

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Croker v. Boeing Co. (Vertol Division)

662 F.2d 975 (3d Cir. 1981) · No. Nos. 80-1569, 80-1570 · Decided September 30, 1981

SUMMARY

The United States Court of Appeals for the Third Circuit, sitting en banc, reviewed orders in a class action alleging racial discrimination in employment at Boeing’s Vertol Division under Title VII and 42 U.S.C. §§ 1981 and 1985. The court held that the appeal was timely because the judgment was not final until the amount of civil-rights attorney’s fees was determined, and it addressed whether purposeful discrimination was required for a § 1981 claim.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	SEITZ; ALDISERT; ADAMS; GIBBONS; HUNTER; WEIS; GARTH; HIGGINBOTHAM; SLOVITER
JURISDICTION	Federal
DECIDED	September 30, 1981
DOCKET	Nos. 80-1569, 80-1570
DISPOSITION	other
PROCEDURAL POSTURE	Appeal from district court orders in a Title VII and §1981 class action; cross-appeal by defendant; motion to dismiss portions of appeal for lack of appellate jurisdiction.
STANDARD OF REVIEW	Factual findings reviewed for clear error; legal conclusions reviewed de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Mamie Croker, Eric Travis, Chivis Davis, Leolin Dockins, and Robert DeBose (employees) and The Boeing Co. (Vertol Division) (cross-appeal) v. The Boeing Co. (Vertol Division) and Local No. 1069 (for employees' appeal); Employees (for Boeing's cross-appeal)

TOPICS

- employment discrimination
- title vii
- racial discrimination
- civil rights
- appellate jurisdiction
- standard of review
- statutory interpretation

PRACTICE AREAS

Employment Law

Civil Rights

Appellate Procedure

QUESTIONS PRESENTED

1. Whether an order is final for appeal purposes when the district court has determined entitlement to attorney's fees but not the amount.
2. Whether proof of discriminatory purpose is required to establish a violation of 42 U.S.C. §1981.
3. Whether the district court erred in finding that the employees failed to prove a pattern or practice of racial discrimination in initial placement, promotions, and discipline under Title VII.
4. Whether class-member witnesses who are not named plaintiffs and whose class claims fail are entitled to individual relief.
5. Whether costs may be awarded against a losing Title VII plaintiff only under extraordinary circumstances.

HOLDINGS

1. An order is not final for appeal purposes until the amount of attorney's fees is set, when the court has determined entitlement but not amount.
2. Section 1981's reach does not extend to facially neutral conduct having a disproportionate impact; proof of intentional discrimination is required.
3. The district court's findings were not clearly erroneous.
4. Under *Dickerson*, class-member witnesses who are not named plaintiffs and whose class claims fail are not entitled to individual relief unless they intervene.
5. Title VII plaintiffs enjoy no blanket protection from Rule 54(d); costs are awarded to prevailing parties as a matter of course.

KEY QUOTATIONS

“Appeals often ensue-leading to the prospect of separate fees appeals if final judgment rules are disregarded-as the sizeable sums involved may impose a very substantial and bitterly disputed liability upon the losing party. Hence while such fees, like routine costs, are, to be sure, somewhat ancillary to the main dispute, they are fully capable of engendering a major controverted claim which will require careful factual and legal analysis by the court.”

“A discriminatory act which is not made the basis for a timely charge is the legal equivalent of a discriminatory act which occurred before the statute was passed. It may constitute relevant background evidence in a proceeding in which the status of a current practice is at issue, but separately considered, it is merely an unfortunate event in history which has no present legal consequences.”

“That is not to say, however, that Boeing Vertol has been completely free from discrimination. Rather, my holding is only that the plaintiffs have failed to prove that Boeing Vertol engaged in a pattern or practice of

discrimination, as that term has been defined by the Supreme Court in International Brotherhood of Teamsters (v. United States, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977)).”

FACTUAL BACKGROUND

Boeing Vertol, a helicopter manufacturer, employed a workforce that fluctuated dramatically. Black employees comprised between 4% and 8.4% of the workforce from 1962 to 1968. The plaintiffs alleged discrimination in initial placement, promotions, discipline, and harassment. The district court found that statistical disparities were largely explained by non-discriminatory factors such as hiring patterns, experience requirements, and employee preferences. It also found that Boeing had taken affirmative steps to prevent racial harassment. The court found individual discrimination against Croker, Travis, Davis, and others but no pattern or practice of class-wide discrimination.

PROCEDURAL HISTORY

Five black employees of Boeing Vertol brought a class action alleging racial discrimination in employment under Title VII and 42 U.S.C. §§1981, 1985. The district court certified a class, bifurcated the case, and after a nonjury trial on liability found for Boeing on class claims but for several individual plaintiffs on some claims. Damages and attorney's fees were awarded in subsequent orders. The employees appealed from the June 1977, November 1977, October 1979, and March 1980 orders. Boeing cross-appealed but presented no issues. Boeing moved to dismiss portions of the appeal as untimely.

DISPOSITION

other

REMAND INSTRUCTIONS

The district court's award of costs in favor of Boeing Vertol is vacated and remanded for clarification of the assessment of costs and to determine objections raised by the employees. The judgment is affirmed in all other respects.

CASES CITED

- Washington v. Davis, 426 U.S. 229 (1976)
- Guardians Association v. Civil Service Commission, 633 F.2d 232 (2d Cir. 1980)
- International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977)
- Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981)
- Dickerson v. United States Steel Corp., 582 F.2d 827 (3d Cir. 1978)
- Richerson v. Jones, 551 F.2d 918 (3d Cir. 1977)
- White v. New Hampshire Department of Employment Security, 629 F.2d 697 (1st Cir. 1980)
- Boeing Co. v. Van Gemert, 444 U.S. 472 (1980)
- DeLong Corp. v. Raymond International, Inc., 622 F.2d 1135 (3d Cir. 1980)
- Baughman v. Cooper-Jarrett, Inc., 530 F.2d 529 (3d Cir. 1976)

- *Christianburg Garment Co. v. EEOC*, 434 U.S. 412 (1978)
- *United Air Lines v. Evans*, 431 U.S. 553 (1977)
- *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971)
- *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975)
- *Krasnov v. Dinan*, 465 F.2d 1298 (3d Cir. 1972)
- *United States v. United States Gypsum Co.*, 333 U.S. 364 (1948)
- *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968)
- *City of Memphis v. Greene*, 451 U.S. 100 (1981)
- *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975)
- *Hazelwood School District v. United States*, 433 U.S. 299 (1977)
- *New York Transit Authority v. Beazer*, 440 U.S. 568 (1979)
- *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)
- *Mahone v. Waddle*, 564 F.2d 1018 (3d Cir. 1977)
- *Young v. International Telephone & Telegraph Co.*, 438 F.2d 757 (3d Cir. 1971)
- *NAACP v. Medical Center, Inc.*, No. 80-1893 (3d Cir. June 29, 1981)