

The Burger Court Opinion Writing Database

United Parcel Service, Inc. v. Mitchell

451 U.S. 56 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

April 6, 1981

No. 80-169 - United Parcel Service, Inc. v.
Mitchell

Dear Bill,

I join.

Regards,

A handwritten signature in cursive script, appearing to read 'WRB', written in dark ink.

Justice Rehnquist

Copies to The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 15, 1981

RE: No. 80-169 United Parcel Service v. Mitchell

Dear Bill:

I voted the other way at conference but I am persuaded to your result by your opinion. Therefore, please join me.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 26, 1981

Re: No. 80-169, United Parcel Service
v. Mitchell

Dear Bill,

I shall in due course circulate a concurring opinion, expressing the view that the 6-month limitation period in § 10(b) of the National Labor Relations Act is applicable here.

Sincerely yours,

PS.
/

Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice Stewart

No. 80-169

Circulated: 27 MAR 1981

United Parcel Service, Inc.,
Petitioner,
v.
William Mitchell.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Second Circuit.

[April —, 1981]

JUSTICE STEWART, concurring in the judgment.

The Court believes itself obligated by *Auto Workers v. Hoosier Corp.*, 383 U. S. 696, to determine the applicable statute of limitations in this case "as a matter of federal law, by reference to the appropriate state statute of limitations."¹ I do not believe, however, that we are so constrained by *Hoosier*. Instead of deciding which of two almost equally relevant state limitations periods applies to the respondent's claims, I would impose the limitations period of § 10 (b) of the National Labor Relations Act (NLRA), 29 U. S. C. § 160 (b).

A

Hoosier involved a straightforward breach-of-contract damage suit brought by a union against an employer under § 301 of the Labor Management Relations Act (LMRA). As Congress had not provided a limitations period for § 301 suits, the Court concluded that a state statute of limitations should apply. But the Court was careful to note that it was not deciding the appropriate time limits for all suits brought under § 301:

"The present suit is essentially an action for damages caused by an alleged breach of an employer's obligation embodied in a collective bargaining agreement. Such an

¹ But see *ante*, at 3, n. 2.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 26, 1981

Re: 80-169 - UPS v. Mitchell

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 15, 1981

Re: No. 80-169 - United Parcel Service, Inc. v.
William Mitchell

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Justice Rehnquist

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: APR 6 1981

Recirculated: _____

No. 80-169 - United Parcel Service, Inc. v. Mitchell

JUSTICE BLACKMUN concurring.

I join the Court's opinion because I am persuaded that the Court has made the correct choice between the two state law alternatives presented by the parties. As the Court observes, the applicability of § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) (1976), was never pressed by either party, and was not considered by the Court of Appeals. Although I find much that is persuasive in JUSTICE STEWART'S analysis, resolution of the § 10(b) question properly should await the development of a full adversarial record.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

dated: APR 6 1981

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-169

United Parcel Service, Inc.,
Petitioner,
v.
William Mitchell. } On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit.

[April —, 1981]

JUSTICE BLACKMUN, concurring.

I join the Court's opinion because I am persuaded that the Court has made the correct choice between the two state law alternatives presented by the parties. As the Court observes, the applicability of § 10 (b) of the National Labor Relations Act, 29 U. S. C. § 160 (b) (1976), was never pressed by either party, and was not considered by the Court of Appeals. Although I find much that is persuasive in JUSTICE STEWART's analysis, resolution of the § 10 (b) question properly should await the development of a full adversarial record.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 7, 1981

Re: No. 80-169 - United Parcel Service, Inc. v. Mitchell

Dear Bill:

Just so nothing drops between the stools, this is a formal joinder of your opinion. I said as much in my little concurrence, but I think it well to give you a separate letter.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 26, 1981

80-169 UPS v. Mitchell

Dear Bill:

Please join me.

I do raise a question, possibly because I do not fully understand the situation. Footnote 2 refers to the amicus brief of AFL-CIO arguing for the sixth-month period in §10(b) of NLRA. As you state, the parties did not make this argument, and therefore you decline to consider it. Thus, your opinion apparently would leave open whether the applicable limitation is determined by state or federal law. Thus, our case really would not decide very much.

I take it that the AFL-CIO argues that even though the suit is brought under §301, one must look to §10(b) of NLRA - and not to state law - to determine the appropriate time within which a suit must be brought. Would it not be proper for us to reach the issue and hold that under §301 the appropriate limitations period is determined by state law? This would be consistent with the assumption of the parties to this litigation, and would resolve the question for other litigants. My recollection from the Conference is that Potter and Thurgood voted to rely on §10(b). It occurs to me that we may confuse matters more than clarify them if we leave this question undecided.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated:
 MAY 6 1981

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

 No. 80-169

United Parcel Service, Inc., Petitioner, v. William Mitchell.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Second Circuit.
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[April —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

We are called upon in this case to determine which state statute of limitations period should be borrowed and applied to an employee's action against his employer under § 301 (a) of the Labor Management Relations Act, 29 U. S. C. § 185 (a) (1976) and *Hines v. Anchor Motor Freight, Inc.*, 424 U. S. 554 (1976).

I

Petitioner United Parcel Service, Inc. (UPS) employed respondent Mitchell as a car washer at its facility on Staten Island, N. Y. On January 13, 1977, respondent was discharged for dishonest acts, including falsifying his time cards and claiming payment for hours which he did not work. Respondent denied the charges against him and requested his union, Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union No. 177 (the Union), to file a grievance on his behalf contesting the discharge. UPS and the Union were parties to a collective-bargaining agreement which provided a grievance and arbitration procedure for the resolution of disputes covered by the agreement. App. 57-67. Pursuant to the agreement respondent's grievance was submitted to a panel of the Atlantic Area Parcel Grievance Committee, composed of three union and three company rep-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1981

Re: No. 80-169 UPS v. Mitchell

Dear Lewis:

Thank you for your letter of March 26th. I am reluctant either to accept or to reject the AFL-CIO's argument that the federal limitations period in § 10(b) of the NLRA should apply to this case. As I note in my draft opinion, the parties have assumed a state limitations period should be borrowed, and the issue as they have presented it both below and to us is simply which state limitations period to borrow.

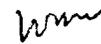
The AFL-CIO has gone beyond the proper bounds of an amicus brief in raising for the first time the issue of whether it was appropriate to borrow state limitations periods at all, an issue not presented by the parties. The established rule in this Court is that we will not consider arguments raised by amici which were neither raised below nor by the parties before the Court. Just recently in Bell v. Wolfish, 441 U.S. 520, 532 n. 13 (1979), the Court declined to consider two arguments raised by an amicus under similar circumstances: "Neither argument was presented to or passed on by the lower courts; nor have they been urged by either party in this Court. Accordingly, we have no occasion to reach them in this case." See also Knetsch v. United States, 364 U.S. 361, 370 (1960) ("Some point is made in an amicus curiae brief of the fact that Knetsch in entering into these annuity agreements relied on individual ruling letters issued by the Commissioner to other taxpayers. This argument has never been advanced by petitioners in this case. Accordingly, we have no reason to pass upon it."). This rule is well established in other courts as well. See, e.g., Montana v. Lasorte, 596 P.2d 477, 482 (Mont. 1979); Washington State Bar Association v. Great Western Union Federal Savings & Loan Association, 586 P.2d 820, 877 (Wash. 1978).

- 2 -

The rule is based on sound judicial practice. Accepting an argument such as that raised by the AFL-CIO would be establishing a rule without benefit of adversary presentation or treatment by the lower courts. Rejecting it would suffer from the same flaws. The proper approach, I believe, is that established by precedent: not reaching the issue. Bell v. Wolfish, supra; Knetsch v. United States, supra. The opinion as written, therefore, simply considers which state limitations period to borrow, assuming, as the parties and lower courts did, that such borrowing is appropriate.

You may well be correct that, so limited, "our case really would not decide very much." I believe, however, we would be deciding the issue presented by the parties, and should not decide more.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Bill advised me verbally that he might well agree with me if BAW would remain with the Court.

Re: No. 80-169 UPS v. Mitchell

Dear Lewis:

Thank you for your letter of March 26th. I am reluctant either to accept or to reject the AFL-CIO's argument that the federal limitations period in § 10(b) of the NLRA should apply to this case. As I note in my draft opinion, the parties have assumed a state limitations period should be borrowed, and the issue as they have presented it both below and to us is simply which state limitations period to borrow.

The AFL-CIO has gone beyond the proper bounds of an amicus brief in raising for the first time the issue of whether it was appropriate to borrow state limitations periods at all, an issue not presented by the parties. The established rule in this Court is that we will not consider arguments raised by amici which were neither raised below nor by the parties before the Court. Just recently in Bell v. Wolfish, 441 U.S. 520, 532 n. 13 (1979), the Court declined to consider two arguments raised by an amicus under similar circumstances: "Neither argument was presented to or passed on by the lower courts; nor have they been urged by either party in this Court. Accordingly, we have no occasion to reach them in this case." See also Knetsch v. United States, 364 U.S. 361, 370 (1960) ("Some point is made in an amicus curiae brief of the fact that Knetsch in entering into these annuity agreements relied on individual ruling letters issued by the Commissioner to other taxpayers. This argument has never been advanced by petitioners in this case. Accordingly, we have no reason to pass upon it."). This rule is well established in other courts as well. See, e.g., Montana v. Lasorte, 596 P.2d 477, 482 (Mont. 1979); Washington State Bar Association v. Great Western Union Federal Savings & Loan Association, 586 P.2d 820, 877 (Wash. 1978).

March 30, 1981
WHR underhand
BAW would
not join
position
was adopted.



The rule is based on sound judicial practice. Accepting an argument such as that raised by the AFL-CIO would be establishing a rule without benefit of adversary presentation or treatment by the lower courts. Rejecting it would suffer from the same flaws. The proper approach, I believe, is that established by precedent: not reaching the issue. Bell v. Wolfish, supra; Knetsch v. United States, supra. The opinion as written, therefore, simply considers which state limitations period to borrow, assuming, as the parties and lower courts did, that such borrowing is appropriate.

You may well be correct that, so limited, "our case really would not decide very much." I believe, however, we would be deciding the issue presented by the parties, and should not decide more.

Sincerely,



Mr. Justice Powell

Copies to the Conference

Jaws - as I said on the phone this A.M., I am quite sure we would lose by a 5-4 vote if we went the AFL-CIO route (because of conversations I had with Tom when I began drafting the opinion)

3,4

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Uncirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-169

United Parcel Service, Inc.,
Petitioner,
v.
William Mitchell. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Second Circuit.

[April —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

We are called upon in this case to determine which state statute of limitations period should be borrowed and applied to an employee's action against his employer under § 301 (a) of the Labor Management Relations Act, 29 U. S. C. § 185 (a) (1976) and *Hines v. Anchor Motor Freight, Inc.*, 424 U. S. 554 (1976).

I

Petitioner United Parcel Service, Inc. (UPS) employed respondent Mitchell as a car washer at its facility on Staten Island, N. Y. On January 13, 1977, respondent was discharged for dishonest acts, including falsifying his time cards and claiming payment for hours which he did not work. Respondent denied the charges against him and requested his union, Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union No. 177 (the Union), to file a grievance on his behalf contesting the discharge. UPS and the Union were parties to a collective-bargaining agreement which provided a grievance and arbitration procedure for the resolution of disputes covered by the agreement. App. 57-67. Pursuant to the agreement respondent's grievance was submitted to a panel of the Atlantic Area Parcel Grievance Committee, composed of three union and three company rep-

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 29, 1981

MEMORANDUM TO THE CONFERENCE

Re: Cases held for 80-169 UPS, Inc. v. Mitchell

In No. 80-26, United Steelworkers v. Flowers, respondents, who are craft welders, alleged that while they were laid off by their employer, Bethlehem Steel, the employer assigned their craft welding duties to employees who were not craft welders. This was alleged to be a violation of the collective bargaining agreement. The grievance went to arbitration, and the arbitrator denied the respondents' claims. Eleven months later respondents brought suit under § 301(a) against both the employer and union. The District Court granted a motion by the union and employer to dismiss the suit as time barred under New York's 90-day limitations period for actions to vacate arbitration awards. The Court of Appeals for the Second Circuit reversed on the basis of its then-recent decision in Mitchell v. UPS, and applied the six-year period for contract actions. Both the company and the union petitioned for certiorari. Under UPS v. Mitchell, the suit against the employer is time barred, and the Court of Appeals decision to the contrary cannot stand. (The suit against the company would also be barred under Justice Stewart's separate theory in UPS v. Mitchell). The holding in UPS v. Mitchell did not cover suits against unions. I would not grant plenary consideration to address that separate question now (if in fact it is a separate question), but rather leave it for the Court of Appeals in the first instance on remand, after the company is taken out of the suit. Respondents may not even desire to proceed against their union with the suit against the company dismissed. I will therefore vote to GVR No. 80-26 in light of UPS v. Mitchell. OK

In No. 80-890, Liotta v. National Forge Co., petitioner employee was discharged following his participation in a work stoppage. He filed a grievance which was denied by an

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 26, 1981

Re: 80-169 - United Parcel v. Mitchell

Dear Bill:

Although I may end up joining you, I am still troubled by a requirement that the employee must sue a union for breach of its duty of fair representation within as short a period as ninety days. Although this is not an attractive case, it seems to me that there may well be cases in which even a diligent employee may not become aware of the basis for such a suit within such a short period. Moreover, I would suppose the employer would be protected against back pay liability during the period that it would take to establish the right to recover against the union. In sum, I would like to take the time to see whether a brief dissent will write before coming to rest.

Respectfully,



Justice Rehnquist

Copies to the Conference

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: APR 10 '81

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-169

United Parcel Service, Inc., Petitioner, v. William Mitchell.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Second Circuit.
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[April —, 1981]

JUSTICE STEVENS, concurring in part and dissenting in part.

In this action, the plaintiff-employee seeks a judicial remedy against his former employer for wrongful discharge, and against his union for breach of the duty of fair representation. The District Court granted summary judgment in favor of both defendants because of the employee's failure to file suit within what that court viewed as the appropriate period of limitations. The Court of Appeals reversed the District Court's judgment as to both claims and remanded for further proceedings. The employer alone sought further review in this Court. Therefore, at this stage of the litigation, the only question properly presented for our consideration is whether the Court of Appeals chose the most appropriate New York statute of limitations to govern the employee's claim against his former employer for wrongful discharge.¹ Although I agree for the most part with the

¹ The union did not petition for review of the Court of Appeals' decision, and the employer has not taken a position with respect to which statute of limitations governs respondent's claim against the union. Indeed, the employer has vigorously denied that this question is presented in this case:

"[T]he only question raised in the petition for certiorari is the statute of limitations applicable to Mitchell's claim against his employer, UPS. See *Liotta v. National Forge Co.*, 629 F. 2d 903 (3d Cir. 1980).

"The fact that Mitchell may have a claim against the Union does not