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Robinson Vs. Shell Oil Co.

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Decided On : Feb-18-1997

Appeal No. : 519 U.S. 337

Appellant : Robinson

Respondent : Shell Oil Co.

Judgement :

Robinson v. Shell Oil Co. - 519 U.S. 337 (1997)

OCTOBER TERM, 1996

SYLLABUS

ROBINSON *v.* SHELL OIL CO.

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

No. 95-1376. Argued November 6, 1996-Decided February 18, 1997

Mter he was fired by respondent, petitioner filed an employment discrimination charge with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964. While that charge was pending, petitioner applied for a job with another company, which contacted respondent for an

employment reference. Claiming that respondent gave him a negative reference in retaliation for his having filed the EEOC charge, petitioner filed suit under 704(a) of Title VII, which makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" who have availed themselves of Title VII's protections. The District Court dismissed the action, and the en banc Fourth Circuit affirmed, holding that the term "employees" in 704(a) refers only to current employees and therefore petitioner's claim was not cognizable under Title VII.

Held: Because the term "employees," as used in 704(a) of Title VII, includes former employees, petitioner may sue respondent for its allegedly retaliatory postemployment actions. Pp. 340-346.

(a) Consideration of the statutory language, the specific context in which it is used, and the broader context of Title VII as a whole leads to the conclusion that the term "employees" in 704(a) is ambiguous as to whether it excludes former employees. First, there is no temporal qualifier in 704(a) such as would make plain that it protects only persons still employed at the time of the retaliation. Second, 701(f)'s general definition of "employee" likewise lacks any temporal qualifier and is consistent with either current or past employment. Third, a number of other Title VII provisions, including 706(g)(1), 717(b), and 717(c), use the term "employees" to mean something more inclusive or different from "current employees." That still other sections use the term to refer unambiguously to a current employee, see, *e.* g., 703(h), 717(b), at most demonstrates that the term may have a plain meaning in the context of a particular section-not that it has the same meaning in all other sections and in all other contexts. Once it is established that "employees" includes former employees in some sections, but not in others, the term standing alone is necessarily ambiguous and each section must be analyzed to determine whether the context gives the term a definite meaning. Pp. 340-345.

SYLLABUS

(b) A holding that former employees are included within 704(a)'s coverage is more consistent with the broader context provided by other Title VII sections and with 704(a)'s primary purpose of maintaining unfettered access to Title VII's remedial mechanisms. As noted, several sections of the statute plainly contemplate that former employees will make use of Title VII's remedial mechanisms. These include 703(a), which prohibits discriminatory "discharge." Insofar as 704(a) expressly protects employees from retaliation for filing a "charge," and a charge under 703(a) alleging unlawful discharge would necessarily be brought by a former employee, it is far more consistent to include former employees within the scope of "employees" protected by 704(a). This interpretation is supported by the arguments of petitioner and the EEOC that exclusion of former employees from 704(a) would undermine Title VII's effectiveness by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide a perverse incentive for employers to fire employees who might bring Title VII claims. Pp. 345-346.

70 F.3d 325 , reversed.

THOMAS, J., delivered the opinion for a unanimous Court.

Allen M. Lenchek argued the cause for petitioner. With him on the briefs were Eric Schnapper, Elaine R. Jones, Theodore M. Shaw, Norman J. Chachkin, and Charles Stephen Ralston.

Paul R. Q. Wolfson argued the cause for the United States et al. as amici curiae urging reversal. With him on the brief were Solicitor General Days, Assistant Attorney General Patrick, Deputy Solicitor General Bender, C. Gregory Stewart, and Gwendolyn Young Reams.

L. Chris Butler argued the cause for respondent. With him on the brief was *Patricia McHugh Lambert.* *

*Briefs of amici curiae urging reversal were filed for the Lawyers' Committee for Civil Rights Under Law et al. by Paul C. Saunders, Marc L. Fleischaker, Norman Redlich, Barbara R. Arnwine, Thomas J. Henderson, Richard T. Seymour, Teresa

A. Ferrante, Cathy Ventrell-Monsees, Dennis Courtland Hayes, Judith H. Lichtman, Donna R. Lenhoff, Helen

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339

JUSTICE THOMAS delivered the opinion of the Court. Section 704(a) of Title VII of the Civil Rights Act of 1964 makes it unlawful "for an employer to discriminate against any of his employees or applicants for employment" who have either availed themselves of Title VII's protections or assisted others in so doing. 78 Stat. 257, as amended, 42 U. S. C. 2000e-3(a). We are asked to decide in this case whether the term "employees," as used in 704(a), includes former employees, such that petitioner may bring suit against his former employer for postemployment actions allegedly taken in retaliation for petitioner's having filed a charge with the Equal Employment Opportunity Commission (EEOC). The United States Court of Appeals for the Fourth Circuit, sitting en bane, held that the term "employees" in 704(a) referred only to current employees and therefore petitioner's claim was not cognizable under Title VII. We granted certiorari, 517 U. S. 1154 (1996), and now reverse.

I

Respondent Shell Oil Co. fired petitioner Charles T. Robinson, Sr., in 1991. Shortly thereafter, petitioner filed a charge with the EEOC, alleging that respondent had discharged him because of his race. While that charge was pending, petitioner applied for a job with another company. That company contacted respondent, as petitioner's former employer, for an employment reference. Petitioner claims that respondent gave him a negative reference in retaliation for his having filed the EEOC charge.

L. Norton, Stephen R. Shapiro, Sara L. Mandelbaum, and Martha F. Davis; and for the National Employment Lawyers Association by Douglas A. Hedin and Robert Belton.

Briefs of *amici curiae* urging affirmance were filed for the Equal Employment Advisory Council by *Robert E. Williams* and *Ann Elizabeth Reesman;* and for the Washington Legal Foundation by J. *Thomas Kilpatrick, Daniel* J. *Popeo,* and *Paul D. Kamenar.*

340

Petitioner subsequently sued under 704(a), alleging retaliatory discrimination. On respondent's motion, the District Court dismissed the action, adhering to previous Fourth Circuit precedent holding that 704(a) does not apply to former employees. Petitioner appealed, and a divided panel of the Fourth Circuit reversed the District Court. The Fourth Circuit granted rehearing en bane, vacated the panel decision, and thereafter affirmed the District Court's determination that former employees may not bring suit under 704(a) for retaliation occurring after termination of their employment. 70 F.3d 325 (1995).

We granted certiorari in order to resolve a conflict among the Circuits on this issue.1

II A

Our first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. Our inquiry must cease if the statutory language is unambiguous and "the statutory scheme is coherent and consistent." *United States* v. *Ron Pair Enterprises, Inc.,* 489 U. S. 235 , 240 (1989); see also *Connecticut Nat. Bank* v. *Germain, 503* U. S. 249, 253-254 (1992).

1 The other Courts of Appeals to have considered this issue have held that the term "employees" in 704(a) does include former employees. See *Charlton* v. *Paramus Bd. of Educ.,* 25 F.3d 194 , 198-200 *(CA3),* cert. denied, 513 U. S. 1022 (1994); *Bailey* v. *USX Corp.,* 850 F.2d 1506 , 1509 (CAll 1988); *O'Brien* v. *Sky Chefs, Inc.,* 670 F.2d 864 , 869 (CA9 1982), overruled on other grounds

by *Atonio* v. *Wards Cove Packing Co., 810* F. 2d 1477, 1481-1482 (CA9 1987) (en bane); *Pantchenko* v. C. *B. Dolge Co.,* 581 F.2d 1052 , 1055 (CA2 1978); *Rutherford* v. *American Bank of Commerce,* 565 F.2d 1162 , 1165 (CAW 1977). The Fourth Circuit indicated that it joined the approach taken by the Seventh Circuit in *Reed* v. *Shepard,* 939 F.2d 484 , 492-493 (1991). But the Seventh Circuit has since repudiated the Fourth Circuit's view of *Reed.* See *Veprinsky* v. *Fluor Daniel, Inc.,* 87 F.3d 881 , 886 (1996).

341

The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. *Estate of Cowart* v. *Nicklos Drilling Co.,* 505 U. S. 469 , 477 (1992); *McCarthy* v. *Bronson, 500* U. S. 136, 139 (1991). In this case, consideration of those factors leads us to conclude that the term "employees," as used in 704(a), is ambiguous as to whether it excludes former employees.

At first blush, the term "employees" in 704(a) would seem to refer to those having an existing employment relationship with the employer in question. Cf. *Walters* v. *Metropolitan Ed. Enterprises, Inc., ante,* at 207-208 (interpreting the term "employees" in 701(b), 42 U. S. C. 2000e(b)). This initial impression, however, does not withstand scrutiny in the context of 704(a). First, there is no temporal qualifier in the statute such as would make plain that 704(a) protects only persons still employed at the time of the retaliation. That the statute could have expressly included the phrase "former employees" does not aid our inquiry. Congress also could have used the phrase "current employees." But nowhere in Title VII is either phrase used-even where the specific context otherwise makes clear an intent to cover current or former employees.2 Similarly, that other statutes have been more specific in their coverage of "employees" and

2 Our recent decision in *Walters* v. *Metropolitan Ed. Enterprises, Inc., ante,* p. 202, held that the term "employees" in 701(b), 42 U. S. C. 2000e(b), referred to

those persons with whom an employer has an existing employment relationship. See *ante,* at 207-208. But 701(b) has two significant temporal qualifiers. The provision, which delimits Title VII's coverage, states that the Act applies to any employer "who *has* fifteen or more employees *for each working day* in each of twenty or more calendar weeks in the current or preceding calendar year." 42 U. S. C. 2000e(b) (emphasis added). The emphasized words specify the time frame in which the employment relationship must exist, and thus the specific context of that section did not present the particular ambiguity at issue in the present case.

342

"former employees," see, *e.* g., 2 U. S. C. 1301(4) (1994 ed., Supp. I) (defining "employee" to include "former employee"); 5 U. S. C. 1212(a)(1) (including "employees, former employees, and applicants for employment" in the operative provision), proves only that Congress *can* use the unqualified term "employees" to refer only to current employees, not that it did so in this particular statute.

Second, Title VII's definition of "employee" likewise lacks any temporal qualifier and is consistent with either current or past employment. Section 701(f) defines "employee" for purposes of Title VII as "an individual employed by an employer." 42 U. S. C. 2000e(f). The argument that the term "employed," as used in 701(f), is commonly used to mean "[p]erforming work under an employer-employee relationship," Black's Law Dictionary 525 (6th ed. 1990), begs the question by implicitly reading the word "employed" to mean *"is* employed." But the word "employed" is not so limited in its possible meanings, and could just as easily be read to mean *"was* employed."

Third, a number of other provisions in Title VII use the term "employees" to mean something more inclusive or different from "current employees." For example, 706(g)(1) and 717(b) both authorize affirmative remedial action (by a court or EEOC, respectively) "which may include ... reinstatement or hiring of employees." 42 U. S. C. 2000e5(g)(1) and 2000e-16(b). As petitioner notes, because one does not "reinstat[e]" current employees, that language necessarily refers to former

employees. Likewise, one may hire individuals *to be* employees, but one does not typically hire persons who already *are* employees.

Section 717(b) requires federal departments and agencies to have equal employment opportunity policies and rules, "which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder." 42 U. S. C. 2000e-16(b). If the complaint involves

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343

discriminatory discharge, as it often does, the "employee" who must be notified is necessarily a former employee. Similarly, 717(c) provides that an "employee or applicant for employment, if aggrieved by the final disposition of his complaint, ... may file a civil action .... " 42 U. S. c. 2000e-16(c). Again, given that discriminatory discharge is a forbidden "personnel actio[n] affecting employees," see 717(a), 42 U. S. C. 2000e-16(a), the term "employee" in 717(c) necessarily includes a former employee. See *Loef* fler v. *Frank,* 486 U. S. 549 (1988) (involving a discriminatory discharge action successfully brought under 717 by a former Postal Service employee).3

Of course, there are sections of Title VII where, in context, use of the term "employee" refers unambiguously to a current employee, for example, those sections addressing salary or promotions. See 703(h), 42 U. S. C. 2000e-2(h) (allowing different standards of compensation for "employees who work in different locations"); 717(b), 42 U. S. C. 2000e16(b) (directing federal agencies to establish a plan "to provide a maximum opportunity for employees to advance so as to perform at their highest potential").

But those examples at most demonstrate that the term "employees" may have a plain meaning in the context of a particular section-not that the term has the same meaning in all other sections and in all other contexts. Once it is established that the term "employees" includes former employees in some sections, but not in

others, the term standing alone is necessarily ambiguous and each section must be ana-

3 Other sections also seem to use the term "employees" to mean something other than current employees. Section 701(c) defines "employment agency" as "any person regularly undertaking ... to procure employees for an employer or to procure for employees opportunities to work for an employer .... " 42 U. S. C. 2000e(c). This language most naturally is read to mean "prospective employees." Section 701(e) uses identical language when providing that a labor organization affects commerce if it "operates a hiring hall or hiring office which procures employees for an employer .... " 42 U. S. C. 2000e(e).

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lyzed to determine whether the context gives the term a further meaning that would resolve the issue in dispute.4

Respondent argues that the addition of the word "his" before "employees" narrows the scope of the provision. Brief for Respondent 19. That argument is true, so far as it goes, but it does not resolve the question before us-namely, in what time frame must the employment relationship exist. The phrase "his employees" could include "his" former employees, but still exclude persons who have never worked for the particular employer being charged with retaliation.

Nor are we convinced by respondent's argument that Congress' inclusion in 704(a) of "applicants for employment" as persons distinct from "employees," coupled with its failure to include "former employees," is evidence of congressional intent not to include former employees. The use of the term "applicants" in 704(a) does not serve to confine, by negative inference, the temporal scope of the term "employees." Respondent's argument rests on the incorrect premise that the term "applicants" is equivalent to the phrase "future employees." But the term "applicants" would seem to cover many persons who will not become employees. Unsuccessful applicants or those who turn down a job offer, for example, would

have been applicants, but not future employees. And the term fails to cover certain future employees who may be offered and will accept jobs without having to apply for those jobs. Because the term "applicants" in 704(a) is not synonymous with the phrase "future employees," there is no basis for engaging in the further (and questionable) negative infer-

4 Petitioner's examples of non- Title VII cases using the term "employee" to refer to a former employee are largely irrelevant, except to the extent they tend to rebut a claim that the term "employee" has some intrinsically plain meaning. See, *e. g., Richardson* v. *Belcher,* 404 U. S. 78 ,81,83 (1971) (unemployed disabled worker); *Nash* v. *Florida Industrial Comm'n, 389* U. S. 235, 239 (1967) (individual who had been fired); *Flemming* v. *Nestor,* 363 U. S. 603 , 611 (1960) (retired worker).

345

ence that inclusion of the term "applicants" demonstrates intentional exclusion of former employees.

Finally, the use of the term "individual" in 704(a), as well as in 703(a), 42 U. S. C. 2000e-2(a), provides no meaningful assistance in resolving this case. To be sure, "individual" is a broader term than "employee" and would facially seem to cover a former employee. But it would also encompass a present employee as well as other persons who have never had an employment relationship with the employer at issue. The term "individual," therefore, does not seem designed to capture former employees, as distinct from current employees, and its use provides no insight into whether the term "employees" is limited only to current employees.

B

Finding that the term "employees" in 704(a) is ambiguous, we are left to resolve that ambiguity. The broader context provided by other sections of the statute provides considerable assistance in this regard. As noted above, several sections

of the statute plainly contemplate that former employees will make use of the remedial mechanisms of Title VII. See *supra,* at 342-343. Indeed, 703(a) expressly includes discriminatory "discharge" as one of the unlawful employment practices against which Title VII is directed. 42 U. S. C. 2000e-2(a). Insofar as 704(a) expressly protects employees from retaliation for filing a "charge" under Title VII, and a charge under 703(a) alleging unlawful discharge would necessarily be brought by a former employee, it is far more consistent to include former employees within the scope of "employees" protected by 704(a).

In further support of this view, petitioner argues that the word "employees" includes former employees because to hold otherwise would effectively vitiate much of the protection afforded by 704(a). See Brief for Petitioner 20-30. This is also the position taken by the EEOC. See Brief for

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346

United States and EEOC as *Amici Curiae* 16-25; see also 2 EEOC Compliance Manual 614.7(f). According to the EEOC, exclusion of former employees from the protection of 704(a) would undermine the effectiveness of Title VII by allowing the threat of postemployment retaliation to deter victims of discrimination from complaining to the EEOC, and would provide a perverse incentive for employers to fire employees who might bring Title VII claims. Brief for United States and EEOC as *Amici Curiae 18-21.*

Those arguments carry persuasive force given their coherence and their consistency with a primary purpose of antiretaliation provisions: Maintaining unfettered access to statutory remedial mechanisms. Cf. *NLRB* v. *Scrivener,* 405 U. S. 117 , 121-122 (1972) (National Labor Relations Act); *Mitchell* v. *Robert DeMario Jewelry, Inc.,* 361 U. S. 288 , 292293 (1960) (Fair Labor Standards Act). The EEOC quite persuasively maintains that it would be destructive of this purpose of the antiretaliation provision for an employer to be able to retaliate with impunity against an entire class of acts under Title VII-for example, complaints regarding discriminatory termination. We agree with these

contentions and find that they support the inclusive interpretation of "employees" in 704(a) that is already suggested by the broader context of Title VII.

III

We hold that the term "employees," as used in 704(a) of Title VII, is ambiguous as to whether it includes former employees. It being more consistent with the broader context of Title VII and the primary purpose of 704(a), we hold that former employees are included within 704(a)'s coverage. Accordingly, the decision of the Fourth Circuit is reversed.

It is so ordered.

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