

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3762
Conference Calendar

JAMES RICHARD DUNWORTH,

Plaintiff-Appellant,

versus

GILBERTO GUARDIA, Administrator
of the Panama Canal Commission
and THE PANAMA CANAL COMMISSION,
An Agency of the United States,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-93-1660-G
- - - - -

(May 19, 1994)

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

PER CURIAM:*

James Richard Dunworth, a canal pilot employed by the Panama Canal Commission, filed a complaint in federal district court seeking a writ of mandamus directed to the Panama Canal Commission (Commission) and its administrator, Gilberto Guardia. Dunworth was seeking to have his bonus compensation used to compute retirement contributions and retirement pay. In addition to ordering the Commission and Guardia to compute the retirement

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

contributions based on the bonus pay, Dunworth sought to have the district court determine the proper amount of past contributions.

The district court dismissed Dunworth's action holding that it would be improper to exercise mandamus jurisdiction because Dunworth had an adequate administrative remedy that he had not exhausted. "As a general rule parties are required to pursue administrative remedies before resorting to the courts to challenge agency action. We agree with the district court, however, that the exhaustion requirement is not a jurisdictional prerequisite but a matter committed to the sound discretion of the trial court." Haitian Refugee Center v. Smith, 676 F.2d 1023, 1034 (5th Cir. 1982).

Although Dunworth argues that an administrative remedy is either nonexistent or impractical, the statutory law clearly provides for administrative procedures arising out of Dunworth's dispute with the Panama Canal Commission. Title 5 U.S.C. § 8347(a) authorizes the Office of Personnel Management (OPM) to administer the subchapter entitled Civil Service Retirement running from 5 U.S.C. §§ 8331 through 8348. This subchapter includes 5 U.S.C. § 8331(3) which defines basic pay and excludes bonuses from basic pay.

Section 8347(d) provides that "[a]n administrative action or order affecting the rights or interests of an individual or of the United States under this subchapter may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board." There is no dispute in this case that Dunworth did not seek an appeal to the MSPB.

Title 5 U.S.C. § 7703(a)(1) provides that "[a]ny employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision." The United States Court of Appeals for the Federal Circuit has exclusive jurisdiction of such an appeal. 28 U.S.C. § 1295(a)(9); 5 U.S.C. §§ 7703(b)(1) and (d).

A district court may exercise its jurisdiction even if the plaintiff has failed to exhaust his administrative remedies if judicial intervention does not thwart the policies behind employing the administrative process.

Among those policies are (1) allowing the agency to develop a more complete factual record; (2) permitting the exercise of agency discretion and expertise on issues requiring this; (3) preventing deliberate disregard and circumvention of established agency procedures; and (4) enhancing judicial efficiency and eliminating the need for judicial vindication of legal rights by giving the agency the first opportunity to correct any error.

Haitian Refugee Center, 676 F.2d at 1034. The district court noted that in this case the policies behind exhaustion of administrative remedies would be thwarted by judicial intervention because the agency would not have an "opportunity to apply its expertise, exercise its discretion, and correct its errors." The district court did not abuse its discretion in declining to exercise its jurisdiction over this mandamus action.

AFFIRMED.