

IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX AT CHRISTIANSTED

ROBERT BAINVILLE	)	
	)	
Plaintiff	)	CIVIL NO. 1624/81
	)	
vs.	)	ACTION FOR LIBEL, BREACH
	)	OF CONTRACT AND DAMAGES
V.I. WATER & POWER AUTHORITY, and	)	
the UNITED INDUSTRIAL WORKERS OF	)	
NORTH AMERICA OF THE SEAFARERS IN-	)	
TERNATIONAL UNION OF NORTH AMERICA	)	
	)	
Defendant	)	

BRIAN L. MASON, ESQUIRE
55-56 Company Street
Christiansted, St. Croix, V.I.
(Attorney for Plaintiff)

CAROL G. HURST, ESQUIRE
P.O. Box 756
St. Thomas, V.I. 00801
(Attorney for Defendant
V.I. Water & Power Authority)

ARNOLD M. SELKE, ESQUIRE
Grand Hotel Building
St. Thomas, V.I. 00801
(Attorney for Defendant United Industrial
Workers of North America of the Seafarer's
International Union of North America)

FINCH, Judge

MEMORANDUM OPINION AND ORDER

June 24 1983

I. INTRODUCTION

Defendant, the United Industrial Workers of North America of the Seafarer's International Union of North America, has filed a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56. Plaintiff, Robert Bainville, and defendant, Virgin

Islands Water and Power Authority, have filed responses thereto. Defendant V.I. Water and Power Authority has renewed its previous (May 17, 1982) Motion for Summary Judgment, which was denied by this Court on August 4, 1982. Plaintiff opposes the defendant's motion on the grounds that it has presented no new arguments that would persuade the Court to reverse its earlier ruling and grant the present motion for summary judgment.

II. FACTS

Plaintiff Robert Bainville ("Bainville") was employed by the defendant V.I. Water and Power Authority ("W.A.P.A.") as a plant maintenance mechanic, first class, in September of 1979. On September 5, 1979, Bainville was removed from the W.A.P.A. plant in Christiansted, St. Croix, Virgin Islands by the Department of Public Safety because of alleged irrational behavior exhibited by him at the plant site. Bainville was subsequently suspended from his employment on September 6, 1979, pursuant to the provisions of Section 10.4 of W.A.P.A.'s Manual of Personnel Policies and Procedures.^{1/}

^{1/} Section 10.4 of the Virgin Islands Water and Power Authority's Manual of Personnel Policies and Procedures states:

An employee may be suspended immediately from duty without pay by the Executive Director for a period not to exceed thirty (30) days for disciplinary reasons or pend-

On September 21, 1979, a hearing was held at the offices of W.A.P.A. to investigate the charges that were pending against Bainville. As a result of the hearing, Alma J. Lynton, a personnel analyst at W.A.P.A., concluded that Bainville was in need of psychiatric help and recommended that Bainville seek medical assistance.

On October 4, 1979, Bainville was mailed a letter from Robert E. Grimshaw, who was then the Executive Director of the Water and Power Authority, informing Bainville that he was to undergo psychiatric evaluation to determine whether the actions which precipitated his suspension were "an isolated occurrence, not likely to recur, or were the manifestations of a continuing mental disorder." Copies of the October 4, 1979 letter from Robert E. Grimshaw were sent to the following persons: Norman Minors, Shop Steward for the Union; Glen Massiongale, Assistant Plant Superintendent; Calvin Heidman, Supervisor; Fred Thompson, Plant Superintendent; Liston Gregory, Director of the Production Department; John McKeon, Union Representative; and Attorney George Dudley, W.A.P.A.'s general counsel.

1/ (cont'd.)

ing the investigation of charges which, if substantiated will result in dismissal, provided that if such investigation does not bear out the charges and the employee is returned, he shall be paid for the period of suspension.

On October 26, 1979, W.A.P.A. received a letter from Dr. Olaf G. Hendricks, the psychiatrist who conducted the psychological evaluation of Bainville. Based on the evaluation of Dr. Hendricks, Bainville was notified by letter dated December 10, 1979 that he was being permanently discharged from employment at W.A.P.A. Copies of the December 10, 1979 letter were sent to Lestor Gregory, Fred Thompson, Norman Minors and Sharon Smalls, Personnel Manager.

Bainville commenced the instant action by filing a complaint in the Territorial Court on December 10, 1981, alleging that W.A.P.A. had breached its contract by failing to pay him for the work which he performed while employed by W.A.P.A. and for wrongful discharge from his employment. Bainville also alleged in his complaint that W.A.P.A. libelled him by publishing to employees of W.A.P.A. and to prospective employers untrue and unfounded allegations that he was psychologically unfit to perform his duties at W.A.P.A. and that he posed a danger to his co-employees.

On June 28, 1982, Bainville filed an amended complaint in the Territorial Court in which he joined in the suit the Seafarer's Union, alleging that the Union breached its duty to him in the following manner: by failing to represent him at the hearing that was held on September 21, 1979, and by refusing to inform him of or assist him in his rights to

appeal his discharge.

III. DISCUSSION

In the instant case, defendant United Industrial Workers of North America of the Seafarer's International Union of North America ("Union") argues that plaintiff's claim against it should be properly characterized as being grounded in tort as opposed to being contractual in nature and, therefore, the action must be dismissed since the applicable statute in the Virgin Islands requires that all tort actions be commenced within two years after the accrual of the cause of action.^{2/} Defendant V.I. Water and Power Authority Authority maintains that if the Union is dismissed from the present action, then it must also be dismissed since the establishment of an unfair representation claim against the Union is a predicate for the assertion of a breach of contract claim against the employer. Defendant W.A.P.A. also contends that the Union is an indispensable party and, therefore, it would be inequitable and unjust for the Court to proceed to adjudicate the wrongful discharge action against it in the absence of the Union. Con-

^{2/} Title 5 V.I.C. Section 31 (5)(A) requires that actions for libel, slander, assault, battery, seduction, false imprisonment, or any injury to the person or rights of another not arising on contract and not herein especially enumerated, shall be commenced within 2 years of the accrual of the cause of action. The present action against the Union was filed in the Territorial Court on June 28, 1982.

versely, plaintiff contends that the complaint against the Union is grounded in contract and not tort. Plaintiff, however, does concede that he must prove his claim of unfair representation by the Union as a condition precedent to the action against W.A.P.A., but argues that the Union is not an indispensable party to the instant action.

The issue of whether or not the present action against the Union should be characterized as one in tort or contract has been the subject the considerable disagreement among the Circuits. The First and Fifth Circuits have held that fair representation actions against unions are properly characterized as actions grounded in tort, even when such actions were joined with breach of contract actions against employers. See Sanderson v. Ford Motor Co., 483 F.2d 102, 114 (5th Cir. 1973); De Arroyo v. Sindicato de Trabajadores Packinghouse, AFL-CIO, 425 F.2d 281, 286-87 (1st Cir. 1970), cert. denied, 400 U.S. 877 (1970). Concomitantly, the Second and Eighth Circuits have held that actions against the union and the employer should be of the "same duration" and, therefore, have applied the contract period of limitations to a fair representation suit against a union when coupled with a breach of contract action against the employer. See Butler v. Teamsters Local 823, 514 F.2d 442 (8th Cir. 1975); Abrams v. Carrier Corp., 434 F.2d 1234 (2nd Cir. 1970).

Presently, the Third Circuit has not adopted either ap-

proach to the threshold question of whether or not an action against a union for unfair representation should be characterized as a tort or a contract action. Nevertheless, this Court shall characterize the cause of action against the Union as one grounded in contract for the following reasons.

First, in Vaca v. Sipes, 386 U.S. 171 (1967), the Supreme Court ruled that a condition precedent to an employee recovering against his employer was that the employee establish that the union breached its duty of fair representation. Therefore, the argument advanced by the proponents of shorter statute of limitations, i.e., that claims based on "stale evidence" ought to be barred, is not persuasive since the "stale evidence" is needed anyway by the employee in order to prove that the union breached its duty of fair representation. The court in Abrams v. Carrier Corp., supra, commenting on this problem stated:

That claimants should not be permitted to bring actions based on stale evidence long after the parties had a right to assume that the claim would not be pursued, is simply inapplicable; no matter what the disposition of the claim against the union, the claim against the employer, based on the same evidence, will still go forward (emphasis added).

Second, only by subjecting both employer and union to the same limitations period will the Court be able to fashion a remedy which properly allocates or apportions the damages between them. The Supreme Court in Vaca, supra, recognized

the inherent difficulties presented by the application of multiple statutes of limitations in an action against a union and an employer when it stated:

If a breach of duty by the union and a breach of contract by the employer are proven, the court must fashion an appropriate remedy. Presumably, in at least some cases, the union's breach of duty will have enhanced or contributed to the employee's injury. What possible sense could there be in a rule which would permit a court that has litigated the fault of employer and union to fashion a remedy only with respect to the employer?....

The Court continued:

The governing principle, then, is to apportion liability between the employer and the union according to the damage caused by the fault of each. Thus, damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer....

This Court is of the opinion that a rule which subjects both the union and the employer to an "equal period of vulnerability to suit" is the best means of achieving the goal of equitable apportionment of damages. Therefore, it is the holding of this Court that when a suit is commenced against an employer alleging breach of contract in conjunction with a claim that the union breached its duty of fair representation, the same period of limitations should be applied to both claims.

In reaching the above conclusion, the Court is cognizant of and acknowledges the principle that "relatively rapid disposition of labor disputes is a goal of federal labor law." See International Union v. Hoosier Cardinal Corp., 383 U.S. 696 (1966). Yet, the Court is also aware that the timeliness of a suit brought by an employee against an employer and the union is determined by reference to the appropriate state statute of limitations, which can only be done after the actions that are brought against the union and the employer are properly characterized as actions in contract or tort. See United Parcel Service v. Mitchell, 451 U.S. 56 (1981).

THE STATUTE OF LIMITATIONS

Having concluded that the claim against the Union should be properly characterized as an action in contract, the Court must apply the appropriate statute in the Virgin Islands which governs actions in contract. Title 5 V.I.C. Section 31(3) provides that a civil action upon a contract shall be commenced within six years after the cause of action has accrued. Thus, the present action against the Union is not time-barred since the earliest date that the alleged breach could have occurred was on September 21, 1979 when, plaintiff claims, the Union failed to represent him at a hearing to investigate the charges then pending against him stemming from

his alleged irrational behavior at the plant site on September 5, 1979. 3/

SUMMARY JUDGMENT MOTION BY DEFENDANT W.A.P.A.

Counsel for defendant W.A.P.A. has renewed its earlier (May 17, 1982) Motion for Summary Judgment. The Court directs counsel to its Order dated August 4, 1982, when it found that there were genuine issues of material fact, i.e., the debt owed to plaintiff, whether the communications were privileged and whether plaintiff exhausted his administrative remedies.

The Court is of the opinion that the above mentioned

3/ Even though, in the instant case, the Court has applied the six-year statute of limitations in the breach of duty of fair representation action against the Union, it is aware that the Supreme Court has recently ruled that the proper statute of limitations in a breach of duty of fair representation action against a union is the six-month period of limitations established by §10b of the National Labor Relations Act. See DelCostello v. Teamsters, 51 U.S.L.W. 4693 (U.S. June 7, 1983). The Court points out, however, that the Supreme Court was able to apply the shorter federal limitations period because of the existence in DelCostello of a federal cause of action. Conversely, in the case at bar the plaintiff's claim does not stem from a federal cause of action and, therefore, the Court cannot look to a federal statute to find the appropriate statute of limitations in a breach of duty of fair representation action against a union, but is compelled by pre-existing decisional law to apply the appropriate state statute of limitations. Thus, it is state law which is the only source available to the Court in determining the appropriate statute of limitations in an action by an employee against the union for breach of a duty of fair representation.

Memorandum Opinion
Bainville vs. V.I. Water & Power, et al
Page 11

genuine issues of material fact remain and that the defendant W.A.P.A. has presented no new arguments that would persuade the Court to reverse its earlier ruling on the Motion for Summary Judgment.

IV. CONCLUSION

For the reasons expressed in the Memorandum Opinion, both defendants' motions for summary judgment are denied.

DATED:

June 21, 1983


Raymond L. Finch, Judge