

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

---

No. 94-60760  
Summary Calendar

---

NORMAN F. JOHNSON,

Plaintiff-Appellant,

versus

TRANSPORTATION COMMUNICATIONS WORKERS  
UNION, ET AL.,

Defendants-Appellees.

---

Appeal from the United States District Court  
For the Southern District of Mississippi

(3:93CV277BN)

---

(May 18, 1995)

Before KING, JOLLY and DeMOSS, Circuit Judges.

PER CURIAM:\*

BACKGROUND

Norman Johnson began working for the Illinois Central Railroad Company ("ICR") in 1962 as a clerk in East St. Louis, Illinois. In March 1990, Johnson accepted a position with the ICR office in

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jackson, Mississippi.<sup>1</sup> In early 1991 a "Position 1450C" job opening became available in East St. Louis, Missouri. The bulletin listing the opening contained the following statement:

This position is excepted from Rules 6, 15, and 36, [of the collective bargaining agreement] to the extent that management shall select the employee to be assigned.

The bulletin reiterated that as a "C" position, the job opening was exempted from the collective bargaining agreement between ICR and the employees' union, Transportation-Communications International Union ("TCIU"). The collective bargaining agreement provided that employment rights concerning internal promotions be based upon seniority. ICR's management could fill "C" positions, however, without regard to the applicants' seniority.

Johnson applied for the 1450-C position. Several other ICR employees, both junior and senior to Johnson, also applied for the job. Management selected an employee junior to Johnson to fill the position. Johnson filed a grievance with ICR alleging that its decision to fill the position with an employee who had less seniority than he had violated the collective bargaining agreement. He argued that ICR had improperly classified the job as a "C" position and that the position should have been filled solely based

---

<sup>1</sup>In 1987, ICR had sold its East St. Louis facility to the Chicago, Missouri and Western Railroad ("CMW"). CMW retained Johnson and most of the other ICR employees at the facility. In 1990 CMW declared bankruptcy. ICR offered its former employees the chance to come back to ICR with full credit for prior seniority rights. Johnson accepted and exercised his seniority rights to obtain a position as a demurrage clerk at ICR's Jackson, Mississippi facility.

on seniority, according to the terms of the collective bargaining agreement.

ICR dismissed Johnson's grievance. ICR stated that the position was properly categorized as a "C" position and that, as such, it was exempt from the collective bargaining agreement's seniority requirements. ICR also determined that Johnson's grievance was without merit because, even if the position was not exempt from the agreement and the decision to fill it should have been based solely on seniority, one of the ICR applicants who had more seniority than Johnson would have received the job.

Pursuant to union procedures, Johnson then informed TCIU of his grievances. TCIU's general chairman appealed Johnson's claim to ICR on his behalf. ICR denied the appeal. The TCIU chairman thereafter met with ICR representatives to discuss Johnson's grievances. The TCIU chairman determined that Johnson's grievances were without merit and withdrew them after a June 23, 1992 meeting. Johnson appealed the general chairman's decision to TCIU's appeals committee, to its international president, and finally to TCIU's executive council. At each level, the general chairman's decision was affirmed.

On June 14, 1993, Johnson filed suit against both TCIU and ICR.<sup>2</sup> The district court determined that Johnson lacked standing

---

<sup>2</sup>Johnson filed a "hybrid action," which under the National Railway Labor Act ("NRLA") is an exception to the exclusive jurisdiction of the National Railroad Adjustment Board over an employee's individual grievances against an employer. See Trial v. Atchison, Topeka & Santa Fe Ry. Co., 896 F.2d 120, 123 (5th Cir. 1990). To bring a hybrid action, an employee must have a dispute with his employer involving interpretation of the

and granted the defendants' motions for summary judgment based on a lack of standing. Johnson timely noticed his appeal of the district court's judgment.

#### OPINION

Johnson contends that the district court erred in granting the defendants' motions for summary judgment for two reasons. First, he argues that the court erred in determining that, even if ICR violated the collective bargaining agreement by improperly classifying the job opening as a "C" position, Johnson still could not show that ICR's conduct harmed him for purposes of establishing standing. Second, Johnson contends that the court erred by failing to address the merits of his claim that TCIU breached its duty of fair representation. Johnson argues that TCIU violated its duty of fair representation by failing to present his grievances to the particular ICR officer designated to receive grievances as required under Rule 25 of the collective bargaining agreement. He also contends that TCIU's decision to withdraw his grievances was arbitrary and capricious and that TCIU's failure to inform him in a timely manner of the withdrawal was without rational basis.

This court's standard of review of a summary judgment ruling is the same as the district court's, and it must be based on the evidence which was presented in the district court. See Sanders v. English, 950 F.2d 1152, 1159 (5th Cir. 1992). This court must determine "whether an application of the relevant law to th[e]

---

collective bargaining agreement as well as a claim against his union for breach of its duty of fair representation. Id.

facts leads to the inescapable conclusion that the defendants were entitled to a judgment in their favor as a matter of law." Id.

In Allen v. Wright, 468 U.S. 737, 751 (1984), the Supreme Court stated that in order to have standing to bring a cause of action in federal court "[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Id. at 751. Johnson contends that if he could establish that ICR improperly categorized the 1450-C job opening as a "C" position, he could show the required resulting harm. The district court ruled that Johnson could not show the requisite harm because even if ICR had awarded Position 1450-C on the basis of seniority, as Johnson alleges it should have done, the job would have been given to one of the more senior applicants and not to Johnson.

Johnson contends that those applicants senior to him abandoned their rights to the job by failing to pursue a grievance after the job was awarded to a junior employee and that therefore "their rights inured to the Appellant Johnson." The district court dismissed this contention because Johnson had not cited any support for the proposition. On appeal, Johnson cites something he lists as "Railway Labor Board No. 571 SOU" in support of the proposition that the senior applicants' rights to the job inured to him. Johnson fails to include a copy of this offered authority in the record excerpts he submitted with his brief. Neither staff counsel nor the Fifth Circuit reference librarian has been able to locate a copy of the document to which he refers. Without establishing

that such rights to the job inured to him, Johnson cannot establish that ICR's alleged improper conduct injured him. See Allen, 468 U.S. at 751 ("Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights, . . . ."). Assuming ICR's classification was improper, the most senior applicant was injured as a result. That applicant may have had standing to sue ICR for its alleged violation. Johnson does not.

Moreover, Johnson was not seeking injunctive or declaratory relief such that his grievance would have been redressed by his preventing ICR from violating the collective bargaining agreement. His complaint clearly seeks only monetary damages personal to him. Johnson fails to establish standing necessary for the district court to address his claims against ICR.

Because Johnson could not establish how ICR's allegedly improper conduct harmed him, the district court similarly determined that he could not show how his union's decision not to pursue his grievances harmed him. Even if TCIU had not withdrawn Johnson's grievances and Johnson had gone before the National Railroad Adjustment Board and prevailed, Johnson still would not have been awarded position 1450-C. Nor would he have been entitled to an award of punitive damages, even if he could establish that TCIU's handling of his grievances was reckless. See Int'l Bhd. of Elec. Workers v. Foust, 442 U.S. 42, 52 (1979) (holding in a cause of action brought under the NRLA that punitive damages "may not be

assessed against a union that breaches its duty of fair representation by failing properly to pursue a grievance."). Johnson therefore has not suffered an injury for which he could be compensated through his breach-of-fair-representation suit against TCIU.

For the foregoing reasons, the district court properly determined that it did not have subject matter jurisdiction over Johnson's claims due to his lack of standing. We affirm the district court's order granting the defendants' motions for summary judgment.

AFFIRMED.