

Case Name: Jeremy Gilmore and Dana Gilmore v. Union Pacific Railroad Company

Date Decided: December 2nd, 2009

Originally Filed in: ()

Decided by: (State)

Court: U.S.D.C. Eastern District of California

Judge: Judge Mendez

Citation: 2009 WL 4705427 (E.D.Cal.)

Background:

Jeremy Gilmore, plaintiff, was injured while working on a locomotive engine. Jeremy was employed by Union Pacific Railroad Company ("UP") while injured and brought an action under the Federal Employers' Liability Act (FELA). Dana Gilmore, an electrician was working with Jeremy at the time he was hurt. Following the accident, Jeremy was cited for violations of various work rules including allegations that he falsified the extent of his injury in the injury report. Dana was questioned by UP and accused of dishonesty and insubordination because she refused to testify against Jeremy at a disciplinary hearing. Dana was terminated following her refusal and both Dana and Jeremy (plaintiffs) filed suit under FELA for wrongful discharge, intentional infliction of emotional distress (IIED), and invasion of privacy. UP has filed a motion to Dismiss and motion to strike in this Court.

Issue:

Did this Court grant UP's motion to dismiss the plaintiffs' claims under FELA?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

Jeremy alleged he was wrongfully terminated in violation of public policy. Specifically, he argued that UP only fired him because they knew he was going to exercise his rights under FELA and receive compensation for his injuries. Moreover, he alleged that his termination was in violation of the law and policy articulated in the California Labor Code. UP contended that the Federal Rail Safety Act (FRSA) and FELA preempted the wrongful discharge action. UP argued that because FRSA contains an election of remedy clause, that it preempted the wrongful discharge. However, this Court found that Jeremy was not suing under the FRSA, but rather referencing it as a public policy which was violated and therefore his claim was not subject to FRSA's election of remedies. The Court further found that Jeremy was referencing to the California Labor Code for the same reason, and not to establish a cause of action. UP asserted that the Railway Labor Act (RLA) preempts wrongful termination claims because adjudication of the claim would require interpreting the collective bargaining agreement and the RLA is the exclusive dispute resolution process for claims requiring adjudication under the

CBA. UP reasoned that Jeremy's discharge claim is a "minor" dispute that involves interpreting or applying an existing CBA. This Court found that in order to raise a valid state law claim to survive a motion to dismiss that first, it must be determined if a public policy has been asserted capable of supporting such a claim. Under California Law, an employee fired in violation of fundamental state or federal public policy may sue for tort damages. A policy will support a claim if it is (1) constitutionally protected or by statute and if it is (2) "public" in the sense that it inures to the benefit of the public rather than serving interests of the individual (3) it is well established at the time of discharge and (4) substantial and fundamental. This Court found that the public policy asserted by the plaintiff was a valid common law claim of public policy and not preempted by the RLA. Second, under a RLA preemption analysis this Court determined whether Jeremy raised a "minor" dispute requiring an interpretation of the CBA and not an independent claim. UP contended that Jeremy is asserting a failure to follow disciplinary procedure outlined in the RLA and therefore, his dispute was "minor" as related to the CBA. However, this Court noted that Jeremy's claim was based on whether he was fired for an unlawful purpose. Accordingly, because Jeremy's claim raised a factual issue of whether his termination was retaliatory and in violation of public policy (therefore not "minor") the Court found it was not preempted. UP further argued that the wrongful discharge claim was preempted by FELA. Again, this Court recognized Jeremy's claim is not based on UP's liability for his injury (covered exclusively by FELA) but rather it was based on UP's decision to unlawfully terminate him. Moreover, this Court dismissed Jeremy's IIED claim with prejudice because it is preempted by RLA. Determining whether UP's conduct was outrageous, requires an interpretation of the CBA and not independent. Dana, the other plaintiff, argued she was fired for (1) refusing to reveal to UP information that they believed she possessed due to her marital relationship and (2) refusing UP's orders to testify against her husband at a disciplinary hearing. UP again, contended that RLA preempted her wrongful discharge action because determining whether the supervisors had the right to compel her to testify was an issue that could only be resolved by interpreting the CBA. However, this Court found that determining whether Dana could be fired for asserting marital privilege was separate and independent from the RLA's interpretation of the CBA. Accordingly, this Court denied UP's motion to dismiss Dana's wrongful termination action.

Comments:

Issues that involve the interpretation of the Collective Bargaining Agreement, entered into upon employment, are usually preempted by the Railway Labor Act. However, substantive protections provided by state law, independent of whatever labor agreement might govern, are not preempted by the RLA. Here, the issue involved a case of wrongful termination and did not turn on an interpretation of the CBA. Therefore it was not preempted by the RLA for that reason. Steve Gordon