SUPREME COURT RULES EEOC MAY SUE FOR DAMAGES AND OTHER VICTIM-SPECIFIC RELIEF DESPITE VALID AND BINDING ARBITRATION AGREEMENT BETWEEN AN EMPLOYER AND AN EMPLOYEE

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In *Equal Employment Opportunity Commission v. Waffle House, Inc.*, No. 99-1823, decided on January 15, 2002, the United States Supreme Court determined that the U.S. Equal Employment Opportunity Commission ("EEOC") may sue for victim-specific relief despite an employee having signed a valid and binding arbitration agreement.[1] This 6-3 decision resolved a conflict among the circuit courts of appeals over the nature and extent of the relief that EEOC may pursue when a "victim"-employee has signed a mandatory arbitration agreement. The decision is significant because it alerts employers to an important limitation on an employee's agreement to arbitration as the forum to resolve all employment disputes.

The Facts of Waffle House & the Initial Proceedings

In *Waffle House*, the employee, Eric Baker, was hired as a grill operator at one of the respondent's restaurants in August of 1994. In his application for employment, Baker agreed to settle any dispute or claim with respect to his employment by final and binding arbitration. Signing the application, with the mandatory arbitration provision, was a condition of employment for all prospective Waffle House employees. Baker suffered a seizure while at work soon after commencing employment, and he was discharged shortly thereafter. Baker did not commence arbitration proceedings; however, he did file a charge of discrimination with EEOC maintaining that he was discharged in violation of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12101 *et seq.* (the "ADA").

After an investigation, EEOC initiated an ADA enforcement action against Waffle House. In its suit, EEOC requested both injunctive relief with respect to the employment practices of Waffle House, and victim-specific relief for Baker, including backpay, reinstatement and compensatory damages. EEOC also sought punitive damages.

Pursuant to the Federal Arbitration Act, 9 U.S.C. §1 *et seq.* (the "FAA"), Waffle House sought to stay the EEOC action and compel arbitration, or in the alternative, to dismiss the action. The District Court determined that Baker's employment contract did not contain a mandatory arbitration provision, and denied the motion. On appeal, the Court of Appeals for

[1] "Victim-specific relief" includes monetary damages to make the individual whole (*e.g.*, backpay, front pay and compensatory damages) and reinstatement.

the Fourth Circuit found that a valid and enforceable arbitration agreement existed between Baker and Waffle House. The Court of Appeals further determined that the agreement did not bar an EEOC enforcement action, because EEOC was not a party to the agreement and had independent statutory authority to sue in any federal district court where venue was proper. However, the Fourth Circuit found that EEOC was limited to suing for injunctive relief, and that the arbitration clause precluded suit for victim-specific relief.[2] The Court of Appeals based its decision on the competing policies of the ADA and the FAA, and found that permitting EEOC to seek compensatory relief on Baker's behalf would conflict with the federal policy favoring arbitration, as expressed in the FAA. The Fourth Circuit differentiated between injunctive relief, which serves a broad public interest and thus overcomes the public policy goals favoring arbitration, and compensatory relief, which has less public interest and is thus outweighed by the policy favoring arbitration.

The Supreme Court Permits Victim-Specific Relief Despite Valid Arbitration Agreement

The Supreme Court reversed the Fourth Circuit and held that EEOC has the statutory authority to pursue victim-specific relief regardless of the forum that an employer and an employee have chosen to resolve their disputes.

As an initial matter, the Court reviewed EEOC's authority under Title VII of the Civil Rights Act of 1964, and its subsequent amendments, 42 U.S.C. §2000e *et seq.* ("Title VII"). When Title VII was first enacted, EEOC only had the authority to investigate and, if possible, to conciliate charges of discrimination. However, through subsequent amendments, EEOC was authorized to bring its own enforcement actions, and was permitted to seek compensatory and punitive damages, as well as injunctive relief. Thus, the Court noted, Title VII specifically and unambiguously authorizes EEOC to seek the type of relief that it seeks in the present case. The Court reasoned that neither Title VII nor any of the cases interpreting it suggest that the existence of an arbitration agreement between private parties materially changes EEOC's statutory function or the remedies that are available to it.

The Court also reviewed the FAA, and observed that its purpose was to ensure that arbitration agreements were placed on the same footing as ordinary contracts (such clauses had historically been disfavored as usurping the function of the courts). The Court determined that the statute does not authorize compelling arbitration on issues not covered by an arbitration agreement, nor does it place any restriction on the choice of a judicial forum by a person or entity not a party to the arbitration agreement.

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[2] Other circuit courts of appeals had reached conflicting results on this issue. *Compare EEOC v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448 (6th Cir. 1999) (arbitration agreement did not preclude EEOC from bringing enforcement action for injunctive relief, backpay and damages) *with EEOC v. Kidder, Peabody & Co.*, 156 F.3d 298 (2d Cir 1998) (arbitration agreement barred EEOC from seeking anything other than injunctive relief) *and Merrill, Lynch, Pierce, Fenner and Smith, Inc. v. Nixon*, 210 F.3d 814 (8th Cir. 2000) (same).

The Court rejected the reasoning of the Fourth Circuit, noting that Title VII "clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake." Without an express statutory provision that victim-specific relief is outweighed by the policies favoring arbitration, the Court found that it was for EEOC to determine whether public resources should be committed to the recovery of victim-specific relief. The Court found that the relevant statutes permit EEOC to seek victim-specific relief, and do not authorize courts to balance the competing policies of the ADA and the FAA or to second-guess the agency's decisions regarding which remedies it will pursue in a given case.

With respect to the Fourth Circuit's analysis of the policy goals favoring arbitration, the Court held that EEOC was not required to relinquish its statutory authority without being party to a binding agreement in which it agreed to do so. Thus, since EEOC was not a party to the arbitration agreement, it could not be bound by its terms. The Court further determined that the "compromise" created by the Court of Appeals was both overinclusive and underinclusive. The Fourth Circuit's solution was overinclusive in that it barred EEOC from seeking punitive damages, which serves a clear public function in deterring future violations by the employer in question as well as other employers. The solution was underinclusive in that, in a given case, injunctive relief may serve solely to redress a specific victim's grievances (*e.g.*, reinstatement). Thus, the Court found that the Court of Appeal's resolution would effectively transform a forum selection clause into a waiver of a non-party's statutory remedies, and, would, in effect, give greater weight to an agreement between private parties than a detailed enforcement scheme created by Congress.

Conclusion

The Court's decision in *Waffle House* should alert employers to the fact that there is a significant limitation on an agreement between an employer and an employee that all employment disputes must be resolved in arbitration. The effect of this decision will be to permit EEOC to pursue a claim on behalf of, and seek damages for, an employee who has signed an arbitration agreement. Although the Supreme Court specifically observed in the *Waffle House* decision that "[i]t is an open question whether a settlement or arbitration judgment would affect the validity of the EEOC's claim or the character of relief the EEOC may seek," it is likely that the courts would at least offset any damage award in a subsequent EEOC action by amounts recovered by the individual employee through an earlier arbitration. It remains to be seen in future cases whether EEOC can maintain an action for victim-specific relief when the employee has pursued arbitration to resolve his claim.

However, this does not mean that employers with arbitration procedures in place should abandon them, or that employers considering instituting arbitration procedures should decide against arbitration. Depending on the goals of the employer, a fair and impartial arbitration procedure that employees are encouraged to use for resolution of employment disputes can serve a valuable purpose in the practical resolution of employment claims. By maintaining an accessible and fair arbitration process, employees may be less likely to file charges with EEOC. And, in the case of charges that are filed with EEOC, the Supreme Court in

Waffle House has kept open the possibility that a final arbitration award in an employment dispute may forestall EEOC from seeking victim-specific damages or, perhaps, maintaining a claim on the same facts at all. [3]

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[3] As noted in the *Waffle House* decision, EEOC files suit in less than five percent of cases in which it finds reasonable cause to believe that a statute within its jurisdiction has been violated. In fiscal year 2000, for example, EEOC received approximately 79,896 charges of discrimination, found reasonable cause in approximately 8,248 cases, but filed only 291 lawsuits and intervened in only 111 other cases.