

Court Denies Employee's Request to Revoke Settlement Agreement due to Invalid OWBPA Release

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The chemical company worker was terminated in March 2009 due to an industrial accident. The worker challenged the termination through his union, and the union filed a grievance on his behalf. The employer denied the grievance, which prompted the union to file for arbitration under the collective bargaining agreement. The parties were ultimately able to reach a resolution prior to the arbitration. The worker and the employer entered into a settlement agreement and release of claims related to his termination.

Five days later, the worker sent a letter to his employer revoking the settlement and requesting arbitration, and he returned the settlement check. The employer informed him that it did not accept his revocation and considered the settlement valid. The worker then sought the assistance of his union, but the union advised that it could not help since it was not party to the agreement.

The employee then filed a charge with the National Labor Relations Board, claiming that the union failed to represent him. This claim was dismissed on the grounds that the union was well within its discretion to not revoke the agreement and reinstate the grievance. The employee accordingly sought relief through the Texas Workforce Commission Civil Rights Division, alleging that he was terminated based on sex in violation of Title VII. Two days later, he filed a similar charge with the Equal Employment Opportunity Commission. He received a right to sue letter, but did not file suit until almost two years later.

The worker filed a request for a declaratory judgment with the U.S. District Court for the Southern District of Texas, claiming that the document was not binding under the Older Workers Benefit Protection Act (OWBPA). Specifically, he claimed that he wanted to arbitrate his claim under the collective bargaining agreement between his union and his former employer. The employer moved for summary judgment.

Upon review, the court found that the release executed by the employee did not meet the OWBPA requirements for a valid release of an Age Discrimination in Employment (ADEA) claim. Specifically, the release did not refer to the ADEA, advise the employee to consult with an attorney, or provide for the statutory grace period. His release was accordingly voidable.

To rescind an agreement, the worker must restore the status *quo ante*, and the rescission must promptly follow the discovery of the OWBPA deficiency. Here, the worker met both requirements by sending the check back and announcing his revocation five days after entering into the agreement.

This, still, however, was not enough to give the worker his day in court. This is because, as the employer pointed out, in a declaratory judgment case, the worker had to prove that there was a viable underlying claim. Here, there was no such claim because the OWBPA serves only to invalidate a deficient ADEA release and any ADEA claim that he may have filed was now time-barred. The Court found while the OWBPA served to invalidate the release of ADEA claims, it does not allow him to revive a grievance claiming he was terminated in violation of a collective bargaining agreement. The Court accordingly granted summary judgment for the employer.

This case signifies the importance of ensuring that settlement agreements contain the requisite terms so as to serve as a full and final complete release of any and all claims as permitted by law.

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Topics

ADEA, Settlement Agreement, Texas