

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Kevin R. Carmody v. Board of Trustees of the University of Illinois,
et al.

747 F.3d 470 (7th Cir. 2014) · No. 13-2302 · Decided March 28, 2014

SUMMARY

The Seventh Circuit reviewed the dismissal of Kevin Carmody’s claims arising from his termination by the University of Illinois after an investigation into an email-system security breach. The court held that Carmody plausibly alleged that he lacked a meaningful pre-termination opportunity to respond because a state-court protective order restricted his ability to discuss the relevant emails and because an additional charge was introduced without adequate notice. The court reversed in part and remanded the pre-termination due process claim, affirming the judgment in all other respects.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Hamilton; Posner; Manion
JURISDICTION	Federal
DECIDED	March 28, 2014
DOCKET	13-2302
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Carmody appealed the dismissal with prejudice under Federal Rule of Civil Procedure 12(b)(6) of his federal due-process and Illinois whistleblower-retaliation claims.
STANDARD OF REVIEW	The court reviewed de novo the district court's Rule 12(b)(6) dismissal, construing the complaint in the plaintiff's favor, accepting well-pleaded facts as true, and considering attached exhibits and contradictions among the allegations and exhibits.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Kevin R. Carmody v. Board of Trustees of the University of Illinois, University officials

TOPICS

- procedural due process
- appellate procedure
- civil rights
- employment law
- standard of review

PRACTICE AREAS

constitutional law

civil rights

employment law

appellate procedure

QUESTIONS PRESENTED

1. Whether Carmody plausibly alleged that he was denied a meaningful pre-termination opportunity to respond because a state-court protective order prevented him from answering the university's questions.
2. Whether the university violated procedural due process by relying on a materially new charge without providing Carmody an opportunity to respond before termination.
3. Whether Carmody's voluntary decision to decline completion of the post-termination hearing foreclosed his due-process challenge to that hearing.
4. Whether Carmody stated a plausible retaliation claim under the Illinois State Officials and Employees Ethics Act.
5. Whether the district court abused its discretion by denying Carmody leave to amend.

HOLDINGS

1. At the pleading stage, Carmody plausibly alleged that he lacked a meaningful opportunity to respond before termination because answering the university's questions about the sealed emails may have violated a state-court protective order, and the university terminated him before the order was modified.
2. Relying on a materially distinct charge without providing a meaningful opportunity to respond before termination violates procedural due process; Carmody plausibly alleged that the failure-to-report charge was sufficiently distinct from the original charges and was added after his pre-termination meeting.
3. Carmody's voluntary decision to discontinue an adversarial post-termination hearing foreclosed his due-process claim to the extent it was based on alleged deficiencies in that hearing.
4. Carmody failed to state a plausible retaliation claim under 5 Ill. Comp. Stat. 430/15-10 because the three-year gap between his report and termination, without an explanation for the delay, made causation implausible.
5. The district court did not abuse its discretion in denying leave to amend because Carmody did not identify the additional allegations he proposed or explain how an amendment would cure the defects.

KEY QUOTATIONS

"We conclude that the district court's dismissal was premature with respect to one aspect of Carmody's due process claim: that he was not given an adequate pre-termination hearing." (at 471-472)

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" (at 473)

"The purpose of a pre-termination hearing is to provide 'an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.'" (at 474)

“If indeed Carmody would have needed to violate the state court order to give his side of the story, he has plausibly alleged that he had no meaningful opportunity before the termination decision to respond to the most serious charge against him.” (at 482)

“The general constitutional standard is that an employee with a property interest is entitled to notice of the employer’s reasons and a meaningful opportunity to respond before the employer decides to terminate the employment.” (at 483)

“Relying on a new charge without providing a meaningful opportunity to respond violates due process.” (at 483-484)

FACTUAL BACKGROUND

Kevin Carmody worked for the University of Illinois for approximately twenty-five years and was ultimately terminated in connection with university email documents that he had found outside his home and used in related state-court litigation. A state-court protective order prohibited secondary dissemination of the documents' contents, and Carmody alleged that university officials questioned him about those contents at his pre-termination meeting even though answering could have violated the order. The state court modified its order on the same day the university terminated him, and the university also relied on an allegedly new charge—that he failed to report a security breach—without giving him a further opportunity to respond. Carmody later declined to complete an adversarial post-termination hearing after his attorney died.

PROCEDURAL HISTORY

Carmody, a longtime University of Illinois employee, sued the university's board of trustees and university officials after his termination. The United States District Court for the Central District of Illinois dismissed the complaint with prejudice for failure to state a claim and denied leave to amend. The Seventh Circuit reversed dismissal of the due-process claim insofar as it challenged the adequacy of the pre-termination hearing, affirmed dismissal of the post-termination-hearing due-process theory and the Illinois Ethics Act claim, and remanded for further proceedings limited to the pre-termination issue.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings limited to whether Carmody was denied a constitutionally adequate pre-termination hearing. The dismissal of the post-termination-hearing due-process theory, the Illinois Ethics Act claim, and the denial of leave to amend were affirmed.

CASES CITED

- Sung Park v. Indiana University School of Dentistry, 692 F.3d 828, 830 (7th Cir. 2012)
- Phillips v. Prudential Insurance Co. of America, 714 F.3d 1017, 1019-20 (7th Cir. 2013)
- Gilbert v. Homar, 520 U.S. 924, 928-29 (1997)

- *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538-39, 543, 545-46 (1985)
- *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 576-78 (1972)
- *Harbaugh v. Board of Education of City of Chicago*, 716 F.3d 983, 986 (7th Cir. 2013)
- *Mathews v. Eldridge*, 424 U.S. 319, 333-35, 344 (1976)
- *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)
- *Baird v. Board of Education for Warren Community Unit School District No. 205*, 389 F.3d 685, 690 (7th Cir. 2004)
- *Schultz v. Baumgart*, 738 F.2d 231, 235 (7th Cir. 1984)
- *Bodenstab v. County of Cook*, 569 F.3d 651, 663 (7th Cir. 2009)
- *Hudson v. City of Chicago*, 374 F.3d 554, 560 (7th Cir. 2004)
- *Duchesne v. Williams*, 849 F.2d 1004, 1008 (6th Cir. 1988) (en banc)
- *Calderón-Garnier v. Rodríguez*, 578 F.3d 33, 38 (1st Cir. 2009)
- *Buckner v. City of Highland Park*, 901 F.2d 491, 495 (6th Cir. 1990)
- *Galloway v. Louisiana*, 817 F.2d 1154, 1158 (5th Cir. 1987)
- *Domiano v. Village of River Grove*, 904 F.2d 1142, 1148-49 (7th Cir. 1990)
- *Gniotek v. City of Philadelphia*, 808 F.2d 241, 245 (3d Cir. 1986)
- *Chaney v. Suburban Bus Division of Regional Transportation Authority*, 52 F.3d 623, 630 (7th Cir. 1995)
- *Staples v. City of Milwaukee*, 142 F.3d 383, 384, 387 (7th Cir. 1998)
- *Peery v. Brakke*, 826 F.2d 740, 743-44 (8th Cir. 1987)
- *Stone v. FDIC*, 179 F.3d 1368, 1376 (Fed. Cir. 1999)
- *Head v. Chicago School Reform Board of Trustees*, 225 F.3d 794, 799 n.3, 804 (7th Cir. 2000)
- *Willer v. Las Vegas Valley Water District*, No. 98-15686, 1999 WL 274472, at *2 (9th Cir. Apr. 19, 1999)
- *English v. Talladega County Board of Education*, 938 F. Supp. 775, 777 n.2 (N.D. Ala. 1996)
- *Powers v. Richards*, 549 F.3d 505, 509 (7th Cir. 2008)
- *Amundsen v. Chicago Park District*, 218 F.3d 712, 717 (7th Cir. 2000)
- *Swank v. Smart*, 999 F.2d 263, 264-65 (7th Cir. 1993)
- *Farhat v. Jopke*, 370 F.3d 580, 596 (6th Cir. 2004)
- *Independent Trust Corp. v. Stewart Information Services Corp.*, 665 F.3d 930, 943-44 (7th Cir. 2011)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
- *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)
- *Lalvani v. Cook County, Illinois*, 269 F.3d 785, 790 (7th Cir. 2001)