IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7390
(Summary Calendar)

PATRICIA A. LITTLE, ET AL.,

Plaintiffs,

PATRICIA B. LITTLE, et al.,

Plaintiffs-Appellants,

VERSUS

FIRST SOUTH PRODUCTION CREDIT ASSOCIATION, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(J89-0021(w))

(May 5, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM*:

The district court held that a severance plan which expresses that its purpose is "to cushion the impact of job loss" provides

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

unemployment benefits, not deferred compensation for past services. Accordingly, the district court concluded that the plaintiffs))employees who had endured no interruption in salary and no period of unemployment))were not entitled to severance benefits as a matter of law. We agree and therefore we affirm.

I

FACTS AND PROCEEDINGS

Plaintiffs-Appellants ("Plaintiffs") are 177[1] employees of various member institutions of the Farm Credit System ("the System"). The System comprises federally chartered banks that are statutorily authorized and required to provide credit to farmers, agricultural businesses, and agricultural cooperatives. Defendants-Appellees are three such federally chartered institutions. The System is regulated by the United States Farm Credit Administration ("FCA").[2]

Plaintiffs sued to collect severance benefits under a severance plan offered by each of the three defendant institutions, namely Jackson Bank for Cooperatives ("CoBank"[3]), Federal Intermediate Credit Bank of Jackson ("Credit Bank"[4]), and First

[1]When this suit was initially filed, there were 236 Plaintiffs. Only 177 of these Plaintiffs have chosen to appeal.

[2]See 12 U.S.C. §§ 2001-260.

[3]Effective January 1, 1989, Jackson Bank for Cooperatives merged with various other banks to create the National Bank for Cooperatives. For convenience, Jackson Bank and its successor are referred to as "CoBank."

[4]Effective September 30, 1993, Federal Intermediate Bank of Jackson merged into Farm Credit Bank of Columbia. For convenience, Federal Intermediate Bank of Jackson and its successor are referred

South Production Credit Association ("First South Association") (collectively, "Defendants"). This plan provides that:

> Employees who are involuntarily terminated as a result of reduction in force or position abolishment will receive severance pay . . . to cushion the impact of job loss.[5]

The story of this litigation begins in May 1988, when the Plaintiffs were divided into two work groups: "bank employees," who worked for the Federal Land Bank Jackson ("Land Bank"), CoBank, and Credit Bank; and "association employees," who worked for Federal Land Bank Association of Jackson ("Land Bank Association") and First South Association. The "bank employees" provided services for all three members of the "bank group," and received payroll checks, management directives, notices, and other employee related material from "Farm Credit Banks of Jackson." Similarly, the "association employees" provided services for the two members of the "association group," and received their checks, management directives, notices, and other employment related material from "Farm Credit Services."

On May 20, 1988, the FCA declared Land Bank (a member of the bank group) and Land Bank Association (a member of the association group) to be insolvent and placed them in receivership. Between May 20th and June 20th of that year the receiver maintained the

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to as "Credit Bank."

[5]The severance policy of First South Association contained an additional provision which provided that no severance benefits were due an employee that accepted a position with another member of the Farm Credit System. Because this case is disposed of on grounds that make this additional provision not germane, we decline to address its significance.

"status quo" regarding the Plaintiffs: Without any break in service, they continued to report to work, to receive their paychecks, and to have essentially the same duties as before. On June 20, 1988, each of the Plaintiffs was offered (and each accepted) one among a number of jobs with 1) the institution that had been placed in receivership, 2) one of the Defendants, or 3) another member of the System.

The parties vigorously contest the pre-May 20th nature of the employee-employer relationships between the Plaintiffs and the Defendants, and the effect of the May 20th and June 20th changes on those relationships. In essence, Plaintiffs contend that both Farm Credit Services and Farm Credit Banks of Jackson were "joint ventures," and that all management control over employees was placed in these organizations, ergo these organizations were Plaintiffs' employers. Once the receiver stepped in, insist Plaintiffs, their employment relationship with these organizations automatically ended, and all Plaintiffs became employees of the receiver.

In contrast, Defendants contend that Farm Credit Services and Farm Credit Banks of Jackson were not separate legal entities. Rather, they insist, Plaintiffs worked under a "joint management" agreement that created economies-of-scale by providing for the sharing of employees and the allocation of costs to the participating individual institutions. These individual institutions maintained their own books and retained their own separate legal identities. Of particular significance, assert

Defendants, is the fact that all profits and losses accrued directly to these individual institutions, not to "Farm Credit Services" or "Farm Credit Banks of Jackson."[6] According to Defendants, the imposition of receiverships on May 20th simply switched the status of each Plaintiff from that of a "joint employee" of all to that of an employee of one or another of the individual institutions, including in some cases one of those institutions that had been placed in receivership. The Defendants further insist, with equal fervor, that no Plaintiff was ever an employee of the receiver qua receiver.

Of more importance to the instant case))and what is not contested))is the practical effect on the Plaintiffs wrought by the May 20th and June 20th changes: Not one Plaintiff ever missed a single day's work or a single day's pay as a result of the institution of these receiverships. During the brief transition period, Plaintiffs continued to perform essentially the same duties as they had immediately beforehand, and no changes were made in personnel policies. Finally, by the end of this transition period each Plaintiff was in the employ of one or another of the member institutions of the System, at or above his or her pre-transition salary. In contrast, former fellow employees who were no longer employed anywhere within the System, i.e., who truly suffered a job loss, did receive severance pay under the plan. Not surprisingly, these former employees are not Plaintiffs in the instant suit.

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[6]Cf. Hults v. Tillman, 480 So.2d 1134, 1146 (Miss. 1985) (indicating that sharing of profits is an important characteristic of a joint venture).

In May 1988, Plaintiffs filed the instant suit in Mississippi state court, seeking severance benefits as well as accrued vacation pay and unpaid travel and relocation expenses. Defendants promptly removed this case to federal district court, where, after procedural wrangling not germane here, they moved for summary judgment on the severance-pay issue.

The district court granted summary judgment on this issue, holding that benefits furnished under a severance plan that provides benefits "to cushion the impact of job loss" are unemployment benefits, not deferred compensation for past services. Accordingly, the court concluded that as Plaintiffs had endured no interruption in salary and no period of unemployment, they had experienced no job loss and thus as a matter of law were not entitled to severance benefits. Plaintiffs then dismissed the rest of their claims, thereby allowing the district court to enter a final judgment, from which Plaintiffs timely appealed.

II

DISCUSSION

A. Plan Interpretation

We review summary judgments de novo.[7] When a court grants a summary judgment based on interpretation of a contract, the initial inquiry is whether the contract is ambiguous. If the contract is not ambiguous, it may be interpreted as a matter of law, so summary

[7] E.g., American Totalisator Co. v. Fair Grounds Corp., 3 F.3d 810, 813 (5th Cir. 1993); D.E.W., Inc. v. Local 93, Laborers' Int'l Union, 957 F.2d 196, 199 (5th Cir. 1992).

judgment is generally appropriate.[8]

As we noted in Barnett v. Petro-Tex Chemical Corp.,[9] severance plans will fall into one of two possible categories: either deferred compensation plans or unemployment benefit plans. Coverage under a deferred compensation plan is triggered by any change in employer (such as occurs as a result of a sale or merger into a successor corporation), whereas coverage under an unemployment benefit plan, which is intended to mitigate the economic disruption associated with job loss, is triggered by actual unemployment. The latter category of plans thus provides benefits to only those employees who actually become unemployed.[10] We also observed in Barnett that the language of the plan is the touchstone for ascertaining which category of benefits are being provided.[11]

When we turn to the language of the severance plan here at issue, we read that "[e]mployees who are involuntarily terminated as a result of reduction in force or position abolishment will receive severance pay . . . . " Were this the only pertinent language of the plan, we may well have concluded that the language of the plan was indeed ambiguous regarding the type of benefits

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[8]E.g., American Totalisator, 3 F.3d at 813; D.E.W., Inc., 957 F.2d at 199.

[9]893 F.2d 800, 807-09 (5th Cir.) (collecting and discussing jurisprudence), cert. denied, 497 U.S. 1025 (1990).

[10]See id.

[11]Id. at 809.

provided.[12] But there is more. The plan immediately goes on to express that its purpose is "to cushion the impact of job loss." Such a statement of purpose eliminates any doubt that this plan belongs in the unemployment benefit category: Absent true unemployment, no Plaintiff could have suffered a "job loss" that caused any "impact" which needed to be "cushioned" by severance benefits.[13] We agree with the district court that this plan unambiguously requires a period of actual unemployment to trigger benefits))a condition that has not been met by any Plaintiff.

Consequently, Plaintiffs' arguments regarding purported changes in employers become irrelevant. Even if we were to assume arguendo that on May 20th each Plaintiff had ceased to be employed by one of the so-called joint ventures (i.e., Farm Credit Services and Farm Credit Banks of Jackson) and had become employed by the receiver, the conclusion that every Plaintiff had remained employed throughout the transition period would not be altered: They continued to perform the same duties for the same or greater pay. Likewise, Plaintiffs' employment continued without interruption after the changes of June 20th, as all became employees of member institutions of the System at or above their pre-transition salaries. In sum, such changes in employer would not alter the

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[12]See id. at 809-10 (concluding that severance policy which provided only that severance benefits were due for "termination" was ambiguous).

[13]Cf. Younger v. Thomas International Corp., 629 S.W.2d 294, 296 (Ark. 1982) (concluding that statement of purpose regarding the need to provide financial assistance strongly indicated that severance policy did not apply absent unemployment).

fact that Plaintiffs have failed to show that they have experienced any unemployment))or, for that matter, any economic harm))that would entitle them to benefits under the severance plan. To the contrary, receipt of such benefits would constitute unintended windfalls.

B. Agency Views

Plaintiffs attempt to avoid the effect of the purpose requirement by relying on excerpts from letters and memoranda prepared by various FCA officials. These excerpts reflect that the officials thought that the imposition of the receiverships on May 20th "terminated" Plaintiffs' employment. Despite the fact that none of the underlying memoranda or letters were issued in accordance with any agency procedure, Plaintiffs insist that these excerpts are "agency interpretations" that are entitled to deference. We disagree entirely.

We first observe that the excerpts quoted to us do not speak to the precise question at issue here: Whether Plaintiffs are entitled to severance benefits. Under the facts of this case, concluding that an employee is "terminated" is not the same as concluding that an employee is entitled to severance benefits. Rather, the essential question is whether the severance plan requires a termination resulting in unemployment, or merely a technical "termination" caused by a change in the identity of the entity that is the employer. For plans falling into the unemployment benefits category, the answer must be the former to entitle employees to severance benefits.

We next observe that even if we were to assume arguendo that these excerpts were relevant))albeit indirectly))to the question at issue, we would still conclude that they are of little to no import. The instant severance plan was enacted by the Fifth Farm District Board, which by law is composed of directors who cannot be FCA personnel, and which by law operates as the "board of directors" for the district that includes, among others, the Defendants.[14] Moreover, the FCA's own regulations limit its jurisdiction regarding personnel matters, stating that "supervision of district human resource management programs is meant to be consultative, . . . rather than [requiring] technical compliance of a specific program."[15] Accordingly, FCA personnel can claim little if any warrant to "interpret" a policy that was not issued by the FCA and that addresses a matter over which the FCA abjures jurisdiction.[16] Under the totality of these circumstances we give these excerpts the deference that we conclude they are due: none.

III

CONCLUSION

The severance plan at issue is expressly and unambiguously

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[14]See 12 U.S.C. §2222(b) (qualifications of directors) and §2227 (powers and duties of the farm credit board).

[15]12 C.F.R. §612.2010.

[16]Indeed))perhaps in recognition of this lack of jurisdiction))the author of a memorandum relied on by the Plaintiffs concedes as much, stating in that very memorandum that he was unaware of any authority that would allow the FCA to impose his views regarding the proper policy for terminations.

intended "to cushion the impact of job loss." The district court correctly found that such a plan is an unemployment benefits plan, not deferred compensation. Plaintiffs have suffered no unemployment; to allow them to collect for severance benefits because of the serendipitous circumstance of member institutions of the Farm Credit System being placed in receivership would be to provide Plaintiffs with an unintended, unexpected, and unjustifiable windfall.

For the foregoing reasons, the judgment of the district court dismissing Plaintiffs' severance claims is

AFFIRMED.