

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9128
Summary Calendar

GARY C. BAKER,

Plaintiff-Appellant,

versus

DEPARTMENT OF AGRICULTURE,
ADMINISTRATOR, AGRICULTURAL
MARKETING SERVICE, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court for the
Northern District of Texas
(3:93-CV-2032-T)

(July 26, 1994)

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

PER CURIAM:*

This appeal challenges the decision of the district court denying injunctive relief sought by appellant Gary C. Baker in connection with an administrative proceeding charging him with misconduct in the performance of his job. Having determined that the district court properly dismissed Baker's claims, 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 Pursuant to that Rule, the court has determined that this opinion should not be published.

Baker was previously employed by Goodman Produce Co. This company was the subject of a disciplinary complaint filed by the Agriculture Marketing Service alleging wilful, flagrant, and repeated violations of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499a, et seq. In connection with the proceedings against Goodman, Baker was advised in April 1992 that his employment within the produce industry could be restricted if the Secretary of Agriculture determined that he engaged in violation of PACA and was "responsibly connected" with Goodman at any relevant time. After Baker was given an opportunity to provide information, he was determined in December 1992 to be responsibly connected with Goodman. Baker sought review and the matter was assigned to a hearing officer who advised Baker, by letter dated June 22, 1993, that a hearing would be held on October 5, 1993, to determine whether he was a "responsibly connected" person.

By letter dated September 15, 1993, Baker's counsel requested that certain subpoenas duces tecum be issued for the October 5 hearing. The defendants promptly advised Baker's counsel that the issuance of such subpoenas was not authorized. Thereafter, on October 4, 1993, Baker initiated this action seeking a temporary restraining order, and temporary and permanent injunctions enjoining the defendants from holding the October 5 hearing. Baker

further requested the district court to enter an order allowing him to take discovery for the administrative hearing.¹

Baker's motion for a temporary restraining order was heard by the district court on October 5, 1993. In denying the request to restrain the administrative hearing set for the same day, the district court questioned why Baker had not pursued other forms of discovery since the dispute first arose in April 1992. At a subsequent hearing before the district court, Baker withdrew the request for preliminary and permanent injunctive relief as moot. Following that hearing, the district court denied the request for discovery, stating that Baker's complaints must be addressed to the Fifth Circuit in an appeal of the agency's final order. Baker timely appealed the district court's order denying his requested relief.

II

The only issue before this court is a request for discovery and other injunctive relief relating to a pending and incomplete administrative proceeding. We review the denial of injunctive relief for abuse of discretion. Belo Broadcasting Corp. v. Clark, 654 F.2d 423 (5th Cir. 1981). We, therefore, must determine

¹Specifically, Baker requested the district court to issue subpoenas and subpoenas duces tecum or, alternatively, to order the Secretary of Agriculture to promulgate regulations providing for depositions and subpoenas in the rules applicable to the administrative hearing or, alternatively, to order the Secretary of Agriculture to designate a person to sign and issue subpoenas for the hearing.

whether the district court abused its discretion in denying the injunctive relief that Baker sought. As a general rule, parties are required to exhaust administrative remedies before seeking relief from the federal courts. McCarthy v. Madigan, 112 S.Ct. 1081, 1086 (1992). Although there are exceptions to this rule, it is not clear from the record that the applicability of any exception was raised before the district court. Accordingly, we cannot conclude that the district court abused its discretion in denying injunctive relief under these circumstances.² We, therefore, AFFIRM the district court's denial of Baker's request for injunctive relief.

III

For the foregoing reasons, the judgment is

A F F I R M E D.

²We also note that Baker had known since June 1993 that he would have a hearing on October 5 and yet he waited until September 15 to request subpoenas for that hearing. Moreover, he waited from September 17 until October 4 to seek injunctive relief from the district court.