UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ROSEANN WHEAT — PLAINTIFF

v. — CIVIL ACTION NO. 3:98CV-346-S

BROWN-FORMAN CORPORATION — DEFENDANT

MEMORANDUM OPINION

This matter comes before the court on a motion by the plaintiff, Roseann Wheat, to alter the judgment of this court entered on July 23, 1998 which dismissed the plaintiff's complaint and denied the plaintiff's motion to remand.

The plaintiff, Roseann Wheat, an employee of the defendant, allegedly suffered a work-related injury which she claims resulted in a disability. Wheat filed a worker's compensation claim and received benefits. Wheat returned to work on January 7, 1997, under medical restrictions. On January 12, 1998 Brown-Forman placed Wheat on lay-off status. Wheat filed suit in state court, claiming that she was wrongfully terminated because of her age and disability and in retaliation for filing a worker's compensation claim.

In her motion to reconsider, Wheat argues that her claim is not preempted by the Labor Management Relations Act ("LMRA"). Wheat focuses the court's attention on the Sixth Circuit's ruling in *Smolarek v. Chrysler Corp.*, 879 F.2d 1326 (6th Cir. 1989). In that case, the employee was placed on medical restrictions after being injured on the job. The employee was then laid off due to lack of available work. The employee claimed that, although technically laid off, he was effectively terminated because his employer failed to provide him with work consistent with his medical restrictions. *Id.* at 1334.

To defend against the employee's state civil rights claim, the employer had to prove that its actions were motivated by some factor other than the employee's handicap. The court noted:

> that [the employer] is likely to assert as its defense to [the employee's] claim that it based its actions on the provisions of the labor agreement regarding reinstatement and accommodation. Even this defense, however, does not require a finding of preemption. In order to resolve the . . . claim in light of this defense, a court need only decide whether [the employer] took actions adverse to [the employee] because of his handicap or rather solely because [the employer] felt bound by the union agreement to take the actions or for some other legitimate reason. It is not necessary to decide at the outset whether or not [the employer]'s interpretation of the agreement is correct as a matter of federal labor law. The question is a factual one: What was [the employer]'s motivation?

Id. The "right not to be discriminated against in employment decisions based on handicap or age is independent of the question of whether [the employee] was demoted or not. . . . [E]mployees have the right not to be discriminated against on the basis of age or handicap without regard to the collective bargaining agreement's language about an employee's rights." *O'Shea v. Detroit News*, 887 F.2d 683, 687 (6th Cir. 1989), *cert. denied*., 493 U.S. 992.

Similarly, Brown-Forman's defense against Wheat's discrimination claim is that it acted in accordance with the job bidding and seniority rights provisions in the CBA in returning Wheat to work. In this way, Brown-Forman attempts to prove that its actions in placing Wheat on lay-off status were motivated by a legitimate business reason. However, according to the Sixth Circuit, such a defense by the employer does not require a finding that the employee's claim is preempted.

This court will vacate its previous ruling and find that Wheat's claim was not preempted by §301 of the LMRA. Accordingly, this court will grant the plaintiff's motion to remand, deny the defendant's motion to dismiss, and remand the action to Jefferson Circuit Court.

This _____ day of _____, 1998.

_____
CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons stated in the memorandum opinion entered this date, the motion of the plaintiff, Roseann Wheat, to **VACATE** the order of this court dated July 23, 1998 is **GRANTED**. The defendant's motion to dismiss is **DENIED**, the plaintiff's motion to remand is **GRANTED**, and this action hereby is **REMANDED** to Jefferson Circuit Court.

IT IS SO ORDERED this _____ day of _____, 1998.

_____
CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

Wheat is a member of a union which is governed by a Collective Bargaining Agreement ("CBA"). The CBA mandates that all employment-related disputes are first to be filed as grievances. If the dispute is not resolved quickly via the grievance procedure, it must then be submitted to arbitration.

Wheat's claim must be dismissed, however, because she failed to file a grievance or submit the matter to arbitration. As this court previously stated, the CBA between the plaintiff's union and Brown-Forman requires that all alleged violations of the CBA must be raised through the contractual grievance procedure. The CBA also mandates that all unsettled grievances are to be submitted to arbitration. The plaintiff, therefore, is required to exhaust this remedy as a prerequisite to bringing a suit under the LMRA. Because the plaintiff has taken no steps to file a grievance or to submit the matter to arbitration, this court will dismiss Wheat's claim by separate order.