

**Case Name:** Zacharia Clifton Jr. and Constance Clifton v. New Jersey Transit Corporation

**Date Decided:** October 19th, 2009

**Originally Filed in:** New Jersey (Federal)

**Decided by:** New Jersey Part A Court of Appeals (State)

**Court:** Superior Court of New Jersey, Appellate Division

**Judge:** Judge Miniman, Judge Simonelli

**Citation:**

**Background:**

Plaintiffs, Zachariah Clifton ("Zachariah"), and Constance Clifton ("Constance"), appealed from an order dismissing their claims against defendants New Jersey Transit Corporation and NJ Transit Rail Operations, Inc. under applicable statute of limitations. Defendants, employed Zachariah under a Collective Bargaining Agreement (CBA) until October 29, 2009, when defendants terminated his employment. Under the CBA, the union complained and arbitrated the adverse employment action and ruled against Zachariah's claim, mailing the decision on January 3, 2003. Zachariah filed a *pro se* complaint against defendants in the US District Court for the District Court of New Jersey which was amended on November 5, 2003. Zachariah alleged one cause of action under the Family and Medical Leave Act ("FMLA"), three under the New Jersey Law Against Discrimination ("LAD") and one under the Railway Labor Act ("RLA"). Defendants moved to dismiss the FMLA and RLA claims and the district court dismissed these claims declining to exercise supplemental jurisdiction because he dismissed all claims over which the court had original jurisdiction. Ultimately, the judge entered summary judgment for the federal claims and accordingly denied to exercise supplemental jurisdiction over the state claims. Plaintiffs appealed.

**Issue:**

Did the District Court judge err in denying plaintiff's claims?

**Overall Issues Discussed or Touched Upon in this Case:**

- *FMLA*
- *Statute of Limitations*
- *Procedural Issues - Federal*

**Held:**

First, the plaintiffs argued that their discrimination claims are not barred because the trial court failed to consider the extraordinary circumstances in this matter. Plaintiffs contended that Zachariah is a "severely mentally handicapped *Pro Se* and accordingly did not know the District Judge's Order was improper in dismissing the state law claims with prejudice and believed he was left with no recourse. Plaintiffs also contended that the judge erred in dismissing their FELA claims for the same reasons their discrimination claims were wrongly

dismissed and that they are entitled to the benefit of the discovery rule that applies to the FELA statute of limitations. Plaintiffs contended that Zachariah while becoming disabled in 2001, did not make any casual connection between the disability and the workplace harassment and discrimination until early 2005. Accordingly they argued the FELA claim was timely. This Court found that the pleadings are considered on a motion to dismiss based on a failure to state a claim, which was the basis identified by the judge for the motion. Plaintiffs complaint alleged that Zachariah went into a state of severe depression and anxiety, failing to show up to work and that the depression was caused by racial discrimination. However, this Court found that because the complaint did not allege that Zachariah did not make a causal connection and that no certification from Zachariah attesting to these facts is in the record on appeal. In the absence of a certification from Zachariah, this court refused to consider on these facts in deciding this appeal. Therefore, because 3 years had passed since the defendants terminated Zachariah's employment, which gave him sufficient critical facts to conduct an investigation, this Court affirmed the district court's dismissal of Zachariah's FELA claim.

**Comments:**

This Case is a good example why it is extremely important to obtain qualified legal counsel. The time period under the FELA statute of limitations begins running at the time of the injury (or here alleged discrimination) or when, under the discovery rule, the plaintiff knew or should have reasonably known the defendant's action was causally connected to the injury suffered. Here, the Plaintiff, in their *pro se* Complaint, failed to allege that the injured plaintiff, Zachariah, did not have reason to know of the causal connection after the wrongful termination.

Steve Gordon