to be intentionally adulterated with glutaraldehyde to mask any illegal drug usage. UPS equated the adulteration of a random urine specimen with refusal to be tested under the CBA. Edwards seeks to equate adulteration of a urine specimen with testing positive (like the two retained white pilots) under the CBA, rather than equating it with a refusal to test. Consequently, the Court finds that Edwards' (sic) state law civil rights claim necessarily requires interpretation of and is inextricably intertwined with the CBA. The claim is thus preempted by the RLA.

Therefore, the Court enters the following Order:

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the motion to dismiss brought by Defendant, United Parcel Service, Inc. d/b/a United Parcel Service Co. (Air) (C-R), is GRANTED on the basis that Courtney Edwards' (sic) state law civil rights claim under KRS Chapter 344 is preempted by the Railway Labor Act, 45 U.S.C. §§ 151 et seq.

This is a final and appealable judgment and there is no just reason for delay.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT *PRO SE*:

Courtney B. L. Edwards
Louisville, KY

BRIEF FOR APPELLEE:

Tony C. Coleman
David L. Hoskins
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