

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 98-30934
Summary Calendar

THOMAS A. BARFIELD,

Plaintiff-Appellant,

VERSUS

ORMET PRIMARY ALUMINUM CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle district of Louisiana
(97-CV-246)

June 30, 1999

Before DAVIS, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:¹

Thomas A. Barfield sues his former employer asserting claims of age discrimination and entitlement to severance benefits based on ERISA. The trial court granted summary judgment on both claims for the employer. On appeal, Barfield contends primarily that the non-discriminatory reason for termination offered by the employer is a pretext for age discrimination. He then argues that if he is successful on that issue he meets the qualifications of the ERISA plan for severance benefits.

We note that even if, as Appellant contends, his remarks at the meeting concerning the scheduling were misinterpreted by Bell,

¹Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

and that he did not refuse to answer the questions put to him, he has still not raised a material issue that the real reason for his termination was age discrimination. The statistical evidence he submitted was properly disregarded by the trial court, and the earlier remarks attributed to Bell were far to distant in time and remote in circumstances to create the material fact issue needed.

Since Appellant has not created a material fact issue that he was discharged "in the interest of Company convenience", he is not qualified for severance pay under the ERISA plan.

Accordingly, essentially for the reasons given by the trial court, its judgment is AFFIRMED.