

SUPREME COURT OF OREGON

Kaib's Roving R.Ph. Agency, Inc. v. Employment Department, 338 Or. 433

111 P.3d 739 (2005) · No. SC S51078, S51165 · Decided April 28, 2005

SUMMARY

The Supreme Court of Oregon held that a Court of Appeals decision vacating an Employment Department order and remanding for reconsideration before a different decision-maker was a decision “in favor of” the petitioner under ORS 183.497. The court further held that the discretionary and mandatory attorney-fee provisions in ORS 183.497(1)(a) and (b) establish different standards. Because the department acted without a reasonable basis in law by permitting its director, rather than an administrative law judge, to sign the final order, an award of attorney fees and costs was mandatory.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Gillette, J.; Carson, Chief Justice; Gillette, Justice; Durham, Justice; Riggs, Justice; De Muniz, Justice; Balmer, Justice
JURISDICTION	Oregon
DECIDED	April 28, 2005
DOCKET	SC S51078, S51165
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kaib's Roving sought attorney fees and costs after obtaining a Court of Appeals order vacating an Employment Department final order and remanding for reconsideration before a different decision-maker. The Court of Appeals denied fees, and both parties sought Supreme Court review.
STANDARD OF REVIEW	Statutory interpretation is reviewed under the text-and-context methodology described in PGE v. Bureau of Labor and Industries. The legal entitlement to attorney fees under ORS 183.497 was reviewed as a question of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kaib's Roving R.Ph. Agency, Inc., Employment Department v. Employment Department, Kaib's Roving R.Ph. Agency, Inc.

TOPICS

administrative law judicial review of agency action appellate procedure statutory interpretation remedies

PRACTICE AREAS

administrative law appellate procedure employment law statutory interpretation remedies

QUESTIONS PRESENTED

1. Whether a Court of Appeals decision vacating an agency order and remanding for reconsideration before a different decision-maker is a finding 'in favor of' the petitioner under ORS 183.497(1).
2. Whether ORS 183.497(1)(a) and ORS 183.497(1)(b) establish distinct discretionary and mandatory standards for attorney-fee awards.
3. Whether the Employment Department acted without a reasonable basis in law by failing to recognize that its director was a party rather than the decision-maker and by permitting the director to sign the final order.

HOLDINGS

1. A judicial decision may be 'in favor of' a petitioner even when it resolves only procedural matters. The Court of Appeals' order vacating the agency's final order and remanding for reassessment before a different decision-maker qualified as a finding in favor of Kaib's Roving.
2. ORS 183.497(1)(a) authorizes a discretionary award of fees and costs when the court finds in favor of the petitioner, whereas ORS 183.497(1)(b) requires an award when the agency acted without a reasonable basis in fact or law, subject to the statutory exceptions.
3. The Employment Department acted without a reasonable basis in law by failing to recognize under ORS 657.683 and ORS 657.684 that the director was a party to the proceeding, not the ultimate decision-maker, and by permitting the director rather than the ALJ to sign the final order. Because the other statutory criteria were satisfied, an award of fees under ORS 183.497(1)(b) was mandatory.

KEY QUOTATIONS

"A decision of the court may be "in favor of" a party, even if it addresses only procedural matters." (at 744)

"The department is obligated to understand the clear provisions of its governing statute without a court's published opinion interpreting it." (at 746)

"State agencies are expected to know the law, just like citizens. Ignorance of the law is no excuse." (at 746)

FACTUAL BACKGROUND

Kaib's Roving supplied relief pharmacists and treated them as independent contractors, while the Employment Department treated them as employees subject to unemployment taxes. After an assessment was upheld by an ALJ, the Court of Appeals remanded because the department had failed to account for an earlier Department of Revenue ruling and later remanded again after concluding that the director, who was a party to the proceeding,

improperly signed the final order. Kaib's Roving then sought attorney fees and costs for obtaining the procedural remand.

PROCEDURAL HISTORY

The Employment Department assessed Kaib's Roving for unemployment taxes on the ground that its relief pharmacists were employees rather than independent contractors. An ALJ upheld the assessment. On an earlier judicial review, the Court of Appeals remanded for reconsideration, and on a subsequent review it again vacated the department's order and directed a new hearing before an uninvolved ALJ. The Court of Appeals later denied Kaib's request for fees under ORS 183.497, leading to review by the Oregon Supreme Court.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the Oregon Court of Appeals to award Kaib's Roving reasonable attorney fees and costs.

CASES CITED

- Kaib's Roving R.Ph. Agency v. Employment Dept., 189 Or. App. 579, 77 P.3d 327 (2003)
- Kaib's Roving R.Ph. Agency v. Employment Dept., 161 Or. App. 290, 984 P.2d 886 (1999)
- Kaib's Roving R.Ph. Agency v. Employment Dept., 182 Or. App. 481, 487, 50 P.3d 1193 (2002)
- Van Gordon v. Ore. State Bd. of Dental Examiners, 63 Or. App. 561, 565-66, 666 P.2d 276 (1983)
- PGE v. Bureau of Labor and Industries, 317 Or. 606, 610-11, 859 P.2d 1143 (1993)
- McKean-Coffman v. Employment Div., 314 Or. 645, 647, 649, 842 P.2d 380 (1992)
- 1000 Friends v. LCDC, 293 Or. 440, 442, 649 P.2d 592 (1982)
- S-W Floor Cover Shop v. Nat'l Council on Comp. Ins., 318 Or. 614, 628, 872 P.2d 1 (1994)