

The Burger Court Opinion Writing Database

Lines v. Frederick

400 U.S. 18 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

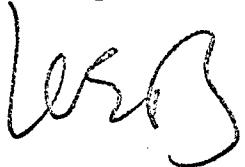
November 4, 1970

Re: No. 412 - Lines v. Frederick

MEMORANDUM FOR THE CONFERENCE:

After reviewing the several expressions
in the above I wonder if we would not be better advised
simply to deny the writ. For this my apologies to
Potter and John who have labored mightily.

Regards,

A handwritten signature in black ink, appearing to read "W. B." or "WB".

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

October 21, 1970

Dear Potter,

Re: No. 412 - Lines v. Frederick, et al.

I agree with your Per Curiam circulated
today.

Sincerely,
HLB
H. L. B.

Mr. Justice Stewart

cc: Conference

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SUPREME COURT OF THE UNITED STATES

October Term, 1970

LINES *v.* FREDERICK ET AL.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

From: Harlan, J.

No. 412. Decided October —, 1970

Circulated ~~OCT 22 1970~~

MR. JUSTICE HARLAN, dissenting.

Recirculated:

In my view this case is another instance in which the pressure of an overcrowded docket has led the Court to deal summarily with an issue which, if deserving of our attention at all, is deserving of full-dress treatment. Cf. *United States v. Maryland Savings-Share Insurance Corp.*, *ante*, p. —; *United States v. Chicago*, *ante*, p. —. Moreover the Court disposes of the case despite the inadequacy of the record and the uncertainty with regard to relevant California law.

We are not furnished with the terms of respondents' employment. It appears, however, that the amount of vacation pay depends on the length of employment since the last vacation. If that is in fact the case, I am unable to see why the turn-over orders prevented the respondents from making "unencumbered fresh start[s]." Even after the turnover they were left with more than they would have been entitled to if they had started work on the dates of the petitions. *Segal v. Rochelle*, 382 U. S. 375 (1966), and *Local Loan Co. v. Hunt*, 292 U. S. 234 (1934), therefore favor the position of the trustee rather than "compel a decision for the bankrupt." *Ante*, p. —. However, forceful arguments can be made in favor of the respondents, even on the assumption that the accrued vacation pay was subject to the claims of creditors—a point of California law which the court below found it unnecessary to decide.

Since the question tendered for review is close and has divided the courts of appeals, I would set the case for argument.

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SUPREME COURT OF THE UNITED STATES

October Term, 1970

LINES *v.* FREDERICK ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

No. 412. Decided November —, 1970

From: Harlan, J.

MR. JUSTICE HARLAN, dissenting.

Circulated

OCT 28 1970

Recirculated

In my view this case is another instance in which the pressure of an overcrowded docket has led the Court to deal summarily with an issue which, if deserving of our attention at all, is deserving of full-dress treatment. Cf. *United States v. Maryland Savings-Share Insurance Corp.*, *ante*, p. —; *United States v. Chicago*, *ante*, p. —. Moreover the Court disposes of the case despite the opaqueness of the record and the uncertainty with regard to relevant California law.

Under the terms of respondent Frederick's employment, his employer credited him with one day's vacation pay for each month's work.¹ From September 15, the date of bankruptcy, to December 23, the beginning of the shutdown and the enforced "vacation," Mr. Frederick presumably became entitled to a little over three days' pay. The same amount would have accrued to a person starting work on the date of bankruptcy with no debts or assets, the paradigm of "an unencumbered fresh start." Indeed, the order not only permitted Mr. Frederick a *fresh* start; it gave him a *head* start, to the extent

¹ While neither the stipulated facts nor the opinions below reveal the rate of accrual of vacation pay, I take as true the uncontested representation in Mr. Frederick's petition for review of the referee's order.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 21, 1970

RE: No. 412 - Lines v. Frederick, et al.

Dear Potter:

I agree with the Per Curiam you have
prepared in the above case.

Sincerely,


W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

October Term, 1970

From: Stewart, J.

Circulated: OCT 21 1970

LINES v. FREDERICK ET AL.

Recirculated: _____

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 412. Decided October —, 1970

PER CURIAM.

This case presents the question of whether a bankrupt wage earner's vacation pay, accrued but unpaid at the time of the filing of his petition, passes to the trustee in bankruptcy as "property" under § 70a (5) of the Bankruptcy Act, 11 U. S. C. § 110a (5). The facts are not in dispute. Respondent Frederick, employed by a large manufacturing company, had accrued vacation pay of \$137.28 at the time he filed his petition. He could collect this sum either during the annual period when his employer shut down the plant in which he worked, or on final termination of his employment. Respondent Harris had accrued vacation pay of \$144.14, which he could draw either on termination or under a conventional voluntary vacation plan of his employer. In each case, the referee in bankruptcy made a "turn over order" requiring the bankrupt to pay to the trustee on receipt all of his accrued vacation pay, less one-half of that part accrued during the 30 days prior to the filing of the petition (the deducted sum being exempt under Cal. Code Civ. Proc. § 690.11).

The District Court affirmed the referee in both cases, but the Court of Appeals for the Ninth Circuit reversed, holding that accrued but unpaid vacation pay is not "property" under the statute, and therefore finding it unnecessary to decide whether such accrued pay meets the further statutory requirement of being "transfer-

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

October Term, 1970

Recirculated: OCT 23 1970

LINES v. FREDERICK ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 412. Decided October —, 1970

PER CURIAM.

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October 21, 1970

Re: No. 412 - Lines v. Frederick

Dear Potter:

Please join me.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 22, 1970

Re: No. 412 - Lines v. Frederick

Dear Potter:

Please join me in your per curiam.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference

October 22, 1970

Re: No. 412 - Lines v. Frederick

Dear Potter:

I agree with the Per Curiam proposed for
this case.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference