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Army and Air Force Exchange Service v. Sheehan

456 U.S. 728 (1982)

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

PERSONAL

May 19, 1982

Re: No. 80-1437 - Army and Air Force Exchange Service v. Sheehan

Dear Harry:

I have tried - and I think succeeded in getting almost everyone to avoid the term plea "bargain." That word has no place in the judicial vocabulary.

I can join your opinion heartily if you can change "bargain" (p. 2) to "negotiations" which the ABA project years ago hit so hard.

So, show me accordingly as joining or joining the judgment.

Regards,



Justice Blackmun

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

1982 MAY 20 PM 4 44

May 20, 1982

Re: No. 80-1437 - Army & Air Force Exchange v. Sheehan

Dear Chief:

I think "plea bargain" has acquired an accepted meaning in the judicial vocabulary. It is far more accepted than the noun "commute" for which I fought a battle last year when no one supported me, and surely is far more acceptable than the Court's constant misuse of the word "viable." So I shall leave it as it is and show you as concurring in the judgment.

I might call to your attention the fact that you have joined, apparently without objection, other opinions in which "plea bargain," or some variant thereof, has been employed. See Lane v. Williams, ___ U.S. ___ (1982) (JPS slip op., p. 3); Bordenkircher v. Hayes, 434 U.S. 357 (1978) (PS op., pp. 359, 361, 363, 364 n. 8). See Black's Law Dictionary, p. 1037 (5th ed., 1979).

Sincerely,



The Chief Justice

*Yes, but I've joined
the last one. It is
a perversion of the English
language + the law!
WJB*

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 12, 1982

RE: No. 80-1437 Army & Air Force Exchange v. Sheehan

Dear Harry:

I agree.

Sincerely,



Justice Blackmun

cc: The Conference

85 MAY 18 1982

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 13, 1982

Re: 80-1437 - Army and Air Force
Exchange Service v. Sheehan

Dear Harry,

Please join me.

Sincerely yours,



Justice Blackmun

Copies to the Conference

cpm

25 113 113

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1982

Re: No. 80-1437 - Army and Air Force Exchange
Service v. Sheehan

Dear Harry:

Please join me.

Sincerely,



T.M.

Justice Blackmun

cc: The Conference

STYLISTIC CHANGES

P. 13

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAY 13 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1437

ARMY AND AIR FORCE EXCHANGE SERVICE, PETITIONER v. ARTHUR EDWARD SHEEHAN

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

[May —, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

The issue presented by this case is whether the federal courts have jurisdiction over a civil action for monetary damages brought by a former military exchange employee who contests the validity of his discharge. The employee claims that federal jurisdiction exists under the Tucker Act, 28 U. S. C. § 1346(a)(2) (1976 ed., Supp. III).

I

A

In 1962, respondent, Arthur Edward Sheehan, was selected for a data processing position with petitioner Army and Air Force Exchange Service (AAFES or Service).¹ Five years later, respondent was designated by the AAFES commander for participation in the Service's Executive Management Program (EMP); this program is "intended to fulfill the continuing requirement of AAFES for highly qualified

¹AAFES is a nonappropriated fund instrumentality of the United States, that is, one that does not receive funds by congressional appropriation. See 10 U. S. C. §§ 4779(c) and 9779(c). AAFES is under the control of the Secretaries of the Army and Air Force and, like other military post exchanges, is intended "to provide convenient and reliable sources where soldiers can obtain their ordinary needs at the lowest possible prices." *Standard Oil Co. v. Johnson*, 316 U. S. 481, 484-485 (1942).

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

Recirculated: MAY 14 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1437

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p. 13

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

1982 MAY 20 PM 4 44

May 20, 1982

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Sincerely,

H.A.B.

The Chief Justice

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the last one. It is
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W.E.B.*

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Blackmun**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1437

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p. 13

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1982

Memorandum to the Conference

Case Held for No. 80-1437, Army & Air Force Exchange Service v. Sheehan

Army & Air Force Exchange Service v. Gorman, No. 80-1435, was the only case held for Sheehan. Respondent was employed as a merchandising specialist in petitioner's Employment Management Program (EMP). After receiving final notice of separation and exhausting his administrative appeals, respondent brought this suit, alleging that his discharge was arbitrary and capricious and an abuse of discretion, in violation of AAFES personnel rules and regulations, a deprivation of due process, and not supported by substantial evidence.

The District Court for the Northern District of Texas dismissed the suit for want of subject matter jurisdiction. The Court of Appeals for the Fifth Circuit reversed, in a short opinion issued the same day as that court's opinion in Sheehan. The Court of Appeals characterized this case as "virtually identical" to Sheehan and concluded that the District Court had subject matter jurisdiction "[f]or the reasons stated in Sheehan"

Petitioner contends that the Court of Appeals erred in ruling that the Tucker Act conferred jurisdiction over respondent's claims for monetary damages. (The Government does not contest the court's finding of jurisdiction with respect to respondent's request for nonmonetary relief.)

As in Sheehan, there is no indication that respondent was employed pursuant to an express employment contract; and our opinion in Sheehan concludes that those employed in the EMP serve by appointment rather than by contract. We also held in Sheehan that a contract may not be implied on the basis of AAFES personnel regulations which do not authorize awards of money damages.

I shall vote to GVR in light of Sheehan.

Harry
—

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1982

80-1437 Army and Air Force Exchange v. Sheehan

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 12, 1982

Re: No. 80-1437 Army & Air Force Exchange Service v.
Sheehan

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

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.85 MAY 15 1982

377

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 12, 1982

Re: 80-1437 - Army & Air Force Exchange
v. Sheehan

Dear Harry:

Please join me.

Respectfully,



Justice Blackmun
Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 11, 1982

No. 80-1437 Army and Air Force Exchange
Service v. Sheehan

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

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