IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-2560
Conference Calendar

DAN K. SCHRAUDT,

Plaintiff-Appellant,

versus

SOUTHWESTERN BELL,
TELEPHONE COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. CA-H-90-3250
- - - - - - - - - - -
August 17, 1993

Before JOLLY and DUHÉ, Circuit Judges. [This matter is being decided by a quorum. 28 U.S.C. § 46(d).]

PER CURIAM:*

Dan K. Schraudt, a former employee of Southwestern Bell Telephone Company (SWBT), appeals the district court's dismissal of his complaint alleging that SWBT breached its contract with the Communication Workers of America when it failed to pay him a $1000 signing bonus.

Summary judgment is proper if the movant demonstrates that "there is no genuine issue as to any material fact and that the

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). To determine whether summary judgment is warranted, we apply the relevant substantive law and "decide whether `the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Bache v. American Tel. & Tel, 840 F.2d 283, 287 (5th Cir. 1987) (citation omitted), cert. denied, 488 U.S. 888 (1988). We will apply the same standard as the district court and review de novo the district court's disposition of the summary judgment motion. See Sims v. Monumental General Ins. Co., 960 F.2d 478, 479 (5th Cir. 1992).

Schraudt apparently misunderstands the scope of our review of the district court's summary judgment ruling and offers to supplement the summary judgment record. Review of the district court's summary judgment is based on evidence actually presented in district court. See Fed. R. Civ. P. 56(c); Bernhardt v. Richardson-Merrell, Inc., 892 F.2d 440, 443-44 (5th Cir. 1990).

Section 301 of the Labor Management Relations Act allows an individual employee to file a lawsuit against his employer on grounds that the employer breached the collective bargaining agreement. Bache, 840 F.2d at 287 (citation omitted). "If the arbitration and grievance procedure is the exclusive and final remedy for breach of the collective bargaining agreement, the employee may not sue his employer under § 301 until he has exhausted the procedure." Id. at 288 (citation omitted).

Schraudt argues that the district court erred when it

granted SWBT's motion for summary judgment because the contract clearly stated that he was entitled to the "Signing Bonus." He also argues that his failure to pursue the grievance procedure was justified because the union was impartial and told him there was little chance of winning. This argument lacks merit.

The summary judgment evidence demonstrates that the signing bonus did not apply to Schraudt under the terms of the contract. Schraudt's private interpretation of the agreement is thus erroneous. Schraudt's argument collapses on a more fundamental basis, however, because he failed to exhaust the grievance procedure. A fair reading of Schraudt's deposition shows that he elected not to file a grievance because he did not think it would be successful. Union officials clearly informed Schraudt that he was free to pursue a grievance. Because Schraudt elected not to do so, dismissal is proper as a matter of law. See Bache, 840 F.2d at 288 (citation omitted).

A F F I R M E D .