United States Court of Appeals
Fifth Circuit

F I L E D

January 22, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-30631
Summary Calendar

ABELARDO A. CASTILLO,

Plaintiff-Appellant,

versus

ALSTOM POWER, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
(02-CV-227-A-M1)

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:[*]

Abelardo Castillo filed the instant action under the Americans with Disabilities Act and state law against his former employer, Alstom Power, Inc. (Alstom), claiming Alstom improperly refused to rehire him after he recovered from work-related injuries. Thereafter, Castillo failed both to conduct discovery in accordance with the scheduling order and to communicate with opposing counsel or the court. As a result, Alstom filed an unopposed motion to

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[*] Pursuant 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

strike. The district court granted Alstom's motion and dismissed this action with prejudice.

Castillo can not receive relief from that judgment unless he shows that the district court abused its discretion in dismissing his action. *E.g., **SEC v. First Houston Capital Resources Fund, Inc.**, 979 F.2d 380, 381-82 (5th Cir. 1992). Castillo has not done so.

A review of the record reflects that he engaged in "delay or contumacious conduct" and that the district court determined that lesser sanctions were inappropriate. *See **McNeal v. Papasan***, 842 F.2d 787, 790 (5th Cir. 1988). Moreover, the breadth of Castillo's failures to comply with the discovery order and to communicate with either opposing counsel or the district court supports that court's determination that these failures were intentional and not the result of mere inadvertence. Such intentional delay is an aggravating factor supporting a decision to dismiss an action. *See **id***.

AFFIRMED