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FIRST DIVISION  
February 1, 2016

No. 1-14-0747  
2016 IL App (1st) 140747-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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CONSTANCE HUGHES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 10757
	)	
UNITED AIRLINES, INC.,	)	
	)	Honorable
	)	Raymond Mitchell,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Liu and Justice Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff's claim for retaliatory discharge was preempted by the Railway Labor Act because the claim required a court to interpret a collective bargaining agreement; affirmed.
- ¶ 2 Plaintiff, Constance Hughes, appeals from an order of the circuit court that dismissed her complaint pursuant to section 2-619(a) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a) (West 2012)). Plaintiff had asserted that defendant, United Airlines, Inc., had discharged her in retaliation for seeking workers' compensation benefits. On appeal, plaintiff contends that

the court improperly concluded that her claim was preempted by the Railway Labor Act (Act) (45 U.S.C. § 151 *et seq.* (2012)). We affirm.

¶ 3 Plaintiff filed her complaint on September 11, 2009, asserting a cause of action for retaliatory discharge. In the complaint, plaintiff stated that she had been a flight attendant for defendant and was a member of the Association of Flight Attendants-CWA (Union). Plaintiff further stated that around October 18, 2004, she had been placed on an extended medical furlough and filed a workers' compensation claim due to injuries to her right hand and other conditions. Plaintiff's leave was governed by section 23.C of the collective bargaining agreement (CBA) between defendant and the Union, which stated:

"C. Medical Leave of Absence

Upon request, the Company shall grant the following medical leaves of absence: occupational and non-occupational. When leaves of absence are granted due to occupational or non-occupational illness or injury, a Flight Attendant shall retain and accrue seniority for a period not to exceed three (3) years."

¶ 4 Plaintiff stated that around May 2, 2007, defendant advised her that she had to return to work by October 17, 2007. Defendant instructed plaintiff to submit a completed absence certificate, which required plaintiff's medical providers to advise defendant whether plaintiff could return to work before October 17, 2007. Ultimately, plaintiff was cleared to return to work on October 15, 2007, whereupon plaintiff was required to complete items on a "Leave of Absence Return to Work Checklist." The checklist consisted of the following items:

- Complete Criminal History Record Check Continued Disclosure
- TSA Crewmember Badge

- Training Requirements
- Company Medical Examination/Clearance
- Uniform Needs
- Updated Passport & Visa Information
- Security Identification Display Area (SIDA) Badge Form
- Local Airport-issued Parking Badge/Permit
- Updated Flight Attendant Operations Manual Checked
- Appearance Check
- Address/Phone Changes
- Revisions to Emergency Contact
- Return to Work Briefing

¶ 5 Plaintiff averred that she completed the items on the checklist by December 22, 2007, and that her first work assignment was scheduled for December 27, 2007, in which she was to be on "Reserve/Call in Reserve" status. However, plaintiff was injured during the course of her requalification training on December 21, 2007, and sought medical treatment to determine the severity of her injuries. Plaintiff stated that she was unable to see a medical provider until December 27, 2007, and so she advised defendant that she would use sick leave on that day. Plaintiff averred that defendant did not advise her that she could not use sick leave on December 27 or that using sick leave would affect her employment status.

¶ 6 Plaintiff further stated that she had taken steps to submit a workers' compensation claim to defendant, and that defendant denied her claim on January 9, 2008. Plaintiff stated that on January 11, 2008, she received a termination notice that advised her that she was terminated because her three-year medical leave of absence had expired and she had failed to fulfill all of

her return-to-work requirements. According to plaintiff, she discovered that the requirement she failed to complete was "an unwritten policy, not known by the general Union membership" that flight attendants returning from leave must complete their first assignment or exercise a contractual scheduling flexibility. Plaintiff referred to this as the "Unknown Duty Requirement." Plaintiff asserted that she was not aware of this requirement and that the requirement was not in the checklist or CBA.

¶ 7 Plaintiff asserted that defendant had "no legitimate business purpose" for terminating her because she had completed all of the items on the checklist. Additionally, plaintiff stated that defendant's "reliance upon the Unknown Duty Requirement to terminate [her] \*\*\* was and is mere pretext to justify [plaintiff's] termination in retaliation for her past exercise and anticipated future exercise of benefits under the Illinois Workers' Compensation Act." Plaintiff also contended that defendant violated public policy by wrongfully terminating her for exercising her rights under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)). According to plaintiff, as a result, she suffered "personal and pecuniary damages," including "the loss of seniority and anticipated future benefits which she would have fully vested but for [defendant's] wrongful conduct."

¶ 8 Previously, plaintiff had pursued a grievance under the CBA. The record includes a document from defendant that indicated that plaintiff was discharged "[p]er section 23[.]C of the contract: Flight attendant was separated due to reaching [three] year maximum leave of absence. Completed training[,] however[,] was not medically able to fly first trip as required." On January 21, 2008, plaintiff sent a letter to defendant that requested that defendant confirm her as an active status employee. Plaintiff asserted that she had performed her return-to-work responsibilities "as set out in the Leave of Absence Packet and Section 23[.]C of the Flight

Attendant Agreement." Plaintiff added that she was not advised "nor have I found anything in either the Flight Attendant Agreement, the Skynet Leave of Absence Information, or the included Return to Work Checklist, that stated 'fly first trip as required.' " Plaintiff asked where she could find "any stated 'fly first trip as required' written requirement, contained in any United Airlines policy or procedure, that is applicable to a flight attendant, who has been restored to active status and who has completed EMR6 training."

¶ 9 The matter proceeded to a hearing. In a letter of decision issued on October 14, 2008, a hearing officer stated that the issue was "whether [plaintiff was] improperly separated from United Airlines effective December 27, 2007[,] pursuant to the terms of 23.C of the Collective Bargaining Agreement." The hearing officer found that defendant "has a long standing practice" of requiring flight attendants to either "work their first scheduled trip upon completion of training, or exercise one of their contractual scheduling flexibilities (WOP, GWOP, trip trade, etc.) in order to return to active status." The hearing officer further found that "this practice is both known and accepted" by the Union. Acknowledging plaintiff's position that the practice did not appear in writing, the hearing officer stated that past practice does not have to be in writing to be enforceable and defensible, and can instead "arise on the basis of regular, repeated action by management." The hearing officer concluded that defendant acted properly in terminating plaintiff pursuant to section 23.C of the CBA. Following the relevant procedure in the CBA, plaintiff appealed the hearing officer's decision on November 6, 2008.

¶ 10 The record does not reveal what further action was taken on plaintiff's grievance. In the meantime, defendant filed a notice of removal in the circuit court, seeking to remove the state law matter to federal court. Defendant asserted that plaintiff was attempting to recast her contractual grievance into a tort claim and that her claim was in reality a "classic 'minor

dispute' " under the Act. Defendant asserted that as a result, plaintiff's claim was preempted by federal law and removable to federal court.

¶ 11 After the matter was removed to federal court, defendant moved to dismiss the suit for lack of subject matter jurisdiction pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (eff. Dec. 1, 2009). The federal district court found that plaintiff's claim was completely preempted by the Act. *Hughes v. United Air Lines, Inc.*, 675 F. Supp. 2d 907, 909 (N.D. Ill. 2009). The Seventh Circuit disagreed, stating that the Act does not completely preempt retaliatory discharge suits. *Hughes v. United Air Lines, Inc.*, 634 F.3d 391, 394 (7th Cir. 2011). While the court did not determine whether plaintiff's individual claim was preempted, it stated that the Act does not completely preempt any category of state law claims. *Id.* at 395. The kind of preemption at stake—"normal preemption"—was a "defense to be asserted in the original forum rather than a rule that the claim itself must rest on federal law." *Id.* at 394. The court remanded the suit to state court. *Id.* at 395.

¶ 12 Subsequently, defendant filed a motion to dismiss the complaint pursuant to section 2-619(a) of the Code of Civil Procedure (735 ILCS 5/2-619(a) (West 2012)). Defendant contended that the court did not have subject matter jurisdiction over plaintiff's claims because they were preempted by the Act (45 U.S.C. § 151 *et seq.* (West 2012)). Defendant asserted that plaintiff's grievance had challenged defendant's ability to terminate her employment under section 23.C of the CBA, and her complaint attempted to recast that grievance into a common law claim. Defendant stated that plaintiff's claim had to be decided by the board of adjustment rather than a court because plaintiff's claim required an interpretation of the CBA. In particular, the court would have to interpret and apply section 23.C of the CBA as that provision had been informed by the parties' historical practice. Defendant further noted that the court would have to interpret

other CBA provisions that define certain terms, such as "ID," "Reserve," "Call In Reserve," and "trip trade" scheduling flexibilities, among others. Additionally, defendant stated that plaintiff sought relief in the form of past and future wages and benefits, including seniority, which are determined by the CBA.

¶ 13 In response, plaintiff contended that state law claims for retaliatory discharge are not completely preempted by the Act. Additionally, plaintiff noted that an employer's purported justification for termination is a "purely factual question" that does not make a state law claim dependent on a contract's terms. Plaintiff also asserted that her complaint did not allege any other legal basis for her claim other than defendant's violation of the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)).

¶ 14 The circuit court issued a written decision on October 5, 2012, finding that plaintiff's claim was preempted by the Act because the claim depended on an interpretation of the CBA. However, rather than dismiss the complaint, the court stayed the proceedings pending a determination by the board of adjustment whether plaintiff's claim was arbitrable.

¶ 15 Subsequently, on November 6, 2013, with the matter before a different judge, defendant filed a renewed motion to dismiss, asserting that the case should have been dismissed in October 2012 because dismissal is the appropriate consequence when a state law claim is preempted by federal law. In response, plaintiff asserted that courts have repeatedly held that federal labor statutes do not preempt retaliatory discharge claims based on the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)). Plaintiff asserted that retaliatory discharge claims do not require that a court interpret a collective bargaining agreement and that the issue in this matter was not whether an unstated past practice existed, but whether defendant's motivation for

terminating plaintiff was an "alleged past practice" or plaintiff's assertion of her workers' compensation rights.

¶ 16 In a written order entered on February 11, 2014, the circuit court confirmed that plaintiff's claim was preempted and dismissed the complaint. The court found that plaintiff could not establish that she was entitled to relief without the court first considering whether the CBA permitted or required her to be discharged. As such, the case did not raise purely factual questions about the employer's conduct and motive. The court further stated that it would also have to resort to and perhaps interpret or apply the CBA to address plaintiff's alleged damages, which included lost compensation, loss of seniority, and future benefits due under the CBA.

¶ 17 On appeal, plaintiff contends that the Act does not preempt her complaint for retaliatory discharge. According to plaintiff, her claim does not require a court to interpret the CBA. Plaintiff states that per defendant's explanation, she was terminated pursuant to an unstated past practice of which she had no notice. Plaintiff argues that the issue is not whether an unstated past practice existed, but whether defendant terminated plaintiff because of the alleged past practice or because plaintiff asserted her workers' compensation rights. Plaintiff additionally contends that case law establishes that retaliatory discharge claims based on the Workers' Compensation Act do not require a court to interpret a collective bargaining agreement.

¶ 18 Defendant's motion to dismiss was brought pursuant to section 2-619(a)(1) and (a)(9) of the Code (735 ILCS 5/2-619(a)(1), (9) (West 2012)). Section 2-619(a)(1) allows for an involuntary dismissal of an action based on lack of subject matter jurisdiction. 735 ILCS 5/2-619(a)(1) (West 2012)). A section 2-619(a)(9) motion to dismiss assumes a cause of action has been stated, but contends that the action is barred by an affirmative matter that avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2012); *Dewan v. Ford Motor Co.*,

363 Ill. App. 3d 365, 368 (2005). An "affirmative matter" is "something in the nature of a defense that negates the cause of action completely or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Dewan*, 363 Ill. App. 3d at 368. On appeal, the question is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such issue of fact, whether dismissal is proper as a matter of law." (Internal quotation marks omitted.) *Betts v. City of Chicago*, 2013 IL App (1st) 123653, ¶ 13. We review *de novo* a dismissal under section 2-619 of the Code. *Dewan*, 363 Ill. App. 3d at 368.

¶ 19 At issue here is whether plaintiff's claim for retaliatory discharge is preempted by the Act (45 U.S.C. § 151 *et seq.* (2012)). As background, the purpose of the Act is to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). The Act covers the airline industry. *Gendron v. Chicago & North Western Transportation Co.*, 139 Ill. 2d 422, 427 (1990) (citing 45 U.S.C. § 181 *et seq.* (1982)). To fulfill its purpose, the Act establishes a mandatory arbitral mechanism for the prompt and orderly settlement of two kinds of disputes—major and minor. *Hawaiian Airlines, Inc.*, 512 U.S. at 252. These terms have nothing to do with the importance of the issue (*Lara-Girjikian v. Mexicana Airlines*, 307 Ill. App. 3d 510, 514 (1999)) and instead differentiate the two kinds of disputes governed by the Act (*Gendron*, 139 Ill. 2d at 427-28). Major disputes relate to the formation or modification of a collective bargaining agreement and seek to create contractual rights. *Id.* at 428. Meanwhile, minor disputes involve the interpretation or application of an existing collective bargaining agreement and seek to enforce existing rights. *Id.* If the claim at stake is actually a minor dispute, then it is preempted and must be resolved through the Act's mechanisms, which include the carrier's

internal dispute resolution processes and an adjustment board established by the employer and union. *Hawaiian Airlines, Inc.*, 512 U.S. at 253. Indeed, the grievance procedure for minor disputes is mandatory and exclusive. *Alfieri v. CSX Corp.*, 201 Ill. App. 3d 559, 564 (1990).

¶ 20 To avoid preemption, the claim must be independent of the collective bargaining agreement, meaning that the state law claim can be resolved without interpreting the agreement itself. *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 410 (1988). See also *Hawaiian Airlines, Inc.*, 512 U.S. at 263 (adopting the *Lingle* standard to resolve claims of preemption under the Act). Our task is to determine whether plaintiff's claim can be resolved without interpreting the CBA. Broadly speaking, claims for retaliatory discharge do not necessarily require a court to interpret a collective bargaining agreement. To state a cause of action for retaliatory discharge for filing a workers' compensation claim, a plaintiff must show that: (1) she was defendant's employee before or at the time of the injury; (2) she exercised a right granted by the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2012)); and (3) her discharge was causally related to the exercise of her rights under the Workers' Compensation Act. *Grabs v. Safeway, Inc.*, 395 Ill. App. 3d 286, 291 (2009). "The element of causation is not met if the employer has a valid basis, which is not pretextual, for discharging the employee." *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 160 (1992). As a matter of general principle, the elements of retaliatory discharge are "purely factual questions" that pertain to the conduct of the employee and the conduct and motivation of the employer. *Lingle*, 486 U.S. at 407. Neither the elements of the claim nor the employer's defense—that it had a nonretaliatory reason for the discharge—require a court to interpret a collective bargaining agreement. *Id.*

¶ 21 However, plaintiff's specific claim does require a court to interpret the CBA. See *Monroe v. Missouri Pacific R.R. Co.*, 115 F.3d 514, 519 (7th Cir. 1997) (finding that the "factual

particularities" of the plaintiff's complaint required an interpretation of a collective bargaining agreement). Here, plaintiff alleged that defendant's "reliance on the Unknown Duty Requirement" to terminate plaintiff "was and is mere pretext to justify [plaintiff's] termination in retaliation for her past exercise and anticipated future exercise of benefits under the Illinois Workers' Compensation Act." To assess plaintiff's assertion that defendant used the "Unknown Duty Requirement" as a pretext, and whether defendant had a nonretaliatory reason for the discharge, a court would have to interpret section 23.C of the CBA, which is where the alleged Unknown Duty Requirement supposedly comes from. It is true that "a court's task is complete in a retaliatory discharge case when it determines, as a factual matter, whether the employer's motivation for the discharge was the employee's filing of a workers' compensation claim or some other motive," and that a court must "simply determine whether such a motive exists." See *Nelson v. Central Illinois Light Co.*, 878 F.2d 198, 202 (7th Cir. 1989); *Bettis v. Oscar Mayer Foods Corp.*, 878 F.2d 192, 197 (7th Cir. 1989). Here, to find out whether defendant had a nonretaliatory motive and if the "Unknown Duty Requirement" could have been used as a pretext, a court would have to interpret the CBA to determine if the "Unknown Duty Requirement" even exists. Because a court would have to interpret at least section 23.C of the CBA, plaintiff's claim is preempted. See *Monroe*, 115 F.3d at 518 (claim of pretextual discharge preempted where a court had to apply and interpret implied terms of a collective bargaining agreement).

¶ 22 Our conclusion that plaintiff's claim is preempted is further supported by the fact that plaintiff's grievance under the CBA contested the same conduct by defendant that gives rise to her retaliatory discharge claim. See *Lara-Girjikian*, 307 Ill. App. 3d at 515. In her initial letter following her termination, plaintiff contested the existence of a requirement that she had to

complete her first trip to be reinstated. The existence of this requirement was the subject of her grievance hearing. Following an unsuccessful result, plaintiff reframed her position from the grievance hearing as a retaliatory discharge claim. Both her grievance and her complaint concern the same issue—whether there is a requirement that flight attendants complete their first trip to return to work. Although her complaint does not focus on the CBA, her complaint is actually a dispute over the interpretation of the CBA. As a result, it is a minor dispute and preempted by the Act. See *Gendron*, 139 Ill. 2d at 438 ("artful drafting of the complaint \*\*\* will not save plaintiffs' claims from preemption if they are in actuality a 'minor dispute' under the [Act]).

¶ 23 As an additional consideration, plaintiff seeks damages in the form of loss of seniority and "anticipated future benefits which she would have fully vested but for [defendant's] wrongful conduct." That these items are determined by the CBA also supports our finding that her claim is preempted. See *Monroe*, 115 F.3d at 518, n.4 (that the plaintiff's claims involved past and future wages, benefits, and promotions that were determined by the CBA "does aid our analysis," although that reason alone "would not compel a finding that [the plaintiff's] claims involve application or interpretation" of a collective bargaining agreement).

¶ 24 Because plaintiff's claim requires a court to interpret the CBA, it is preempted by the Act, and the complaint was properly dismissed.

¶ 25 Affirmed.