19-7736

No. 19-1924

In The

Supreme Court of the United States

October Term, 2019

Silvester Woods,

Petitioner,

V.

WASHINGTON METROPOLITAN TRANSIT AUTHORITY ("WMATA")

AMALGAMATED TRANSIT UNION, LOCAL 690 ("ATU"),

Respondent

On Writ of Certiorari to the

United States Court of Appeal

For the Fourth Circuit

Petition of Writ Certiorari

Pro-se Petitioner, Silvester Woods

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February 20, 2020

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I. PETITION FOR WRIT OF CERTIORARI

Silvester Woods files this Writ of Certiorari to review the ruling of the United States Court of Appeal for the Fourth Circuit.

II. QUESTION(S) PRESENTED

Under the Maryland law, whether the defendants acted in bad faith in terminating the Plaintiff; and whether the conducts of its WMATA's employees were foreseeable within the range of responsibilities entrusted to the plaintiff.

III. OPINION BELOW

The opinion of the United District Court of Maryland, Greenbelt Division to review the merits of the case at Appendix A. The petition was reported as *Woods v. WMATA, No. 8:18-cv-0384-PWG (D. Md. Aug.9, 2019),* published.

The opinion of the United States Court of Appeal for the Fourth Circuit appears at Appendix C the timely filed petition for Appeal denied by Court of Appeal on the following date November 25, 2019.

IV. LISTED OF THE PARTIES

Defendants Washington Metropolitan Area Transit Authority ("WMATA" or the "Authority") and Defendant, Local 689, Amalgamated Transit Union, ("Local 689" or "the Union

V. JURISDICTION

Woods invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days. The jurisdiction of this court is invoked under 28 U.S.C.§ 1254 (1)

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S Constitutional XIV § 1, No person shall ... be deprived of life, liberty, or property, without due process of law. WMATA cannot plead sovereign immunity to bar the exercise of federal question jurisdiction.
Md. Code Ann., Transp. § 10-204 (80) WMATA is a quasi-government organization is an organization that is supported by the government but is managed privately. Under the Maryland, District of Columbia and Virginia Compaq (e) it shall be the policy of the authority not to suspend employees for misses or other minor violations of the rules if the necessary result can be obtained by other means of discipline. Suggestions from the Union will be welcomed regarding the best way to ensure good service without hardship on the employees. (f) .... that the employees was suspended or discharged without sufficient cause, the employee shall be reinstated in the employee's former position and paid for the time lost at the employee's regular rate during such suspension or discharged.

STATEMENT OF THE CASE

The Plaintiff, Silvester Woods; set forth the following facts in his complaint;
Defendant Washington Metropolitan Area Transit Authority ("WMATA" or the "Authority") is a political subdivision of the District of Columbia, Commonwealth of Virginia and the State of Maryland.
Defendant, Local 689, Amalgamated Transit Union, ("Local 689" or "the Union") represents for the collective bargaining the drivers, mechanic, clerical and maintenance personnel who are employed by WMATA. The defendants are parties to the Collective Bargaining Agreement ("CBA" or the "Agreement").
On July 19, 2018, co-defendant WMATA extended an offer of employment to the Plaintiff. The Plaintiff accepted the offer and began training on July 23, 2018, at WMATA's Carmen Turner Facility located in Hyattsville, Maryland.

On August 3, 2018, the instructor stated the Plaintiff refused to follow his instructions. The Plaintiff denied in his complaint the instructor's accusations. as false and slanderous.
The plaintiff has also inserted that the instructor made a false statement about using the cell phone on the bus. The plaintiff was aware of WMATA's' electronic device policy and the consequence of the violation. The plaintiff denied using his cell phone on the bus.
The instructor stated the Plaintiff left the bus without his permission. The instructor fabricated the story in order to terminate the Plaintiff.
The plaintiff established the instructor's behavior was based on the consideration of impermissible factors. A prima facie case under *McDonnell Douglas* did raise an interference of discrimination. The Plaintiff had the merit to establish a legal complaint in his wrongful and retaliatory claim against WMATA.
The Plaintiff filed a complaint with the Equal Employment Opportunity Commission (EEOC). The Plaintiff satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission, and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue, 42 U.S.C.§§ 2000e-5 and 2000e-5. The Act did not restrict a complainant's rights to sue to those charges as to which the Commission has may find a reasonable cause. *McDonnell Douglas Corp. v. Green, 411 U.S. (1972)*
On November 13, 2018, the plaintiff filed a lawsuit in the United District Court of Maryland, Greenbelt. He maintained Local 689 violated the duty of fair representation, and he would have been reinstated as a bus driver if the Union had represented him. The plaintiff asserted the Union had a duty to represent all employees regardless of whether they were members of the Union. The plaintiff was entitled to punitive damages for emotional distress, Whistleblower protection, payment of paralegal fees, and such other relief the Court deemed proper.

REASONS FOR GRANTING THE PETITION

The refusal of the National Labor Relations Board to assert jurisdiction did not mean the states had power, *San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959)*

The Civil Rights Act of 1964 protected individuals from all forms of discrimination. Under *Id. at § 703 (a) (1)*, the plaintiff satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission, and (ii) by receiving and acting upon with the Commission's statutory notice of the right to sue, *42 U.S.C. §§ 2000 e- 5 (a) and 20003-5 (e)* The Act does not restrict a complainant's right to sue to those charges as to which the Commission has made finding of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review claims of employment discrimination in the federal court. Under U.S.C. Title 28 §1251, the Supreme Court shall original and exclusive jurisdiction of all controversies between two or more States

The Commission itself does not consider the absence of a "reasonable cause" determination as providing employer immunity from similar charges in federal court *29 CFR § 1601.30*, and the courts of appeal have held that, given the large volume of complaints before the Commission and the no adversary character of many of its proceeding and .... a Commission "no reasonable cause" finding does not bar a lawsuit in the lawsuit.

Sovereignty implies superiority and subordination. *Chisholm v. Georgia, 2 U.S. 419 (1793)*.

AGRUEMENT

I. WMATA PRESENTED UNJUSTIFIABLE AND UNWARRANTED NOT EXCUSES TO REINSTATE THE PLAINTIFF.

The Plaintiff presented a well-pleaded and plausible claim and defenses in the amended complaint. *Bell Atlantic Corp v. Twombly, 550 U.S. 544 (2007), Ashcroft v. Iqbal, 556 U.S. 662 (2009),* The plaintiff established the burden by a preponderance of the evidence to WMATA. The plaintiff met all the conditions of employment including, qualifications.

The Plaintiff established a *prima facie case* under the Civil Rights Act of 1964, Sec.704 (a). The instructor alleged he discharged the plaintiff for insubordination and abusive language. The plaintiff presented sufficient evidence of the alleged reasons for the termination were a pretext.

The plaintiff established the actions of the instructor were illegal, retaliatory and unreasonable. Overall, following the instructor's direction would have endangered himself and other employees on the bus. The plaintiff provided sufficient facts to hold the defendant liable for the conduct of the instructor.

II. ATU LOCAL 689 PRESENTED UNJUSTIFIED EXCUSES TO DENY REPRESENTATION TO THE PLAINTIFF.

The US District claimed in his Complaint the Plaintiff did not cite any statute or case law that provided a basis for his relief. Specifically, the Plaintiff made no

definitive statement that he was entitled to Union representation during the investigation and discipline phases of the case or the grievance process. However, the Plaintiff informed WMATA's management of an illegal act and therefore, he was protected under the law.

Under 28 U.S.C. § 1337, where the conduct can be both an unfair labor practice and a breach of the duty of fair representation, not with standing the absence of an affirmative allegation that the employer breached a collective bargaining agreement.

Even though the NLRB might view the same conduct as a violation of the NLRB, the federal court retains their authority to award relief for a breach duty of fair representation. The union was the majority representative when the contract was made and the agreement is a collective bargaining agreement. Regarding false light on the plaintiff, the plaintiff revealed to management at Transdev/ WMATA a contractor. the reasons for his termination by WMATA. The plaintiff was compelled to informed to prospective employer to maintain employment. Publication is a term of art meaning the 422 communication of defamatory matter to a third person. *Sullivan v. Baptist Memorial Hospital. 995 S.W. 2d, 569 (1999*).

The at-will doctrine was illegal and unenforceable under Restatement (Second) of Torts § (1958) historically, the law that governed the employment relationship had limited an employee's ability to challenge an employer's unfair, adverse, or damaging practice, included arbitrary firing. ... Unless the employee was represented by a Union or had rights under an explicit employment contract. The Local 689 was the exclusive bargaining agent for WMATA's employees.

III. UNITED STATES DISTRICT COURT OF MARYLAND, GREENBELT COURT ERRED IN DISMISSING THE AMENDED COMPLAINT ABOUT FAILURE TO STATE A CLAIM AND LACK JURISDICTION.

U.S. District of Maryland stated because of the court lacked jurisdiction over many of the claims in the Amended Complaints and because Plaintiff had failed to state a claim for over those which the court did have jurisdiction the defendant's motions were granted.

Under the *Twombly* standard, *Corp. v. Twombly, 550 U.S. 544, 570 (2007)).* A claim has "facial plausibility" when the plaintiff pleads "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Fed. R. Civil P. R. 12 (b)(6),* "no compliant should be dismissed for failing to properly state a claim" unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which could entitle him to relief' *Twombly,550 U.S. 544 (2007)* at 554-63.

WMATA's governmental function immunity encompasses thee hiring, training, and supervision of WMATA personnel. *Jones v. Washington Metro Area Transit Authority, 205 F. 3rd 439 (2000). However,* WMATA is liable for its contracts and for its tort and those of its director, officers, employees and agent committed in the conduct of any proprietary function. The Plaintiff has established the abusive conduct of the instructor and supervisor were a proprietary function.

Congress has the power under *U.S. Const. amend. XIV §* 5 to abrogate the state's immunity to enforce the protection of *U.S. Const. amend XIV.* Congress exercised the power in enacting the *Civil Right Act of 1964, 42 U.S.C. §2000e.*
Congress has added the Title VII of *The Civil Right Act of 1964,* an express waiver of immunity from absolute interest.
Conduct that involved the same type of employment action occurred relatively frequently and perpetrated by the same manager can included in a single hostile work environment claim. *National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 120, 122 S. Ct. (2002)*

VII. U. S. COURT OF APPEAL FOR THE FOURTH DISTRICT ERRED IN AFFIRMING THE DECISION OF THE U.S. DISTRICT.

Under *U.S.C. Title 28 § 1349.* The U. S. Court of Appeal has jurisdiction on any civil action by or against any corporation upon the ground that it was incorporated by or under an Act of Congress.

VIII. THE APPELLANT ENTITLES TO DAMAGES OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

WMATA strung the appellant along, misrepresented the facts and regarding the reasons for the termination. The appellant presented the allegations against him were false and misleading. The conduct is WMATA monumental to the rise to the level of "extreme and outrageous" conduct. The parties were bounded by a contract regulating an economic relationship. The right to minimum social *Recovery and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct, 82 Col. L. Rev. 43, 69 (1982).* The Appellant sufficiently stated liability upon conduct set forth by WMATA. The Taft-Hartley Act included a substantial exception to exclusive NLRB jurisdiction in *§ 303.* That section, as simplified by the Landrum-Griffin Act, provides as follows: (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b) (4) of the National Labor Relations Act, as amended. (b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States subject to the limitations and provisions of *§ 301* hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.
Under *Water v. Churchill, 511 U.S. 661 (1994),* employees' cell phones were protected under the First Amendment speech. The speech must be on a matter of public concern, and the employee's interest in expressing himself on this matter must not be outweighed by an injury the speech could cause to "the interest of the state as an employee, in promoting the efficiency of the public services performed through it employees." The three elements that the employee must prove to show adverse employment actions based employees' speech. (2)The speech was public

concern. (3),the exercise of the speech right outweighs the government employer's interest in the efficient functioned of the office.
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IX. CONCLUSION

The petitioner, Silvester woods, urges the court to reverse the ruling by the Court of Appeal for the Fourth Circuit. The court should have granted the petitioner a summary judgment under the *McDonnell Douglas* burden-shifting framework.

The U.S. Supreme Court should consider granting Writ of Certiorari under *Fed .R. App. P.§ 6.7 (1)* a conflict among the federal circuits on an "important" (2) a conflict between a federal court of appeals and the highest court of a State on an "important" federal question." (5): a ruling by the state court or a federal court of appeals that decides "an important question of federal law that has not been, but should be" settled by the Supreme Court, or that decides "an important federal question in a way that conflict with relevant decisions" of the Supreme Court.
DATED: 2/20/2020

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