

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Cynthia Keehr and Bruce Keehr v. Consolidated Freightways of Delaware, Inc.

825 F.2d 133 (7th Cir. 1987) · No. No. 86-2126 · Decided July 15, 1987

SUMMARY

The Seventh Circuit affirmed jury verdicts arising from a supervisor's allegedly defamatory and highly offensive remark about an employee's wife during a workplace altercation. The court held that the employee's Indiana tort claims for invasion of privacy and intentional infliction of emotional distress were not preempted by the NLRA or LMRA § 301, upheld the verdicts despite alleged inconsistency, and sustained compensatory and punitive damages.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Cudahy; Bauer; Posner
JURISDICTION	Federal
DECIDED	July 15, 1987
DOCKET	No. 86-2126
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from the denial of its motion for judgment notwithstanding the verdict or, alternatively, for a new trial, following jury verdicts for the plaintiffs on invasion-of-privacy and intentional-infliction-of-emotional-distress claims and an award of damages.
STANDARD OF REVIEW	The court reviewed the denial of judgment notwithstanding the verdict and the alternative motion for a new trial, indulging reasonable presumptions in favor of the jury verdicts and examining whether the damages awards were so excessive as to indicate passion, prejudice, partiality, or corruption.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	Consolidated Freightways of Delaware, Inc. v. Cynthia Keehr, Bruce Keehr

TOPICS

labor law

invasion of privacy

intentional infliction of emotional distress

punitive damages

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Bruce Keehr's state-law tort claims were preempted by the National Labor Relations Act under Garmon or by section 301 of the Labor Management Relations Act.
2. Whether an invasion-of-privacy claim based on the supervisor's remark was preempted by federal labor law.
3. Whether the verdicts for Cynthia on invasion of privacy and against her on defamation were impermissibly inconsistent.
4. Whether Cynthia's \$20,000 compensatory-damages award for invasion of privacy was unsupported or excessive.
5. Whether Consolidated Freightways waived arguments that Indiana law did not recognize invasion of privacy based solely on an oral comment or a derivative invasion-of-privacy claim by Bruce.
6. Whether Bruce's nominal damages awards precluded punitive damages under Indiana law.
7. Whether the evidence sufficiently established malicious or intentional conduct to support punitive damages.
8. Whether Bruce's \$50,000 punitive-damages award was excessive in relation to his nominal damages.

HOLDINGS

1. The claim was not preempted under Garmon because it was based on the particularly abusive manner in which alleged workplace harassment was carried out, rather than on the underlying employment discrimination or labor dispute itself, and the jury could find the conduct outrageous.
2. Bruce's invasion-of-privacy claim was not preempted under sections 7 and 8 of the NLRA.
3. Bruce's tort claims were not preempted by section 301 of the LMRA because their resolution did not depend on interpreting the collective-bargaining agreement.
4. The verdicts were not necessarily inconsistent, and the district court properly denied the post-trial motion.
5. The \$20,000 invasion-of-privacy award was supported by the evidence and was not so grossly excessive as to require reversal.
6. Consolidated Freightways waived its arguments that an oral comment could not support an invasion-of-privacy claim and that Indiana law did not recognize a derivative privacy claim.
7. Bruce's recovery of only nominal damages did not, by itself, preclude the \$50,000 punitive-damages award under Indiana law.

8. The evidence was sufficient for the jury to find by clear and convincing evidence that the conduct was wilful or malicious rather than the result of an innocent error or ordinary human failing.
9. The \$50,000 punitive-damages award was not excessive despite Bruce's \$2.00 nominal-damages award.

KEY QUOTATIONS

"The mere fact that Bruce might be able to grieve Nisun's conduct under procedures provided in the collective bargaining agreement is not sufficient in itself to conclude that Bruce's tort claims are preempted." (825 F.2d at 137)

"Given this premise, the appropriateness of a punitive damage award is determined by the degree of the defendant's misconduct rather than by the amount of compensatory damages awarded." (825 F.2d at 141)

"A punitive damage award of \$50,000 against the defendant in this case does not seem excessive." (825 F.2d at 142)

FACTUAL BACKGROUND

Bruce Keehr, a dockman employed by Consolidated Freightways at its Fremont, Indiana facility, became involved in a verbal and physical altercation with supervisor Ronald Nisun. During the altercation, Nisun allegedly made a sexually and racially vulgar remark about Bruce's wife, Cynthia. The Keehrs claimed the remark was part of a management-directed campaign to harass employees viewed as troublemakers and provoke conduct that could justify discharge. Cynthia sued for defamation and invasion of privacy, while Bruce sued for invasion of privacy and intentional infliction of emotional distress.

PROCEDURAL HISTORY

The Keehrs brought a diversity action in federal court against Consolidated Freightways under a respondeat-superior theory based on a supervisor's allegedly abusive remark. The jury rejected Cynthia Keehr's defamation claim but awarded her \$20,000 on invasion of privacy; it awarded Bruce Keehr nominal damages on invasion of privacy and intentional infliction of emotional distress and \$50,000 in punitive damages. The district court denied Consolidated Freightways' post-trial motion, and the Seventh Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 245-46 (1959)
- Lingle v. Norge Div. of Magic Chef, Inc., 823 F.2d 1031, 1042, 1046 (7th Cir. 1987) (en banc)
- Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210-13 (1985)
- International Bhd. of Elec. Workers v. Hechler, 481 U.S. 851, 107 S. Ct. 2161, 95 L. Ed. 2d 791 (1987)
- Farmer v. United Bhd. of Carpenters & Joiners, 430 U.S. 290, 305-06 (1977)
- Linn v. United Plant Guard Workers, 383 U.S. 53, 65 (1966)

- *Tellez v. Pacific Gas & Elec. Co.*, 817 F.2d 536, 539 (9th Cir. 1987)
- *Buscemi v. McDonnell Douglas Corp.*, 736 F.2d 1348, 1352 (9th Cir. 1984)
- *Kirby v. Allegheny Beverage Corp.*, 811 F.2d 253, 256 (4th Cir. 1987)
- *Indianapolis Newspapers, Inc. v. Fields*, 254 Ind. 219, 257, 259 N.E.2d 651, 668 (1970), cert. denied, 400 U.S. 930 (1970)
- *Northern Ind. Pub. Serv. Co. v. Otis*, 145 Ind. App. 159, 186, 250 N.E.2d 378, 395-96 (1969)
- *Continental Optical Co. v. Reed*, 119 Ind. App. 643, 651, 86 N.E.2d 306, 309 (1949)
- *First Fed. Sav. & Loan Ass'n v. Stone*, 467 N.E.2d 1226, 1235-36 (Ind. App. 1984)
- *Hahn v. Ford Motor Co.*, 434 N.E.2d 943, 954 (Ind. App. 1982)
- *Baker v. American States Ins. Co.*, 428 N.E.2d 1342, 1351 (Ind. App. 1981)
- *Skinner v. Martin*, 455 N.E.2d 1168, 1171 (Ind. App. 1983)
- *Newton v. Yates*, 170 Ind. App. 486, 495, 353 N.E.2d 485, 491 (1976)
- *Broadacre Trailer Lodge, Inc. v. Johnson*, 439 N.E.2d 684, 685-86 (Ind. App. 1982)
- *Orkin Exterminating Co. v. Traina*, 486 N.E.2d 1019, 1022-23 (Ind. 1986)
- *Hibschman Pontiac, Inc. v. Batchelor*, 266 Ind. 310, 317, 362 N.E.2d 845, 849 (1977)
- *Travelers Indemnity Co. v. Armstrong*, 442 N.E.2d 349, 362 (Ind. 1982)
- *Nate v. Galloway*, 408 N.E.2d 1317, 1322-23 (Ind. App. 1980)
- *Lou Leventhal Auto Co. v. Munns*, 164 Ind. App. 368, 380, 328 N.E.2d 734, 742 (1975)
- *Murphy Auto Sales v. Coomer*, 123 Ind. App. 709, 720, 112 N.E.2d 589, 593-94 (1953)

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