

appeal from
Balele v. DDA, DER # DMRS
93-0144-PC-ER, 3-26-97

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SA

STATE OF WISCONSIN CIRCUIT COURT BRANCH 6 DANE COUNTY

PASTORI M. BALELE,

Petitioner,

VS

ORDER AFFIRMING DECISION
OF WISCONSIN PERSONNEL BOARD

WISCONSIN PERSONNEL COMMISSION,
THE DEPARTMENT OF ADMINISTRATION,
THE DEPARTMENT OF EMPLOYMENT RELATIONS
and THE DIVISION OF MERIT RECRUITMENT
AND SELECTION,

Case No. 97 CV 1389 DANE

RECEIVED

MAR 23 1998

Respondents.

041
State of Wisconsin
County of Dane
This document is a true and
Correct copy of the original on file
and of record in my office and has
been compared by me
Alfred
JUDITH A. COLEMAN
Clerk of Courts
By *[Signature]*
Deputy Clerk

PERSONNEL COMMISSION

FACTUAL BACKGROUND

This proceeding was commenced May 22, 1997, under secs. 111.375(2) and 230.87, and ch. 227, Stats., to review a decision of the Wisconsin Personnel Commission under the Wisconsin Fair Employment Act (WFEA), secs. 111.31-111.395, Stats., and under the Wisconsin Employee Protection Act (the "Whistleblower Act"), secs. 230.80-230.89, Stats. The Commission decided that petitioner Pastori Balele's state law claims were precluded by the decision of the federal district court in Balele v. Klauser, et al., Case No. 93-C-723-C (W.D. Wis., July 22, 1994), which was affirmed by the United States Court of Appeals for the Seventh Circuit in Balele v. Klauser, et al., Case No. 94-2777 (January 11, 1996).

ISSUE PRESENTED

Did the Commission reasonably conclude that Balele's state law claims were precluded by the decision of the federal district court in Balele v. Klauser, et al., Case No. 94-2777 (January 11, 1996)?

FILED
OCT 30 1997
CIRCUIT COURT BR. 6
DANE COUNTY, WI

STATEMENT OF THE CASE

On August 31, 1993, Balele filed a complaint with the Commission. On September 7, 1993, he filed an amended complaint. He alleged that the Wisconsin Department of Administration (DOA) unlawfully discriminated and retaliated against him when he was not selected for an Administrative Officer 2 (AO2) position in 1992 or for an Administrative Officer 1 (AO1) position in 1993. He also named the Department of Employment Relations (DER) and the Division of Merit Recruitment and Selection (DMRS) as respondents.

On September 17, 1993, Balele filed a virtually identical complaint in Dane County Circuit Court. The defendants were several state officials, including the Secretary of DOA, the Secretary of the DER, and the Administrator of DMRS. On October 1, 1993, the Commission notified Balele, DOA, DER, and DMRS that the Commission case would be held in abeyance pending the outcome of the circuit court case.

On October 20, 1993, the circuit court case was removed to federal district court by the defendants. Balele v. Klauser, et al., Case No. 93-C-723-C (W.D. Wis.). The notice of removal stated in pertinent part:

1. This action consists of a state law claim under the Fair Employment Act and ch. 230, Wis. Stats., and a federal claim pursuant to 42 U.S.C. Sec. 1981, 1983 & 1985, and the Civil Rights Acts of 1964 and 1991, alleging that the defendants . . . unlawfully discriminated against the plaintiff by denying him two positions . . .

2. The United States district court has jurisdiction of the federal claim pursuant to 28 U.S.C. Sec. 1331 (Federal question) and 1343 (Civil rights and elective franchise), and over the state claim pursuant to the doctrine of pendent jurisdiction.

On July 22, 1994, the district court granted summary judgment in favor of the defendants and dismissed Balele's complaint. The District Court stated in pertinent part:

Neither Wisconsin's Fair Employment Act nor Wis. Stats. Ch. 230 provides a private right of action. Mursch v. Van Dorn Co., 627 F. Supp. 1310, 1312-15 (W.D. Wis. 1986); Bachand v. Connecticut General Life Ins. Co., 101 Wis. 2d 617, 624 (Ct. App. 1981). The defendants' motion for summary judgment will be granted on these claims. (Slip Opn., p. 46).

ORDER

IT IS ORDERED that the defendant's motion for summary judgment is GRANTED in [Balele's] claims against defendants under 42 U.S.C. Sec. 1981, 1983, 1985(3), 2000e et seq., the First Amendment, and under Wisconsin State law . . .

(Slip. Opn. p. 47).

On January 11, 1996, the United States Court of Appeals for the Seventh Circuit affirmed the decision of the district court, for the reasons contained in the decision of the district court. On October 3, 1996, Balele notified the Commission that the United States Supreme Court had denied his petition for certiorari.

This Court has reviewed the file, including the voluminous record of the Wisconsin Personnel Commission, studied the briefs of the parties and concludes this litigation must end. The petitioner has attacked these issues in many forums and has failed to prevail in each. He also fails in this administrative review.

DECISION

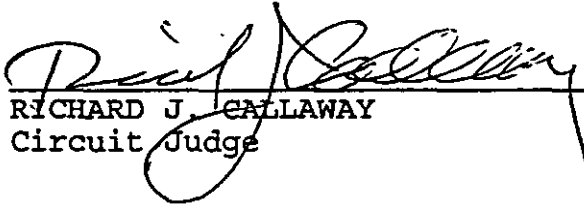
Balele is precluded from pursuing his state law claims before the Commission by the federal district court summary judgment, either under the doctrine of claim preclusion (Schaeffer)

or under the doctrine of issue preclusion. The Court affirms the decision of the Wisconsin Personnel Commission in all respects dismissing petitioner's state law claims.

IT IS SO ORDERED.

Dated this 30th day of October, 1997.

BY THE COURT


RICHARD J. CALLAWAY
Circuit Judge

CC:

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