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Can a Worker's Arbitration Agreement Prevent the EEOC from Seeking Victim-Specific Relief?

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Case at a Glance

The Court is asked to determine whether an employee's agreement to arbitrate employment-related disputes with his or her employer prevents the Equal Employment Opportunity Commission from bringing an enforcement action against the employer to obtain victim-specific remedies for that employee.

Can a Worker's Arbitration Agreement Prevent the EEOC From Seeking Victim-Specific Relief?

by Jay E. Grenig

PREVIEW of United States Supreme Court Cases, pages 8–11.

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ISSUE

Does an employee's agreement to arbitrate employment-related disputes with his or her employer prevent the Equal Employment Opportunity Commission (EEOC) from bringing an enforcement action against the employer to obtain victim-specific remedies (such as backpay, reinstatement, and damages)?

FACTS

In June 1994, Eric Baker went to a Waffle House in Columbia, S.C., where he filled out and signed an application for employment with Waffle House, Inc. The application included a provision requiring the applicant to submit to binding arbitration "any dispute or claim concerning Applicant's employment with Waffle House, Inc., or any subsidiary or Franchisee of Waffle House, Inc., or the terms, conditions or benefits of such employment." Baker stated he did not want a job at the Columbia facility and, instead, called the manager of the Waffle House in West Columbia. The West Columbia Waffle House manager interviewed Baker and hired him to begin work as a grill operator in August 1994. Baker did not fill out another application for the West Columbia facility.

Approximately two weeks later, Baker suffered a seizure at home, ostensibly caused by a change in the medication he was taking to control a seizure disorder that had developed as a result of a 1992 automobile accident. Immediately after he arrived for work the next day, Baker suffered another seizure. Waffle House discharged Baker on Sept. 5, 1994, stating in the separation notice that "We decided that for [Baker's] benefit and safety and Waffle House it would be best he not work any more."

Baker filed a charge with the EEOC, complaining that his discharge violated the Americans with Disabilities Act (42 U.S.C. § 12111 et seq.). On Sept. 9, 1996, the

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION V. WAFFLE HOUSE, INC.
DOCKET NO. 99-1823

ARGUMENT DATE:
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FROM: THE FOURTH CIRCUIT

EEOC filed an enforcement action in its own name against Waffle House in federal district court, alleging that Waffle House had engaged in "unlawful employment practices at its West Columbia, South Carolina, facility."

The EEOC stated in its complaint that its reason for filing the suit was "to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Eric Scott Baker, who was adversely affected by such practices." As relief, the EEOC sought (1) a permanent injunction barring Waffle House from engaging in employment practices that discriminate on the basis of disability; (2) an order that Waffle House institute and carry out antidiscrimination policies, practices, and programs to create opportunities and to eradicate the effects of past and present discrimination on the basis of disability; (3) back pay and reinstatement for Baker; (4) compensation for pecuniary and nonpecuniary losses suffered by Baker; and (5) punitive damages.

In response to the complaint, Waffle House filed a petition under the Federal Arbitration Act (9 U.S.C. § 1 et seq.) to compel arbitration and to stay the litigation and, alternatively, to dismiss the action for failure to state a claim. The motion was referred to a magistrate judge who found that Baker had entered into an arbitration agreement with Waffle House and recommended to the district court that the EEOC was required to arbitrate the claims it had filed on behalf of Baker.

Disagreeing with the magistrate judge's recommendation, the district court concluded that the arbitration provision in Baker's employment application was inapplicable because the West Columbia Waffle House had not hired him pursuant to his earlier application submitted at the Columbia Waffle House. Waffle House then filed an appeal challenging the district court's denial of its petition to compel arbitration and stay proceedings.

The U.S. Court of Appeals for the Fourth Circuit reversed the district court in part, holding that the arbitration agreement in Baker's employment application did govern his employment relationship with Waffle House. *EEOC v. Waffle House, Inc.,* 193 F.3d 805 (4th Cir. 1999). The Fourth Circuit also held that, because the EEOC was prosecuting a suit in its own name, it could not be compelled by the arbitration agreement between Baker and Waffle House to arbitrate its claims. However, the Fourth Circuit went on to hold that although the EEOC could seek broad injunctive relief in its public enforcement role, the arbitration agreement did preclude it from asking a court to award the individual remedies of back pay, reinstatement, and compensatory and punitive damages. The Supreme Court granted the EEOC's request that it review the Fourth Circuit's decision. 121 S.Ct. 1401 (2001).

Case Analysis

Congress enacted the Federal Arbitration Act (FAA) in 1925 to reverse the longstanding judicial hostility to arbitration agreements (a hostility that had existed at English common law and been adopted by the American courts) and to place arbitration agreements on the same footing as other contracts. Relying on the FAA, the Supreme Court has held that a court's duty to enforce an arbitration agreement is not diminished when a party bound by an agreement raises a claim found on statutory rights. *Gilmer v. Interstate/Johnson Lane Corp.,* 500 U.S. 20 (1991); *Shearson/American Express, Inc. v. McMahon,* 482 U.S. 220 (1987). The Court has reasoned that, by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 628 (1985).

Since *Gilmer,* the courts have routinely ordered employees to arbitrate a wide variety of state and federal statutory claims under the provisions of mandatory arbitration agreements governing employment disputes. See, e.g., *Cole v. Burns Int'l Security Services,* 105 F.3d 1465 (D.C. Cir. 1997). Compare *Circuit City Stores, Inc. v. Adams,* 121 U.S. 1302 (2001) (an arbitration agreement between an employer and individual employee can be enforced under the Federal Arbitration Act without contravening policies of congressional enactments giving employees specific protection against discrimination prohibited by law) with *Wright v. Universal Maritime Service Corp.,* 525 U.S. 70 (1998) (an arbitration clause in a collective bargaining agreement that did not contain a "clear and unmistakable" waiver of employees' right to litigate statutory discrimination claims was not enforceable).

The question in this case, however, is not whether the individual employee is bound by the arbitration agreement, but whether the EEOC is prevented from obtaining victim-specific relief for an individual who has agreed to submit his or her employment disputes, including those arising from alleged statutory violations, to binding arbitration.

The EEOC argues that its statutory authority to obtain victim-specific relief in a public enforcement action does not conflict with the terms or

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policies of the FAA. It says that the FAA does not support any limitation on the remedies the antidiscrimination laws make available to the EEOC, because the act's terms and policies are fully vindicated by holding the complainant to his or her agreement to arbitrate.

Waffle House disagrees, arguing that the plain text of the Federal Arbitration Act and the clear congressional policy favoring arbitration compelled the Fourth Circuit's decision. It says that the Fourth Circuit correctly harmonized the text and policies of the Federal Arbitration Act and the Americans with Disabilities Act.

In the Equal Employment Opportunity Act of 1972, Congress gave the EEOC the power to sue employers in federal court. At the same time, Congress made it clear that individuals retained their own causes of action.

Asserting that it is seeking to vindicate the public interest when it seeks victim-specific remedies, the EEOC argues that there is no basis for concluding that it merely represents private parties in such cases or that it should be bound by private agreements. The EEOC reasons that Congress' broadening of the public enforcement role in 1972 beyond "pattern or practice" cases was based on the premise that there is a strong public interest in remedying individual cases of discrimination. The EEOC claims that preventing it from recovering victim-specific remedies in any case in which there is a private arbitration agreement would seriously compromise its ability to enforce the antidiscrimination statutes.

According to Waffle House, the EEOC can fulfill its public-interest role by seeking injunctive relief. It says that the Fourth Circuit's decision promotes the important policy of providing quick and efficient relief under the Federal Arbitration Act and Title VII. Waffle House also contends that the EEOC's arguments are premised on an obsolete mistrust of arbitration.

The EEOC responds that, because the EEOC has not agreed to arbitrate its claims, the Federal Arbitration Act does not limit its rights in litigation.

SIGNIFICANCE

The EEOC has issued a policy statement opposing arbitration of discrimination claims as a condition of employment. It has taken the position that employment discrimination cases must be decided publicly in a court of law so that each court judgment will serve as a clear example of the costs of discrimination. However, the EEOC does support voluntary, postdispute arbitration agreements.

The federal circuits disagree as to whether a binding arbitration agreement signed by an individual employee also binds the EEOC and so prevents it from suing on the employee's behalf. The Second and Fourth circuits have held that the EEOC is precluded from suing for back pay and either compensatory or punitive damages on behalf of an employee who has signed an arbitration agreement. *EEOC v. Kidder, Peabody & Co.,* 156 F.3d 298, 303 (2d Cir. 1998); *EEOC v. Waffle House, Inc.,* 193 F.3d 805, 813 (4th Cir.1999); *Brown v. ABF Freight Systems, Inc.,* 183 F.3d 319, 323 (4th Cir. 1999). The Second Circuit determined that Congress' preference in enforcing arbitration agreements outweighs the interest in allowing the EEOC to sue for damages on behalf of an individual who has signed an arbitration agreement.

In *EEOC v. Frank's Nursery & Crafts, Inc.,* 177 F.3d 448, 455-56 (6th Cir. 1999), however, the Sixth Circuit found that Congress, in amending Title VII of the Civil Rights Act of 1964, granted the EEOC a cause of action distinct from that of the aggrieved individual employee. Reasoning that the EEOC's claim is separate from the individual's claim, the Sixth Circuit ruled that the EEOC is not bound by any arbitration agreement signed by that individual. Not having signed the arbitration agreement, the EEOC retains all of its authority to bring suit against the employer, including suing for classwide injunctive relief, back pay, and punitive damages on behalf of an individual.

The Supreme Court now has the opportunity to resolve this split in the federal circuits. A decision in favor of Waffle House would limit the EEOC's power to protect the rights of individual employees by recovering victim-specific remedies such as back pay, compensatory damages, and punitive damages, and could have a substantial negative impact on the deterrent effect of the EEOC's litigation program. *Cf. Albemarle Paper Co. v. Moody,* 422 U.S. 405, 417 (1974) (if employers faced only the prospect of an injunctive order, they would have little incentive to shun practices of dubious legality).

A ruling in favor of Waffle House would also encourage arbitration of statutory employment disputes, possibly resulting in more employers' requiring their employees to arbitrate statutory employment disputes. In addition, with the increased use of mandatory arbitration agreements in consumer agreements (including consumer credit and investment accounts), a ruling upholding the Fourth Circuit's decision may raise questions about the extent of the power of state and fed-

eral consumer protection agencies to seek victim-specific remedies in situations where the victim has agreed to arbitration.

On the other hand, although a ruling in favor of the EEOC would protect its enforcement powers, it also could be seen as providing a way for employees to avoid the arbitration agreements that they have already signed. That in turn could result in multiple proceedings to deal with a single discrimination claim, thus fostering delays and increased expenses as well as the possibility of inconsistent results.

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Amicus Briefs

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The AFL-CIO (Laurence Gold (202) 842-2600)

The AARP (Thomas W. Osbourne (202) 434-2060)

State of Missouri et al. (James R. Layton (573) 751-3321)

National Whistleblower Center (Stephen M. Kohn (202) 342-2177)

National Employment Lawyers Association et al. (Michael Rubin (415) 421-7151)

In Support of Waffle House, Inc.

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Equal Employment Advisory Council (Rae T. Vann (202) 789-8600)

Associated Industries of Massachusetts et al. (Michael E. Malamut (617) 695-3660)