

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

ANTHONY LAWSON : CIVIL ACTION
 :
 v. :
 :
 CONSOLIDATED RAIL CORPORATION : NO. 97-7206

MEMORANDUM ORDER

Defendant implemented a Voluntary Separation Program ("VSP") in 1996 as part of a plan to reduce its workforce. Under the terms of the VSP, employees who elected to participate and were accepted would receive certain benefits in return for their voluntary termination of employment. Plaintiff initially elected to participate in the VSP. He alleges that he decided to sign up for the plan in reliance on promises made by two vice presidents of defendant that he could later rescind his participation and continue his employment without any loss of seniority or benefits. Plaintiff alleges that he did later attempt to rescind his participation in the VSP but defendant refused to accept the rescission.

Plaintiff filed this action in the Philadelphia Court of Common Pleas asserting breach of contract and seeking reinstatement and recovery of the income and benefits he would have received had he remained employed with defendant. Defendant removed the action to this court on the ground that plaintiff's claim is governed by the Employee Retirement Income Security Act

("ERISA"), 29 U.S.C. § 1001, et seq., and thus there is federal question jurisdiction under 28 U.S.C. § 1331. Presently before the court is plaintiff's motion for remand.

The general rule for determining the existence of federal question jurisdiction is whether or not a federal question is presented on the face of plaintiff's "well-pleaded complaint." See Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). A corollary to the well-pleaded complaint rule, however, is the complete preemption doctrine. See Metropolitan Life Insurance Co. v. Taylor, 481 U.S. 58 (1987). The doctrine is applicable to an area of law which Congress "so completely pre-empt[s] . . . that any civil complaint raising this select group of claims is necessarily federal in character." Id. at 63-64. The Court in Taylor explicitly extended the doctrine to claims under ERISA's civil enforcement provisions, stating that "Congress has clearly manifested an intent to make causes of action within the scope of the civil enforcement provisions of § 502(a) removable to federal court." Id. at 66. Thus, removal is proper if plaintiff's cause of action is effectively a claim within the scope of the ERISA civil enforcement provisions.

Defendant asserts that the VSP is a plan covered by ERISA and points to Bunnion v. Consolidated Rail Corp., 1998 WL 32715, *8 (E.D. Pa. Jan.1998) in which the court held the VSP was

within the purview of ERISA, noting it identified a potential class of participants and set in place an administrative scheme. See Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989).

Plaintiff has presented no evidence even to suggest that the VSP is not an ERISA plan.

In pertinent part, § 502(a) of ERISA permits a civil action:

- (1) by a participant or beneficiary--
- (B) to recover benefits due to him under the terms of his plan or to enforce his rights under the terms of the plan or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(a)(1)(B).

That plaintiff does not seek to recover benefits under the VSP is thus not dispositive. See Ingersoll-Rand v. McClendon, 498 U.S. 133 (1990). In McClendon, the Supreme Court held a claim by an employee that he was unlawfully discharged to prevent attainment of benefits under an ERISA plan was within the enforcement provisions of § 502(a) although the plaintiff was seeking damages for wrongful discharge. Id. at 145. As the Court in McClendon noted, the literal language of § 502(a) includes actions to enforce rights under the terms of a plan.

At the core of plaintiff's claim is his asserted right to rescind his election to participate in the VSP. The written terms of the plan provide employees with seven days "to reconsider and revoke their participation in the Voluntary

Separation Program." Plaintiff appears to predicate his asserted right to revoke on the alleged promises of defendant's vice presidents which he apparently contends effectively modified the written terms of the VSP or otherwise nullified plaintiff's election. In any event, plaintiff's claim essentially turns on his right to revoke his election to participate in the plan and directly implicates the terms of the plan. Plaintiff's action is thus fairly characterized as an action to enforce his rights under the terms of a plan.

ACCORDINGLY, this day of September, 1998, upon consideration of plaintiff's Motion to Remand Action to State Court (Doc. #6) and defendant's response thereto, **IT IS HEREBY ORDERED** that said Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.