The Burger Court Opinion Writing Database

DelCostello v. Teamsters

462 U.S. 151 (1983)

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

June 6, 1983

Re: No. 81-2386, DelCostello v. Brotherhood of Teamsters
81-2408, United Steelworkers of America v.
Flowers and Jones

Dear Bill:

I join.

Regards,

WEB

Justice Brennan

Copies to the Conference

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

From: **Justice Brennan**

Circulated: MAY 2 6 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

PHILIP DEL COSTELLO, PETITIONER
81–2386 *v.*
INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL.

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

UNITED STEELWORKERS OF AMERICA, AFL–CIO–CLC, ET AL., PETITIONERS
81–2408 *v.*
DONALD C. FLOWERS AND KING E. JONES

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

[May ——, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

Each of these cases arose as a suit by an employee or employees against an employer and a union, alleging that the employer had breached a provision of a collective bargaining agreement, and that the union had breached its duty of fair representation by mishandling the ensuing grievance-and-arbitration proceedings. See *infra*, at ——; *Bowen* v. *United States Postal Service*, —— U. S. ——, ——-—— (1983); *Vaca* v. *Sipes*, 386 U. S. 171 (1967); *Hines* v. *Anchor Motor Freight*, 424 U. S. 554 (1976). The issue presented is what statute of limitations should apply to such suits. In *United Parcel Service, Inc.* v. *Mitchell*, 451 U. S. 56 (1981), we held

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 24, 1983

Re: Del Costello v. Teamsters, Nos. 81-2386 & 81-2408

Dear Lewis:

Thank you for your letter. I can readily make the change you suggest on p. 17, and I will do so in my next circulation. The other objection, p. 14, however, causes me some concern. I do not read Vaca and Bowen as permitting joint and several liability as to the entire amount of an employee's damages. Rather, Bowen held that both parties are liable (with the union having primary liability) for the increase in damages caused by the union's default. As to the part not attributable to the default, however, I understand the cases to hold that the employer is solely liable. "[D]amages attributable solely to the employer's breach of contract should not be charged to the union ...." Vaca, 386 U.S. at 197; Bowen, slip op. at 5-6. Indeed, that reading is compelled by our holding in Part IV of Vaca. In that case, the employee sued only the union, so that no issue of apportionment as between two defendants was presented. If the union were severally liable (whether secondarily or not) for the entire damages, then the employee could have recovered those damages from the union, and it would have been the union's problem to seek indemnification from the employer. But instead we held that the employee simply could not recover damages from the union at all. "[M]ay an award against a union include ... damages attributable solely to the employer's breach of contract? We think not." 386 U.S. at 197. It was for that reason that we suggested that the employer should be joined as a defendant in the same suit. This accounts for the "liable only" emphasis on p. 14, and seems to be what's required.

Sincerely,

WJB, Jr.

Justice Powell

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

From: **Justice Brennan**

Circulated: _____

Recirculated: MAY 27 1983

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 7-8 [illegible]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

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[June ——, 1983]

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Each of these cases arose as a suit by an employee or employees against an employer and a union, alleging that the employer had breached a provision of a collective bargaining agreement, and that the union had breached its duty of fair representation by mishandling the ensuing grievance-and-arbitration proceedings. See *infra*, at 10–11; *Bowen* v. *United States Postal Service*, —— U. S. ——, ——-—— (1983); *Vaca* v. *Sipes*, 386 U. S. 171 (1967); *Hines* v. *Anchor Motor Freight*, 424 U. S. 554 (1976). The issue presented is what statute of limitations should apply to such suits. In *United Parcel Service, Inc.* v. *Mitchell*, 451 U. S. 56 (1981),

To: The Chief Justice
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Justice O'Connor

From: **Justice Brennan**

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Recirculated: JUN 0 2 1983

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES 4, 8-9, 15, 17-18, 20

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

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81–2386 *v.*
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SEE PAGES: 3, 15

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Justice O'Connor

From: **Justice Brennan**

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Recirculated: JUN 0 6 1983

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

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81–2386 *v.*
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81–2408 *v.*
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June ——, 1983]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 13, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for Nos. 81-2386 and 81-2408, DelCostello v. Teamsters

No. 82-1054: International Bhd. of Teamsters v. Edwards

This is a Vaca-type suit by an employee against an employer and a union, alleging that the employer laid off the employees (resps) in violation of the collective bargaining agreement and that the union (petr) inadequately represented the employees in the ensuing arbitration proceeding. The suit was filed just over one year after the cause of action accrued. The district court dismissed the complaint, holding that it was untimely under either the 90-day Texas statute of limitations for vacation of arbitration awards or the similar 3-month period of the federal Arbitration Act, 9 U.S.C. §12. The CA5 reversed, holding that the suit was timely as to both the employer and the union. The court declined to apply the 6-month limitations period of §10(b) of the NLRA, for the same reasons given by John Stevens in his Mitchell dissent. As to the union, the court applied the 2-year Texas tort statute, as had the CA2 in No. 81-2408. As against the employer, the court (despite Mitchell) declined to apply the Texas or federal arbitration statutes because both are made expressly inapplicable to labor disputes. Instead, the court applied the 4-year Texas contract statute.

Only the union petitions for cert, arguing that the CA5 should have held the suit untimely under either §10(b) or the Texas arbitration statute. In DelCostello, we held that §10(b)'s six-month period governs all such actions. Since this suit was brought more than twelve months after the cause of action accrued, the district court correctly dismissed the complaint. I will vote to GVR in light of DelCostello.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 24, 1983

Re: 81-2386 and 81-2408 -

Del Costello v. Int'l Brotherhood of Teamsters

United Steelworkers of America, AFL-CIO-CLC v. Flowers and Jones

Dear Bill,

I agree.

Sincerely yours,

Byron

Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 24, 1983

Re: Nos. 81-2386 and 81-2408-Del Costello v. International Brotherhood of Teamsters and United Steelworkers of America v. Flowers

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 26, 1983

Re: No. 81-2386) Del Costello v. International Brotherhood of Teamsters
No. 81-2408) United Steelworkers of America v. Flowers

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 24, 1983

81-2386 and 81-2408 Del Costello v. Teamsters

Dear Bill:

This will accompany my join note. I like your opinion, and think it deals skillfully with why we are not looking to state statutes of limitations in this case.

I would appreciate, however, your omitting or changing two small words.

On p. 14 the opinion states that Vaca and Bowen held that "the union may be held liable only for 'increases . . .'" I am not sure that either case expressly so limited liability by use of the word "only". Bowen held that the two wrongdoers are jointly and severally liable.

On p. 17, the opinion states "it will often be the case that alleged violations by an employer . . ." Would you object to changing "will often" to read "may".

These are "flyspecks" in a fine opinion. But we know that lawyers, as well as courts below, scrutinize every word we write.

Sincerely,

Lewis

Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 24, 1983

81-2368 and 81-2408 Del Costello v. Teamsters

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1983

Re: Nos. 81-~~2368~~ 2384 & 81-2408 Del Costello v. Teamsters

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

cc: The Conference

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

From: **Justice Stevens**

Circulated: MAY 26 '83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

PHILIP DEL COSTELLO, PETITIONER
81–2386 *v.*
INTERNATIONAL BROTHERHOOD OF TEAMSTERS ET AL.

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DONALD C. FLOWERS AND KING E. JONES

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

[May ——, 1983]

JUSTICE STEVENS, dissenting.

For the past century federal judges have "borrowed" state statutes of limitations, not because they thought it was a sensible form of "interstitial law making", but rather because they were directed to do so by the Congress of the United States.

In 1789 the First Congress enacted the Rules of Decision Act (the Act), Rev. Stat. § 721, 1 Stat. 92, plainly stating:

> "That the laws of the several states, except where the constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of

To: The Chief Justice
Justice Brennan
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From: **Justice Stevens**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 81–2386 AND 81–2408

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In 1895, construing that Act, we held that state statutes of limitations provided the relevant rules of decision in patent infringement actions, explaining:

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3rd DRAFT

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From: **Justice O'Connor**

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[June ——, 1983]

JUSTICE O'CONNOR, dissenting.

As the Court recognizes, "resort to state law [is] the norm for borrowing of limitations periods." *Ante*, at 19. When federal law is silent on the question of limitations, we borrow state law in the belief that, given our longstanding practice and congressional awareness of it, we can safely assume, in the absence of strong indications to the contrary, that Congress intends by its silence that we follow the usual rule.[1]

[1] I believe, basically for the reasons given by the Court, *ante*, at 7, n. 13, that our practice of borrowing state periods of limitations depends largely on this general guide for divining congressional intent. See, *e. g.*, *Auto Workers* v. *Hoosier Cardinal Corp.*, 383 U. S. 696, 704 (1966); *Holmberg*