

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

DANIEL R. SALMON	:	CIVIL ACTION
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	NO. 98-5869
-----		
CHARLES E. DAVIS	:	CIVIL ACTION
	:	
v.	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	NO. 99-2802

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 2000

The issues presented by the pending Motions to Dismiss in these cases are identical to the issues presented in several other cases in this district and elsewhere, namely: (1) whether unnamed members of a certified class should be deemed to have satisfied their obligation to exhaust administrative remedies under the Americans With Disabilities Act if the class is decertified and the action dismissed without prejudice to their individual right to pursue claims for ADA violations; and (2) whether persons suing for violations of the Rehabilitation Act of 1973, 29 U.S.C. §794, must first exhaust administrative remedies.

In a comprehensive opinion dated April 7, 2000, my colleague Judge Padova has ruled, consistently with other decisions from this district, that the answers to these questions are, respectively "yes" and "no." That is, he has ruled that

putative class members of a decertified class must exhaust their administrative remedies and obtain a right-to-sue letter before proceeding with individual litigation; and that exhaustion of remedies is not required for non-federal employees pursuing claims under the Rehabilitation Act. I agree entirely with that decision.

I add only the further comment that the class-action relied upon by plaintiffs as satisfying their need to exhaust administrative remedies, Mandichak v. Consolidated Rail Corporation, Civil Action No. 94-1071 (W.D. Pa. 1998) involved a class whose original certification was quite limited. The class was certified only with respect to claims for injunctive relief; the application for Rule 23(b)(3) certification was denied. Even if the class representatives' filings with the EEOC inured to the benefit of all potential class members, the only issues presented to the EEOC for conciliation dealt with overall institutional concerns - whether the mechanisms established by the defendant for evaluating employee disability gave rise to a pattern or practice of discrimination; the issue of discrimination in individual cases, with individual claims for relief, were not involved. It is also clear that the trial judge in that action purported to deal only with the structural sufficiency of defendant's handling of disability claims. The final judgment, dismissing that action on its merits, was expressly made without

prejudice to the right of all class members, including the named plaintiffs, to pursue individual claims for relief. In that context, I am satisfied that no one could reasonably claim to have believed that new, individual, lawsuits could be filed without first pursuing administrative remedies before the EEOC.

I therefore conclude that plaintiffs' ADA claims in these actions must be dismissed. As for the Rehabilitation Act claims, it is now clear that exhaustion of administrative remedies is not required, when the employer being sued is a federally-funded entity. See, Freed v. Consolidated Rail Corp., 201 F.3d 188, 199, (3d Cir. 2000). And, although this action was filed approximately six years after plaintiffs lost their jobs, I conclude that the running of the statute of limitations was tolled during the pendency of the Mandichak class action referred to above. The class was decertified as of August 20, 1998, and these actions were filed within a reasonable time thereafter. The Rehabilitation Act claims will therefore be permitted to proceed.

An Order follows.

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ORDER

AND NOW, this        day of June 2000, upon consideration of the defendant's Motion to Dismiss, and plaintiffs' responses, IT IS ORDERED:

1. That all of plaintiffs' claims under the American With Disabilities Act, 42 U.S.C. §12101, et seq., are DISMISSED WITH PREJUDICE.

2. With respect to the claims under §504 of the Rehabilitation Act, 29 U.S.C. §794, defendant's Motion to Dismiss is DENIED.

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John P. Fullam, Sr. J.