UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Perez v. Lorraine Enterprises, Inc.

769 F.3d 23 (1st Cir. 2014) · No. No. 13-1685 · Decided October 1, 2014

SUMMARY

The First Circuit affirmed summary judgment for the Secretary of Labor in an action alleging that a Puerto Rico restaurant violated the Fair Labor Standards Act's minimum-wage, overtime, and recordkeeping requirements. The court held that the defendants failed to establish eligibility for the FLSA tip credit because they did not provide employees adequate notice, and rejected their due process and individual-liability challenges. The court also affirmed the denial of the defendants' motion to alter or amend the judgment.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Selya, Circuit Judge; Lynch, Chief Judge; Ripple, Circuit Judge, sitting by designation
JURISDICTION	Federal
DECIDED	October 1, 2014
DOCKET	No. 13-1685
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Secretary of Labor sued a restaurant and two individuals for violations of the Fair Labor Standards Act's minimum-wage, overtime, and recordkeeping requirements. The district court granted the Secretary partial summary judgment on the minimum-wage claims, denied the defendants' cross-motion for summary judgment, entered judgment for $129,057.22 plus interest, and denied the defendants' Rule 59(e) motion. The defendants appealed.
STANDARD OF REVIEW	The denial of the Rule 59(e) motion was reviewed for abuse of discretion. The summary-judgment ruling on the notice issue was reviewed de novo.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Lorraine Enterprises, Inc., d/b/a Piccolo e Posto, Lorraine Lago, Pedro Gonzalez v. Thomas E. Perez, Secretary, United States Department of Labor

TOPICS

flsa · wage and hour · summary judgment · appellate procedure · remedies

PRACTICE AREAS

employment law · wage and hour · appellate procedure · civil procedure · remedies

QUESTIONS PRESENTED

1. Whether the defendants' due-process rights were violated because the Secretary allegedly raised the lack-of-tip-credit-notice issue only when moving for summary judgment.
2. Whether the defendants produced sufficient evidence of employee notice to create a genuine issue of material fact and defeat summary judgment on the FLSA minimum-wage claim.
3. Whether Lorraine Lago and Pedro Gonzalez could be held individually liable as employers under the FLSA.
4. Whether the district court abused its discretion in denying the defendants' Rule 59(e) motion to alter or amend the judgment.

HOLDINGS

1. The defendants' due-process rights were not violated because the Secretary's allegation that the defendants violated the FLSA minimum-wage provision put them on notice that their eligibility for the tip credit, including the notice requirement, was at issue.
2. The defendants were ineligible for the tip credit because they failed to produce definite and competent evidence that the affected waiters were informed in advance that the employer intended to count their tips toward the minimum wage.
3. Summary judgment for the Secretary was proper because the defendants failed to identify a genuine dispute of material fact concerning the notice prerequisite to the tip credit.
4. The district court did not err in imposing individual liability on Lago and Gonzalez because they admitted facts showing active control and management of the corporation and did not timely challenge personal liability.

KEY QUOTATIONS

> *"the duty to inform is an affirmative duty placed upon the employer, which cannot be satisfied by the mere hope or assumption that employees will either divine their employer's intentions or figure out their statutory entitlements from the way in which the employer conducts its business."* (at 15)

> *"Rule 59(e) is an extraordinary remedy, to be used sparingly."* (at 17)

FACTUAL BACKGROUND

Lorraine Enterprises operated Piccolo e Posto, a restaurant in Guaynabo, Puerto Rico. The restaurant deducted a so-called spillage fee from waiters' pay, which the Department of Labor determined frequently reduced weekly wages below the statutory minimum, and it also misclassified certain employees as overtime-exempt and failed to maintain proper records. The restaurant claimed that waiters received sufficient tips to make up the difference, but it produced no probative evidence of actual tip income or competent evidence that employees had been informed of the employer's intent to claim the FLSA tip credit.

PROCEDURAL HISTORY

The Department of Labor investigated the restaurant's payroll practices for March 2006 through March 2008. After suit and discovery, the magistrate judge recommended granting the Secretary summary judgment on the minimum-wage claims and awarding unpaid wages, and the district court adopted that recommendation after de novo review. The defendants appealed the judgment and denial of their motion to alter or amend.

DISPOSITION

affirmed

CASES CITED

- Solis v. Lorraine Enters., 907 F. Supp. 2d 186, 192-93 (D.P.R. 2012)
- Bisbano v. Strine Printing Co., 737 F.3d 104, 106 (1st Cir. 2013)
- Martin v. Tango's Rest., Inc., 969 F.2d 1319, 1322 (1st Cir. 1992)
- Kilgore v. Outback Steakhouse of Fla., Inc., 160 F.3d 294, 298 (6th Cir. 1998)
- Reich v. Chez Robert, Inc., 28 F.3d 401, 404 (3d Cir. 1994)
- Barcellona v. Tiffany English Pub, Inc., 597 F.2d 464, 467-68 (5th Cir. 1979)
- Aybar v. Crispin-Reyes, 118 F.3d 10, 16 (1st Cir. 1997)
- Vasapolli v. Rostoff, 39 F.3d 27, 36 (1st Cir. 1994)
- In re Redondo Constr. Co., 678 F.3d 115, 122 (1st Cir. 2012)
- Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010)
- Negrón-Almeda v. Santiago, 528 F.3d 15, 25 (1st Cir. 2008)
- Rodriguez v. Doral Mortg. Corp., 57 F.3d 1168, 1171 (1st Cir. 1995)
- Guan Ming Lin v. Benihana Nat'l Corp., 275 F.R.D. 165, 171 (S.D.N.Y. 2011)
- Tropigas de P.R., Inc. v. Certain Underwriters at Lloyd's of London, 637 F.3d 53, 56 (1st Cir. 2011)
- Vasapolli v. Rostoff, 39 F.3d 27, 32 (1st Cir. 1994)
- Borges ex rel. S.M.B.W. v. Serrano-Isern, 605 F.3d 1, 5 (1st Cir. 2010)
- Vineberg v. Bissonnette, 548 F.3d 50, 56 (1st Cir. 2008)
- McCarthy v. Nw. Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50, 252 (1986)
- Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991)
- Davric Me. Corp. v. Rancourt, 216 F.3d 143, 147 (1st Cir. 2000)
- Squibb v. Mem'l Med. Ctr., 497 F.3d 775, 784 (7th Cir. 2007)

- Garside v. Osco Drug, Inc., 895 F.2d 46, 49-50 (1st Cir. 1990)
- Dorsey v. TGT Consulting, LLC, 888 F. Supp. 2d 670, 682 (D. Md. 2012)
- Manning v. Bos. Med. Ctr. Corp., 725 F.3d 34, 47 (1st Cir. 2013)
- Harrington v. City of Nashua, 610 F.3d 24, 31 (1st Cir. 2010)
- Schott Motorcycle Supply, Inc. v. Am. Honda Motor Co., 976 F.2d 58, 61 (1st Cir. 1992)
- Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 990-91 (1st Cir. 1988)
- Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006)