

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEFFERY DARLIN : CIVIL ACTION
 :
 v. :
 :
 CONSOLIDATED RAIL CORPORATION : NO. 99-CV-6604

MEMORANDUM

Ludwig, J

March 14, 2000

Plaintiff Jeffery Darlin moves to remand this action to the Court of Common Pleas of Philadelphia, following removal premised on ERISA jurisdiction under 29 U.S.C. § 1001 et seq. Because the severance plan in question appears to qualify under ERISA as an “employee welfare benefit plan,” 29 U.S.C. § 1002(1), the motion will be denied. Defendant Conrail moves to dismiss the complaint, Fed R. Civ. P. 12(b)(6), citing ERISA preemption. A ruling on this motion will be deferred pending a further submission.

In July, 1998, defendant Conrail, as part of a pending merger, offered certain managerial employees a “stay-on bonus” if they remained past their termination dates, until the reorganization was complete. A three-page “Summary of Non-Agreement Benefits in Connection with the Change in Control of Conrail” defined eligibility as follows:

All employees who hold a non-agreement position as of March 7, 1997, and who do not have an individual severance agreement with Conrail are eligible for the following benefits, all or a portion of which may be made available as supplemental under the Conrail pension plan.

In the event you are terminated (or constructively terminated without cause within 3 years of the date CSX/NS are permitted by the [Surface Transportation Board] to assume control over Conrail's railroad operation (the "Control Date"), or the date the [Surface Transportation Board] authorizes the removal of Conrail's current Board of Directors, if earlier, estimated at mid-1998, you will be eligible to receive a special pension benefit, subject to the execution of a release and confidentiality agreement. You will have the choice to receive the special benefit as a lump sum or as an annuity....

Complaint, Exh. B.

Plaintiff, an eligible employee, decided to participate in the stay-on program. On April 19, 1999, plaintiff received notice of termination effective May 31, 1999. Attached was further information on the plan, together with a draft of a release of all claims against Conrail, including those under the FELA. See Complaint, Exh. 3. Plaintiff had a pending FELA claim and was unaware that a waiver of the claim would be required.

On June 21, 1999, plaintiff received a separation package that included the release. After consulting with counsel, he removed the reference to FELA claims, signed the release, and returned it. The redacted release was not acceptable to Conrail, and plaintiff refused to execute the original. Following this impasse, plaintiff filed suit in state court for promissory estoppel and fraud.

Severance plans may constitute "employee welfare benefit plans" under ERISA. Massachusetts v. Morash, 490 U.S. 107, 116, 109 S. Ct. 1668, 1669, 104 L. Ed.2d 98 (1989). As discussed by the Court, what characterizes an ERISA plan is the "ongoing, predictable nature of [an] obligation . . . creat[ing] the

need for an administrative scheme to process claims and pay out benefits, whether those sums are received by beneficiaries in a lump sum or on a periodic basis.” Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 16 n.9, 107 S. Ct. 2211, 2219, 96 L. Ed.2d 1 (1987).

Our Court of Appeals has twice applied Fort Halifax to severance plans, determining whether or not an ERISA plan exists based “on the amount of employment discretion involved in providing payment.” See Middleton v. Philadelphia Elec. Co., 850 F. Supp. 348, 351 (E.D. Pa. 1994). Those decisions, Pane v. RCA Corp., 868 F.2d 631 (3d Cir. 1989) and Angst v. Mack Trucks, Inc., 969 F.2d 1530 (3d Cir. 1992), delineate the range of discretion required. In Pane, a severance program was found to be an ERISA plan because it authorized the administrator to exercise subjective discretion to decide whether an employee was terminated other than for cause. 868 F.2d at 635, affirming Pane v. RCA Corp., 667 F. Supp. 171 (D.N.J. 1987). The district court decision noted “the circumstances of each employee’s termination must be analyzed in light of [particular] criteria, and an ongoing administrative system constituting an ERISA plan exists.” Pane, 667 F. Supp. at 168. See also, Bogue v. Ampex Corp., 976 F.2d 1319, 1322 (9th Cir. 1992) (severance plan in which administrator determined if covered employee’s new job was “substantially equivalent” to his previous job was governed by ERISA). In Angst, a buyout plan granting lump sum payments and certain medical benefits was held not to be a “plan” under ERISA. 969 F.2d at 1539. The buyout covered 77 employees, with eligibility based on seniority – there

were 144 applicants. Although the seniority determinations were made by an administrator, the plan did not create “an administrative apparatus that would analyze each employees’ situation in light of particular criteria.” Angst, 969 F.2d at 1539. See also, Middletown, 850 F. Supp. at 353 (A severance plan in which “the administrator [used] objective criteria and calculate[d] severance benefits according to a simple formula” was not subject to ERISA.)

Here, much akin to Pane, plan eligibility is restricted to employees who “are terminated (or constructively terminated) without cause” – a standard involving the use of subjective discretion by the plan administrator. So viewed, Conrail’s special benefit plan is an “employee welfare benefit plan” under ERISA. 29 U.S.C. § 1002(1).

As to defendant’s motion to dismiss the complaint, there are two types of ERISA preemption – complete preemption under § 502(a) and express preemption under § 514(a). Our Court of Appeals recently clarified the differences. See In re U.S. Healthcare, 193 F.3d 151 (3d Cir. 1999). Complete preemption, a jurisdictional concept, “operates to confer original federal subject matter jurisdiction notwithstanding the absence of a federal cause of action on the face of the complaint.” Id. at 160. State law claims subject to complete preemption are “necessarily federal in character” and, as such, are transformed into federal claims. Id., citing Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63, 107 S. Ct. 1542, 1546, 95 L Ed.2d 55 (1987). Express preemption concerns state laws that “relate to” employee benefit plans; it is a “substantive concept governing

the applicable law.” Id. Claims affected by express preemption are “displaced and subject to dismissal.” Id.

The dismissal motion raises both types of preemption. Plaintiff’s response asserts that an ERISA plan does not exist and preemption, therefore, does not apply. Plaintiff will be given additional time to brief this issue.

Edmund V. Ludwig, J.

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ORDER

AND NOW, this 14th day of March, 2000, plaintiff Jeffery Darlin's motion to remand is denied. By March 28, 2000, plaintiff may submit a brief as to ERISA preemption.

Edmund V. Ludwig, J.