

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

In re Donohoe

311 F. App'x 357 (Fed. Cir. 2008) · Decided June 26, 2008

SUMMARY

The Federal Circuit dismissed Philip D. Donohoe’s petition for a writ of mandamus seeking to prevent the Merit Systems Protection Board from issuing remand orders under *Butterbaugh v. Department of Justice*. The court held that the All Writs Act did not authorize mandamus because Donohoe had not initiated a proceeding before the Board and the requested relief was based only on prospective jurisdiction. All other requests for relief were denied.

CASE DETAILS

COURT	United States Court of Appeals for the Federal Circuit
WRITING FOR THE COURT	Per curiam; Lourie; Michel; Newman
JURISDICTION	Federal
DECIDED	June 26, 2008
DISPOSITION	dismissed
PROCEDURAL POSTURE	Philip D. Donohoe petitioned the Federal Circuit for a writ of mandamus directing the Merit Systems Protection Board to cease issuing remand orders under <i>Butterbaugh v. Department of Justice</i> and also sought declaratory and other relief.
STANDARD OF REVIEW	The court examined de novo whether it possessed jurisdiction to issue the requested extraordinary writ.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Philip D. Donohoe v. Merit Systems Protection Board

TOPICS

- appellate jurisdiction
- appellate procedure
- judicial review of agency action
- federal employment law
- military law

PRACTICE AREAS

appellate jurisdiction

appellate procedure

administrative law

federal employment law

military law

remedies

QUESTIONS PRESENTED

1. Whether the Federal Circuit had jurisdiction under the All Writs Act to issue a writ of mandamus concerning prospective Merit Systems Protection Board proceedings when the petitioner had not initiated or participated in a Board proceeding.
2. Whether Donohoe was entitled to declaratory or other relief challenging the Board's issuance of remand orders under Butterbaugh.

HOLDINGS

1. The All Writs Act does not itself confer jurisdiction and cannot authorize the Federal Circuit to issue mandamus in aid of merely prospective jurisdiction. Because Donohoe had not initiated a proceeding before the Board and was not seeking review of a final Board order or decision, the court lacked authority to issue the requested writ.
2. Donohoe was not entitled to declaratory or other relief because his petition did not present a justiciable dispute within the court's jurisdiction.

KEY QUOTATIONS

“While the All Writs Act authorizes employment of extraordinary writs, it confines the authority to the issuance of process ‘in aid of the issuing court’s jurisdiction ... [T]he Act does not enlarge that jurisdiction.’” (at 358)

“It is one thing to say that we have such authority when, in the formulation used by the Supreme Court, a case is ‘within [our] appellate jurisdiction although no appeal has been perfected.’” (at 359)

FACTUAL BACKGROUND

Donohoe appeared to be a civilian Department of the Air Force employee and a member of the Armed Forces Reserve components. He did not identify any particular Merit Systems Protection Board case involving him. Instead, he challenged the Board's use of remand orders under Butterbaugh in cases involving other employees and argued that the underlying government practice lacked the required discriminatory motivation.

PROCEDURAL HISTORY

Donohoe had not sought relief from the Merit Systems Protection Board and had not initiated any Board proceeding before petitioning the Federal Circuit. He challenged the Board's purported practice in cases involving other employees, rather than seeking review of a final Board order or decision in his own case.

DISPOSITION

dismissed

CASES CITED

- Butterbaugh v. Department of Justice, 836 F.3d 1332 (Fed. Cir. 2003)
- Butterbaugh v. Department of Justice, 101 M.S.P.R. 202, 203 (2004)
- Clinton v. Goldsmith, 526 U.S. 529, 534-35, 119 S. Ct. 1538, 143 L. Ed. 2d 720 (1999)
- Allen v. Wright, 468 U.S. 737, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984)
- In re Tennant, 359 F.3d 523, 529 (D.C. Cir. 2004)