

SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

Braun, M. and Hummel, D. v. Wal-Mart Stores, Inc. and Sam's Club

Braun · No. 32 EAP 2012; 33 EAP 2012 · Decided December 15, 2014

SUMMARY

This is a dissenting opinion by Justice Saylor of the Supreme Court of Pennsylvania in consolidated class-action wage-and-hour appeals involving Walmart Stores, Inc. The dissent argues that the trial and intermediate appellate courts applied an impermissibly lax approach to proof of liability and damages across a large employee class, particularly in extrapolating missed or mistimed breaks from limited data.

CASE DETAILS

COURT	Supreme Court of Pennsylvania, Eastern District
WRITING FOR THE COURT	Justice Saylor
JURISDICTION	Pennsylvania
DECIDED	December 15, 2014
DOCKET	32 EAP 2012; 33 EAP 2012
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeals from the Superior Court's judgment affirming in part and reversing in part judgments of the Philadelphia County Court of Common Pleas in class-action wage-and-hour litigation.
PRECEDENTIAL VALUE	published dissenting opinion; nonbinding
PARTIES	Wal-Mart Stores, Inc., Sam's Club v. Michelle Braun, on behalf of herself and all others similarly situated, Dolores Hummel, on behalf of herself and all others similarly situated

TOPICS

class actions wage and hour appellate procedure civil procedure damages

PRACTICE AREAS

employment law wage and hour class actions civil procedure

QUESTIONS PRESENTED

1. Whether the relaxed burden of proof applied in wage-and-hour class actions was permissibly used to establish liability and damages for a class of approximately 187,000 employees.
2. Whether the class-action procedure was used to make substantive alterations to governing wage-and-hour law without adequate evidentiary support or appropriate consideration of due process constraints.

KEY QUOTATIONS

“Here, the Appellee class was permitted to effectively project the anecdotal experience of each of six testifying class members upon thirty-thousand other members of the class at large, to extrapolate abstract data concerning missed and mistimed “swipes” from 16 Pennsylvania stores to 139 others, to overlay discrete data taken from several years’ experience across a distinct four-year period, and to attribute a single cause to missed and mistimed swipes, all despite indisputable variations across store locations, management personnel, time, and other circumstances.” (2)

“Therefore, it is very troublesome for the same to be relied upon in courts of law as the essential support for a large scale class-action verdict.” (2)

“Nevertheless, I remain of the view that the kinds of alterations to substantive law reflected in the majority’s relaxed approach to class-action litigation should be the subject of overt consideration in the political branch and should not occur as a byproduct of the application of a mere procedural device by the judiciary.” (2)

FACTUAL BACKGROUND

The employee classes obtained an almost two-hundred-million-dollar verdict based on alleged missed or mistimed rest and meal breaks at Wal-Mart stores. Justice Saylor criticized the evidentiary methodology used to establish liability and damages across a class of approximately 187,000 members, including extrapolation from six testifying class members, data from 16 stores to 139 other stores, and data from one period to another. He also objected to attributing all missed or mistimed swipes to a single cause despite variations in store locations, management, time periods, and compliance initiatives.

PROCEDURAL HISTORY

The Philadelphia County Court of Common Pleas entered judgments on November 14, 2007, in favor of the employee classes. The Superior Court entered judgment on June 10, 2011, affirming in part and reversing in part. Wal-Mart Stores, Inc. and Sam's Club appealed to the Supreme Court of Pennsylvania. Justice Saylor dissented from the Supreme Court's disposition.

DISPOSITION

other

CASES CITED

- Samuel-Bassett v. Kia Motors Am., Inc., 613 Pa. 371, 34 A.3d 1 (2011)

OPINION

PER CURIAM.

[J-43A&B-2013][M.O. – Per Curiam] IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT MICHELLE BRAUN, ON BEHALF OF: No. 32 EAP 2012 HERSELF AND ALL OTHERS SIMILARLY: SITUATED,: Appeal from the Judgment of Superior: Court, entered on June 10, 2011, at No. Appellee: 3373 EDA 2007, affirming in part and: reversing in part the Judgment of the: Court of Common Pleas of Philadelphia v.: County, Civil Division, entered: November 14, 2007 at No. 3127, March: Term 2002 WAL-MART STORES, INC., A: DELAWARE CORPORATION, AND: SAM'S CLUB, AN OPERATING: SEGMENT OF WAL-MART STORES,: INC.,: Appellants: ARGUED: May 8, 2013 DOLORES HUMMEL, ON BEHALF OF: No. 33 EAP 2012 HERSELF AND ALL OTHERS SIMILARLY: SITUATED,: Appeal from the Judgment of Superior: Court, entered on June 10, 2011, at No. Appellees: 3376 EDA 2007, affirming in part and: reversing in part the Judgment of the: Court of Common Pleas of Philadelphia v.: County, Civil Division, entered: November 14, 2007 at No. 3757,: August Term 2004 WAL-MART STORES, INC., A: DELAWARE CORPORATION, AND: SAM'S CLUB, AN OPERATING: SEGMENT OF WAL-MART STORES,: INC.,: Appellants: ARGUED: May 8, 2013 DISSENTING OPINION MR. JUSTICE SAYLOR DECIDED: December 15, 2014 I agree with Appellants that the trial court implemented, and the intermediate court approved, a severely lax approach to the application of governing substantive law in the issuance and sustainment of an almost two-hundred-million-dollar verdict based on proof which was insufficient to establish liability and damages across a 187,000- member class.

Although I take no issue with the majority's observation that the burden of proof may be relaxed to some degree in wage-and-hour cases, see Majority Opinion, slip op. at 17, the latitude extended in this case is of an untenable magnitude.

Here, the Appellee class was permitted to effectively project the anecdotal experience of each of six testifying class members upon thirty-thousand other members of the class at large, to extrapolate abstract data concerning missed and mistimed "swipes" from 16 Pennsylvania stores to 139 others, to overlay discrete data taken from several years' experience across a distinct four-year period, and to attribute a single cause to missed and mistimed swipes, all despite indisputable variations across store locations, management personnel, time, and other circumstances.¹ The sorts of gross generalizations and assumptions which permitted the simple averaging and extrapolations offered up by Appellees' expert witnesses to stand in support of the conclusion that some tens of millions of missed or mistimed swipes reflected rest breaks foregone on account of payroll pressure exerted from the Wal-Mart boardroom would 1 For example, presumably as a result of Wal-Mart compliance initiatives, the numbers of missed swipes for meal breaks dropped dramatically over the years.

See N.T., Sept. 19, 2006 (afternoon), at 61-62. Nevertheless, in extrapolating rest-break data taken from 1998 through 2001 into the 2002 through 2006 timeframe, Appellees' expert witness took the liberty of assuming that none of Wal-Mart's compliance measures were of any effect whatsoever relative to the rest breaks. See *id.* at 67. [J-43A&B-2013][M.O. – Per Curiam] - 2 never hold up to peer review as a matter of science.

Therefore, it is very troublesome for the same to be relied upon in courts of law as the essential support for a large scale class-action verdict. Certainly, I am sympathetic to efforts to vindicate the interests of workers with modest claims who may lack the ability and incentive to pursue remedies on an individualized basis. Nevertheless, I remain of the view that the kinds of alterations to substantive law reflected in the majority's relaxed approach to class-action litigation should be the subject of overt consideration in the political branch and should not occur as a byproduct of the application of a mere procedural device by the judiciary.

Accord *Samuel-Bassett v. Kia Motors Am., Inc.*, 613 Pa. 371, 466-77, 34 A.3d 1, 58-65 (2011) (Saylor, J., dissenting).² I maintain this position, in particular, in light of the broad-scale social effects likely to attend these sorts of modifications.

In this regard, and more generally, I also incorporate by reference the remarks set forth in my dissent in the *Kia* case. See *id.* ² The ability of the General Assembly to alter the class action landscape via legislation is, of course, subject to constitutional limitations such as the due process constraints raised by Appellants. [J-43A&B-2013][M.O. – Per Curiam] - 3