

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Equal Employment Opportunity Commission v. Neches Butane
Products Company

31 Empl. Prac. Dec. P 33,582 (5th Cir. 1983) · No. No. 81-2347 · Decided April 20, 1983

SUMMARY

The Fifth Circuit dismissed the EEOC's interlocutory appeal from an order staying a subpoena-enforcement action pending discovery concerning the Commissioner's motives in issuing a discrimination charge. The court held that the stay was not a final appealable order under 28 U.S.C. § 1291 or the collateral-order doctrine, and declined to consider mandamus because the EEOC had not complied with Federal Rule of Appellate Procedure 21.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Randall, Circuit Judge; Rubin, Circuit Judge; Jolly, Circuit Judge
JURISDICTION	Federal
DECIDED	April 20, 1983
DOCKET	No. 81-2347
DISPOSITION	dismissed
PROCEDURAL POSTURE	The EEOC appealed an order of the Eastern District of Texas staying its Title VII subpoena-enforcement proceedings until the Commission complied with an order allowing the company to conduct discovery concerning the Commissioner's motives in issuing the discrimination charge. The Fifth Circuit considered appellate jurisdiction under 28 U.S.C. § 1291, the collateral-order doctrine, and the Commission's alternative request for mandamus.
STANDARD OF REVIEW	Jurisdiction is reviewed de novo; the court independently determines whether an interlocutory order is appealable despite a prior provisional ruling by a motions panel.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Equal Employment Opportunity Commission v. Neches Butane Products Company

TOPICS

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit had jurisdiction under 28 U.S.C. § 1291 to review the district court's indefinite stay of the subpoena-enforcement action.
2. Whether the stay and discovery order qualified for immediate review under the Cohen collateral-order doctrine.
3. Whether the court could treat the appeal as a petition for mandamus when the EEOC had not filed or served a petition complying with Federal Rule of Appellate Procedure 21.

HOLDINGS

1. The indefinite stay of the EEOC's subpoena-enforcement proceeding was not a final decision under § 1291 and therefore was not immediately appealable.
2. The discovery and stay order did not qualify as a collateral order because it was neither conclusively determinative nor subject to the type of extraordinary and probably irreparable harm required for immediate review.
3. The court would not consider the Commission's alternative mandamus request because the Commission had not filed or served a petition complying with Federal Rule of Appellate Procedure 21 and had not shown an adequate excuse.

KEY QUOTATIONS

"Since we do not have jurisdiction to reach the merits, this appeal is dismissed." (¶ 1)

"To come within the 'small class' of decisions excepted from the final-judgment rule by Cohen, the order must conclusively determine the disputed question, resolve an important issue completely separate from the merits, and be effectively unreviewable on appeal from a final judgment." (¶ 19)

"The district court's refusal to dismiss the case to create a final order, in a word, means that the indefinite suspension order remains not final, and hence unappealable." (¶ 24)

FACTUAL BACKGROUND

The EEOC analyzed workforce profiles from forty-six Houston businesses and concluded that Neches Butane ranked among the employers with the greatest underemployment of Black employees, Hispanic employees, and women. Commissioner Armando Rodriguez then signed and verified a Title VII charge alleging discrimination in recruitment, hiring, assignments, promotions, and other employment terms. After Neches Butane refused to comply with an EEOC subpoena, it sought discovery into whether the charge had been improperly influenced by a disgruntled former employee and requested Commissioner Rodriguez's deposition.

PROCEDURAL HISTORY

The EEOC brought an action under Title VII to enforce a subpoena seeking records from Neches Butane Products Company. The district court ordered discovery into the legitimacy of the Commission's charge and stayed the subpoena-enforcement proceeding until the EEOC complied. The EEOC filed a notice of appeal and alternatively sought mandamus, but the court dismissed the appeal for lack of appellate jurisdiction and declined to consider mandamus because no proper Rule 21 petition had been filed or served.

DISPOSITION

dismissed

CASES CITED

- United States v. Bear Marine Services, 696 F.2d 1117, 1119 & n. 4 (5th Cir. 1983)
- United States v. Richardson, 204 F.2d 552 (5th Cir. 1953)
- United States v. 2,606.84 Acres of Land, 432 F.2d 1286, 1288 n. 2 (5th Cir. 1970), cert. denied, 402 U.S. 916 (1971)
- Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546-47, 69 S. Ct. 1221, 1225-26, 93 L. Ed. 1528 (1949)
- Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 103 S. Ct. 927, 935, 74 L. Ed. 2d 765 (1983)
- Coopers & Lybrand v. Livesay, 437 U.S. 463, 468, 470, 98 S. Ct. 2454, 2457-58, 57 L. Ed. 2d 351 (1978)
- American Express Warehousing, Ltd. v. Transamerica Insurance Co., 380 F.2d 277, 281 (2d Cir. 1967)
- United States v. Procter & Gamble Co., 356 U.S. 677, 78 S. Ct. 983, 2 L. Ed. 2d 1077 (1958)
- Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)
- Southern Methodist University Association of Women Law Students v. Wynne & Jaffe, 599 F.2d 707, 711-12 (5th Cir. 1979)
- CFTC v. Preferred Capital Investment Co., 664 F.2d 1316, 1318 (5th Cir. 1982)
- Green v. Department of Commerce, 618 F.2d 836, 838-39 (D.C. Cir. 1980)
- Western Electric Co. v. Milgo Electric Corp., 568 F.2d 1203, 1206 & n. 6 (5th Cir. 1978), cert. denied, 439 U.S. 895 (1978)
- EEOC v. International Longshoremen's Association, 511 F.2d 273, 276 & n. 5 (5th Cir. 1975), cert. denied, 423 U.S. 994 (1975)
- Austracan (U.S.A.) Inc. v. M/V Lemoncore, 500 F.2d 237, 239 (5th Cir. 1974)
- Hines v. d'Artois, 531 F.2d 726, 732 & n. 10 (5th Cir. 1976)

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