

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5247
Summary Calendar

RICHARD GRANT VERNON,

Plaintiff-Appellant,

versus

SOUTHERN HILLS CHRISTIAN CHURCH,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92-CV-1903)

(January 19, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit Judges.

PER CURIAM:*

Richard Grant Vernon, a veteran of Operation Desert Storm, appeals an adverse judgment in the bench trial of his 38 U.S.C. § 4301 suit for back pay against his former employer for its refusal of reemployment upon his return from the Gulf. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

The parties stipulated to the relevant events and Vernon does not question the correctness of the district court's factual findings. A minister at the Southern Hills Christian Church, Vernon was called to active military duty during the Gulf War, leaving his home in Shreveport on December 4, 1990. Prior to his call to active duty Vernon and his wife and children lived in the Church's parsonage rent-free. The Church agreed that during Vernon's absence his family could continue their rent-free possession of the parsonage.

Soon after Vernon's departure the Church leadership learned from members who were former servicemen that military personnel on active duty receive a substantial "Basic Allowance for Quarters with Primary Dependents" or BAQPD. Being so advised, the Church asked the Vernons to pay \$255 per month in rent for the parsonage. Vernon represented to the Church, however, that he received no housing allowance even though he was receiving \$418.50 per month as BAQPD.

Upon his release from active duty in May 1991, Vernon notified the Church that he wished to return to his position as minister. Shortly thereafter the Church board held a meeting to consider Vernon's housing allowance dispute with the Church. During this meeting Vernon was informed that his job was in jeopardy. Indeed at conclusion of the meeting the board denied his request for reinstatement.

Vernon filed suit seeking money damages under 38 U.S.C. § 4301

et seq, legislation designed to preserve the civilian jobs of military personnel "who left private life to serve their country in its hour of great need."¹ After a bench trial, the court *a quo`* found that the congregation's loss of confidence in Vernon due to his apparent concealment and misrepresentations about his housing allowance had created a "change in circumstances," excusing the Church from any obligation to reemploy Vernon upon his return from military service. Vernon timely appealed.

Analysis

Vernon advances two points of error. He first alleges that his quarrel with the Church and the congregation's resultant mistrust did not provide sufficient objective "cause" for the refusal to reinstate him. He then contends that he did not receive any advance notice that his conduct with respect to the housing allowance might result in his termination. Vernon misperceives controlling law; his contentions are based on inapplicable portions of the statute in question.

Vernon cites **Carter v. United States**,² a 1968 decision by the D.C. Circuit, which holds that subjective dislike is inadequate cause for firing a returning veteran and that notice and an opportunity to improve must be extended before a valid termination may occur. While we do not question the holding that notice and

¹**Fishgold v. Sullivan Drydock & Repair Corp.**, 328 U.S. 275 (1946).

²407 F.2d 1238 (D.C.Cir. 1968).

objective facts are required to dismiss a returning veteran, neither the **Carter** holding nor the provision underlying it is relevant to our disposition.

The notice and discharge for cause requirements of 38 U.S.C. § 4301(b)(1)(A), upon which **Carter** was based, apply only to returning veterans who have already been "restored to or employed in a position in accordance with the provisions of . . . subsection (a) of this section." Under subsection (a), however, if "the employer's circumstances have so changed as to make it impossible or unreasonable" to reemploy a returning veteran, the veteran need not be reinstated. Such a change in circumstances obviates the subsection (b) cause and notice requirements. In the instant case, the board did not reinstate Vernon under subsection (a); the cause and notice requirements of subsection (b), therefore, never came into fruition.

Under the plain language of 38 U.S.C. § 4301(a), the question before us is whether the Church's circumstances had so changed that it would be unreasonable to require Vernon's reinstatement. The district court's oral findings and conclusions are persuasive in this regard. In the unique factual setting of a pastor and a congregation, it manifestly would be unreasonable to require reinstatement of a pastor in whom the congregation had lost confidence, whether that loss was objectively grounded or was a strongly held subjective belief.

The judgment of the district court is AFFIRMED.