CJ's List

HOLD
FOR No. 87-107,
Patterson v. McLean
Credit Union

November 4, 1988

No. 87-2084)
No. 88-214)

U.S.C.A. 5

Whether §1981 covers this
case imposing Policy on
custom requirement of Monell.

NORMAN JETT

v.

DALLAS INDEPENDENT SCHOOL DISTRICT

Grant: BRW, HAB, JPS, SOC, AS, ANK

Deny: CJ, WJB, JR

HOLD
FOR No. 87-107,
Patterson v. McLean
Credit Union

November 4, 1988

No. 88-214)
No. 87-2084)
U.S.C.A. 5

Companion to No. 87-2084

DALLAS INDEPENDENT SCHOOL DISTRICT

v.

NORMAN JETT

Grant: CJ, WJB, LFP, HAB, Loc
Deny: BRW, JPS, AS, ASK

Jett v. Dallas Ind. School Dist.

No. 87-2084
Summer List 23, Sheet 1
September 8, 1988
Cert to CA5
Timely
Response Received

Petitioner was a white football coach and athletic director at a predominantly black high school in Dallas. Seven years after a black principal was appointed, petitioner and the principal disagreed about the propriety of petitioner's actions as coach, including statements he made about the team's abilities, remarks he addressed to black sports officials, and his failure to respond to complaints about bribes and the way the team was run. The principal recommended that petitioner be relieved of his position. After a couple of discussions between various school district officials and petitioner, the school officials met and decided to reassign petitioner to teach at a district business school, where he had no coaching responsibilities. Petitioner was not invited to the meeting where this decision was made. Petitioner was distressed, and missed many classes at his new school. He was warned, and eventually relieved of his duties as teacher, although he was given a job in the security department. He was informed that he could not remain in the security department for the next school year, but that he might apply for any available position. Petitioner then filed this lawsuit under §1981 and §1983. Three months later, petitioner was notified of a new assignment as history teacher and freshman football and track coach at a different high school. Two weeks after the offer was made, petitioner resigned.

The jury found that petitioner had been deprived of his position on account of his race and on account of exercising his free-speech rights. It also concluded that he had been denied procedural due process. The jury awarded $850,000 in damages against the school district and the principal in his individual capacity. On appeal, CA5 ruled: (1) that petitioner had not been denied procedural due process; (2) that the evidence was insufficient to support a finding of constructive discharge; (3) that the principal was liable in his individual capacity both for racial discrimination and for a violation of petitioner's First Amendment rights; (4) that the case should be remanded on the school district's liability because the jury did not make sufficient findings to support municipal liability; and (5) that a new trial was necessary on damages in light of CA5's other rulings.

The petition and cross-petition for certiorari both raise issues solely with respect to CA5's holding regarding the school district's liability.

(1) Petitioner claims that CA5 erred when it imported Monell's "policy or custom" requirement for §1983 suits against a municipality into §1981 jurisprudence, requiring the same showing for municipality liability under both statutes. It correctly notes that the 1st Circuit reached the opposite result in Springer v. Seamen, 821 F.2d 871, 880 (1st Cir. 1987), where the court held that public employers may be held liable under §1981 on a theory of respondeat superior. Numerous district courts have reached the same result as the 1st Circuit.

Petitioner's claim raises an interesting and important question left open by this Court. A clear circuit-split exists. The issue recurs frequently. I therefore think that the issue is cert-worthy, and would at least recommend that you Join 3.

(2) Petitioner raises a second claim on the final page of his cert petition. He contends that the school superintendent had a policy of "going with the principal" in cases where a principal and a teacher were in disagreement, that this was a policy of conscious indifference to whether the principal's recommendation was racially motivated, and that this policy satisfied Monell's precondition for §1983 liability. CA5 held to the contrary. Although this fact-specific issue is not independently cert-worthy, the Court should probably decide it if it elects to hear the case on the first issue.

(3) Respondent (actually, cross-petitioner in 88-214) raises a third issue. CA5 held that if the school superintendent who transferred petitioner had been vested with non-reviewable authority to make transfer decisions and if he was motivated by racially discriminatory intent or an intent to penalize petitioner for the exercise of his free-speech rights, then the school district could be held liable under §§ 1981 and 1983. Respondent contends that this holding is contrary to this Court's decision in City of St. Louis v. Praprotnik, 108 S. Ct. 915 (1988). Respondent seems to me mistaken. CA5 seems to have read Pembauer correctly to distinguish between discretionary acts by a municipal official and acts taken pursuant to a policy laid down by that official when he possessed final authority to establish

transfer policy. But a majority of the Court may be reading CA5's decision differently, since the Praprotnik majority cited the case as an example of one of two differing interpretations of Pembauer, and it seems fairly clear from the context that the majority frowned on CA5's decision. If the Court decides to take the case, it might as well decide this third issue as well.

GRANT or **JOIN 3**

Eric