



SCOTUS weighs clamping down on discrimination lawsuits

Sean Higgins

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The Supreme Court will hear a case next year that could force the Equal Employment Opportunity Commission to become much more careful about which anti-discrimination lawsuits it files against businesses.

The case, *CRST Vans Expedited v. EEOC*, involves whether the bar should be lowered for businesses seeking damages from the agency when its cases are found to be frivolous. The trucking company is asking the Supreme Court to restore a \$4.7 million award to the trucking company by a district court that an appeals court threw out last year.

"Depending upon how far the court gets into the merits of the case, the decision could have potentially far-reaching impact for any employer embroiled in litigation with the EEOC," said Jennifer Riley, a partner with Chicago law firm Seyfarth Shaw LLP.

The EEOC sued CRST, a Chicago long-haul trucking company, in 2007 for sexual discrimination on behalf of a female employee who said her two on-the-road trainers sexually assaulted her.

The agency had faced a problem in bringing the case. Since CRST was a trucking company, its employees spent most of their time on the road and did not share a workplace. That made it difficult for the EEOC to prove a hostile work environment.

After the initial charge, the agency repeatedly broadened the case, eventually suing CRST on behalf of 270 female employees.

The EEOC initially said it had sufficient grounds for each one, but it was revealed in court that the agency had not attempted to seek a settlement for most, as is required prior to pursuing litigation. In many instances, the agency had not even interviewed the workers.

"They had one or two cases that they investigated and were litigating [at first] and then they added a couple hundred more that they didn't investigate at all. We ended up spending millions of dollars in costs defending against cases that had ... no substance to them," Paul Smith, CRST's attorney, told the *Washington Examiner*.

The EEOC has argued that because it had sought a settlement with the company in the initial case, it was not obligated to do so for the others. The courts disagreed, and after six years of litigation, all but one of the cases, which was settled for \$50,000, were thrown away. A district court awarded the \$4.7 million to CRST based on the EEOC's "failure to investigate and attempt to conciliate" regarding 67 claimants.

Walter Olson, senior fellow with the libertarian Cato Institute, said the EEOC was apparently piling on the cases in an attempt to pressure the company to settle. In the process, it got sloppy and paid little attention to the cases' individual merits.

"It's as if they pushed an iceberg towards the trucking company, and by the time it got there it was only an ice cube," Olson said.

The 8th Circuit Court of Appeals nevertheless threw out the \$4.7 million award last December on a technicality, ruling that since the majority of the cases had been thrown out prior to trial, CRST was not really the "prevailing party" in court and was therefore not eligible for the award.

On Dec. 4, the Supreme Court agreed to hear CRST's appeal of that ruling.

"We don't have a comment," EEOC spokeswoman Kimberly-Smith Brown told the *Washington Examiner*. However, the agency issued a statement last year after the appeals court ruling.

"The decision emphasizes that fees cannot be awarded against the EEOC absent particularized determinations that the claims pursued by the EEOC were frivolous. To us, that is a principle of absolutely critical importance," said David Lopez, the agency's general counsel.

Olson argues there isn't any debate on whether the EEOC failed to follow the law. "Whatever way the Supreme Court rules, the government is still under a burden to do that. The only question is what the consequences are if it doesn't," he said.

