

SUPREME COURT OF KANSAS

Hysten v. Burlington Northern Santa Fe Railway Co., 277 Kan. 551

85 P.3d 1183 (2004) · No. No. 90,730 · Decided March 19, 2004

SUMMARY

The Supreme Court of Kansas answered certified questions concerning whether Kansas recognizes a public-policy tort for retaliatory discharge of an employee who exercises rights under the Federal Employers Liability Act. The court held that Kansas law recognizes such a tort and that remedies available through Railway Labor Act arbitration do not constitute an adequate alternative remedy precluding the state-law claim. The opinion discusses Kansas's employment-at-will exceptions, public policy, collective bargaining agreements, and the adequacy of arbitral remedies.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.
JURISDICTION	Kansas
DECIDED	March 19, 2004
DOCKET	No. 90,730
DISPOSITION	other
PROCEDURAL POSTURE	The United States Court of Appeals for the Tenth Circuit certified two questions of Kansas law to the Supreme Court of Kansas concerning whether Kansas recognizes a retaliatory-discharge tort for exercising rights under FELA and whether RLA remedies preclude that tort claim.
STANDARD OF REVIEW	Review of certified questions of law is unlimited.
PRECEDENTIAL VALUE	Binding Kansas Supreme Court precedent
PARTIES	Larry D. Hysten v. Burlington Northern Santa Fe Railway Company

TOPICS

retaliation wrongful termination employment at-will employment law appellate procedure

PRACTICE AREAS

Employment law Torts Remedies Appellate procedure Federalism

QUESTIONS PRESENTED

1. Whether Kansas law recognizes a tort action for retaliatory discharge when an employer terminates an employee for exercising rights under FELA.
2. Whether remedies available through RLA arbitration constitute an adequate alternative remedy that precludes a Kansas retaliatory-discharge tort claim.

HOLDINGS

1. Kansas law recognizes a common-law tort for retaliatory discharge based on an injured employee's exercise of rights under FELA.
2. RLA arbitration is not an adequate alternative remedy that precludes a Kansas retaliatory-discharge tort claim based on exercising FELA rights.

KEY QUOTATIONS

“Kansas law recognizes a tort of retaliatory discharge for exercise of an injured employee’s rights under FELA, and any RLA proceeding available to that employee is not an adequate alternative remedy.” (564)

“We also do not regard the unavailability of compensatory damages for pain and suffering and punitive damages as trivial.” (563)

FACTUAL BACKGROUND

Larry Hysten, a Burlington Northern employee of 22 years, developed severe lower back pain and eventually declared the injury work-related to preserve his rights under FELA. Burlington Northern disciplined him for violating work-related-injury reporting rules and terminated him. An RLA arbitration later resulted in his reinstatement with full retirement, seniority, and health benefits, but without back pay; Hysten then pursued a Kansas tort claim alleging retaliation for exercising FELA rights.

PROCEDURAL HISTORY

Hysten originally sued in federal district court, asserting federal and state claims arising from his termination. The district court granted summary judgment on the federal claims, declined supplemental jurisdiction over the state claims, and later dismissed the state retaliation claim after removal, concluding that Hysten failed to state a claim under Kansas law. Hysten was reinstated through RLA arbitration with retirement, seniority, and health benefits but without back pay, and the Tenth Circuit certified the two questions to the Kansas Supreme Court.

DISPOSITION

other

REMAND INSTRUCTIONS

The court answered the first certified question yes and the second certified question no. The opinion does not issue a separate remand directive; further proceedings were left to the Tenth Circuit.

CASES CITED

- Flenker v. Willamette Industries, Inc., 266 Kan. 198, 967 P.2d 295 (1998)
- Palmer v. Brown, 242 Kan. 893, 752 P.2d 685 (1988)
- Riddle v. Wal-Mart Stores, Inc., 27 Kan. App. 2d 79, 998 P.2d 114 (2000)
- Murphy v. City of Topeka, 6 Kan. App. 2d 488, 630 P.2d 186 (1981)
- Petty v. City of El Dorado, 270 Kan. 847, 19 P.3d 167 (2001)
- Coleman v. Safeway Stores, Inc., 242 Kan. 804, 752 P.2d 645 (1988)
- Herrera v. San Luis Central Railroad Co., 997 P.2d 1238 (Colo. App. 1999)
- Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 114 S. Ct. 2239 (1994)
- Garley v. Sandia Corp., 236 F.3d 1200 (10th Cir. 2001)
- Jarvis v. Nobel/Sysco Food Services Co., 985 F.2d 1419 (10th Cir. 1993)
- Sabich v. National R.R. Passenger Corp., 763 F. Supp. 989 (N.D. Ill. 1991)
- Jackson v. Consolidated Rail Corp., 717 F.2d 1045 (7th Cir. 1983)
- Union Pacific R. Co. v. Sheehan, 439 U.S. 89, 99 S. Ct. 399 (1978)
- Armstrong v. Goldblatt Tool Co., 242 Kan. 164, 747 P.2d 119 (1987)
- Smith v. United Technologies, 240 Kan. 562, 731 P.2d 871 (1987)
- Cox v. United Technologies, 240 Kan. 95, 727 P.2d 456 (1986)
- Midgett v. Sackett-Chicago, Inc., 105 Ill. 2d 143, 473 N.E.2d 1280 (1984)
- Emery v. Northeast Illinois Regional Commuter R. Corp., 2003 WL 22176077 (N.D. Ill. 2003)
- Mayon v. Southern Pacific Transp. Co., 805 F.2d 1250 (5th Cir. 1986)
- Nelson v. Soo Line R. Co., 58 F. Supp. 2d 1023 (D. Minn. 1999)
- Shrader v. CSX Transp. Inc., 70 F.3d 255 (2d Cir. 1995)
- Lewy v. Southern Pacific Transp. Co., 799 F.2d 1281 (9th Cir. 1986)
- Minehart v. Louisville & Nashville R. Co., 731 F.2d 342 (6th Cir. 1984)
- Choate v. Louisville & Nashville R. Co., 715 F.2d 369 (7th Cir. 1983)
- United States ex rel. Flenker v. Willamette Industries, Inc., 266 Kan. 198, 967 P.2d 295 (1998)
- Kelsay v. Motorola, Inc., 74 Ill. 2d 172, 384 N.E.2d 353 (1978)
- Frampton v. Central Indiana Gas Co., 260 Ind. 249, 297 N.E.2d 425 (1973)