No. 23-303

IN THE
SUPREME COURT OF THE UNITED STATES

Faith Townsend, Pro Se,

Petitioner;

V.

Rockwell Automation Inc.

Respondent

ON PETITION FOR A WRIT OF CERTIORI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Faith Townsend/Pro Se
803 E. 155th Street
Cleveland, Ohio 44110
216-647-1697

September 14, 2023

QUESTIONS PRESENTED TO THE COURT

1. The Plaintiff requests the supreme court to analyze the application of the doctrine of Res Judicata applied to cases 18cv02742 and 21cv02226 and determine if the events of the proceedings constitute a "Full and Fair" opportunity to litigate the wage discrimination claim in question?

2. Should a judgement be vacated when one party presents fraudulent documents to the court, and in discovery, committing fraud on the court.

3. Does it become the responsibility of the Plaintiff to amend a complaint when a Judge causes a claim to go un-litigated by circumventing the arguments between litigants, presenting his own argument without ensuring it is properly applied to the case and the procedure to do so is not followed.

4. What consideration should be given to the doctrine of Res Judicata when the judge has violated CJUS-
APR 73.

PARTIES TO THE PROCEEDING

Faith Townsend
803 E.155TH
WI 44110

Rockwell Automation
1201 S 2nd St CLEVELAND OHIO 53204 Milwaukee,

CORPORATE DISCLOSURE STATEMENT

The plaintiff does not own or have interest in any corporation. The defendant's statement can be found at 1:18-cv-02742-JG docket 9

LIST OF RELATED PROCEEDINGS

1:2018cv02742
Townsend v. Rockwell Automation Inc.
Ohio Northern District Court 01/08/2020

0:2020cv03079
Faith Townsend v. Rockwell Automation
U.S. Court Of Appeals, Sixth Circuit 04/27/2021

1:2021cv02425
Townsend v. United States of America
Ohio Northern District Court 03/09/2022

1:2021cv02226
Townsend v. Rockwell Automation, Inc.
Ohio Northern District Court 02/22/2022

0:2022cv03244

Faith Townsend v. Rockwell Automation, Inc.

U.S. Court Of Appeals, Sixth Circuit 10/25/2022

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CITED AUTHORITIES

Opinions and Orders Below For Review

The opinions and orders below have not been published and are reproduced in the Appendices. 1:18cv02742 granting defendant's motion for summary judgement 01/08/2020. 0:2020cv03079 denying plaintiff's appeal. 1:2021cv02226 dismissed 02/22/2022. 0:2022cv03244 appeal denied 10/25/2022

JURISDICTION

The Judgement of the court of appeals was entered on 10/25/2022, a petition for rehearing was denied on 01/05/2023. The Jurisdiction of this court is invoked under 28 U.S. Code § 1254(1)

Statutes Involved

42USC2000e–2(a),Lilly Ledbetter Fair pay act 2009, 42USC1981, 42USC1981a,42USC1985, 42USC1986 42 U.S.C.1983 and Procedural Due Process Rights

Statement of public interest

All Employers in the US are obligated to follow the guidelines of the EEOC and some are bound by the rules of the Office of Federal Contract Compliance Program·securing billions of dollars in federal contracts. An employer that intentionally participates in discriminatory employment practices and intentional discrimination that involves employee wages may require more incentive from the law to ensure that all its employees are safe from discrimination in all it's hostile forms.

Statement of the Case

The Plaintiff is requesting the Supreme Court to examin the application of res judicata in its application in this case. In order to achieve this a review of the court procedures in the initial trial court requires examination.

The initial case was filed in response to workplace discrimination· harassment and retaliation. It then evolved into confirmation of wage discrimination, fraud on the court and conspiracy to discriminate. The issue in question is the responsibility of the plaintiff in the realm of res judicate under these circumstances.

The second action resulted in agreement with the plaintiff that the wage discrimination was properly presented in the first action but disagree in that it is the responsibility of the plaintiff to amend to reinstate a claim already presented and litigated in the proceedings but deemed invalid by the judge without reviewing documents that demonstrate the opposite.

The Courts have established precedence that not all lawsuits between the same litigants are subject to res judicate, base on different circumstances such as whether the information was unattainable during the first action, the plaintiff timely presented the claim in the first action, if the perceived damage was worse than expected and the use of deception and concealment of evidence coupled with the violation and resulting harm reaching such severity that it out weighs the principles of res judicata, which are all present here.

According to Beloit v. Morgan, 74 U.S. 619(1868) the court also bears some responsibility in ensuring all claims are litigated when the plaintiff diligently attempts to bring them forward. In this case the court was also influenced affected by fraud.

The plaintiff is also requesting of the court to vacate the judgement of 18cv02742 in accordance with *FRCP Rule 60(b)(1),(2), and (3) and consider a default judgement under* FRCP. 37(b)(2)(A)vi · Reverse 0:2020cv03079 and 0:2022cv03244 as moot and remand 1:2021cv02226 or enter a default judgement.

Factual History

In Sept. 2017 Plaintiff filed a charge of harassment and retaliation with the EEOC against Rockwell Automation Inc. in response to years of retaliation and harassment for reporting racism to her supervisor and the Human Resource department. Because of illness the plaintiff was unable to file suit. After returning to work from medical leave the situation worsened causing her to be hospitalized and further medical leave and she filed a second EEOC complaint in Oct. of 2018 then subsequently filed Case number 18-cv02742 in Nov. 2018. The 1st EEOC charge identified all the items in the court complaint. Because of the extensive list of charges the 2018 EEOC officer embodied them is the phrase "Terms and Conditions of Employment" and the Plaintiff added the 2017 charge number indicating that the claims had worsened. The judge informed the Plaintiff in the CMC meeting all claims and related evidence would be barred but worded the order differently.

The defendant Motioned for summary judgement on the bases that all the charges were time barred. The plaintiff argued these all were continuing violations. The judge ruled that the plaintiff failed to prove her case on all charges except wage discrimination. Concerning the wage discrimination claim he decided the plaintiff had not

included wage discrimination in any of the EEOC complaints, and declined to litigate that charge. Plaintiff filed a motion to continue and it was denied .

Plaintiff appealed the decision providing evidence of the 2017 EEOC intake form. The decision was upheld. Plaintiff filed 21cv02226 on 11/22/21 for the un-litigated wage discrimination charge. The case was dismissed citing res judicata. The discission was appealed in cv22-3244. Both the trial court and appeal court agreed that the wage discrimination claim was properly before the court but the claim should have been reasserted or reintroduced by amendment.

REASON FOR GRANTING THE PETITION

(Consider Question 4 throughout this discussion)

QUESTION 1.

The plaintiff is requesting the supreme court to analyze the application of the doctrine of Res Judicata to 18cv02742 and 21cv02226 and determine if she received a full and fair opportunity to litigate a wage discrimination claim, and received due process (Ref: Case:20-3079 Document:9-1 Filed 03/05/2020 pg. 4 item 2, 21cv02226-general and 22-3244 doc # 9-1 pg. 6 filed 05/12/2022). The judge erroneously cites "Dixon v Ashcroft" to suggest the EEOC requirement had not been met(1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 8). Then, cites "Tucker v Needletrade to suggest that the plaintiff did not include the wage discrimination claim in her filings with the court (untrue). Can he then render judgement on a claim he doesn't consider presented? The doctrine is not suitable for all cases. Castor v. Brundage, 674 F.2d 531, 536 (6th Cir.1982), And is not a shield for the blame worthy, *Davis v. Wal-Mart Stores, Inc., 93*

Ohio St. 3d 488, 490 (Ohio 2001)

Case number 21cv02226 addresses intentional wage discrimination and discriminatory employment practices(42usc1983, 42USC1981, 42USC2000e–2(a), 42USC2000e-5, 42USC1986) over a 22 year period and can be litigated separately from the previous harassment and retaliation claims. The plaintiff restated charges in the complaint of the 1st action that directly impacted her wages. The plaintiff felt it was important so show what was occurring that caused supervisors and managers, the Human Resource Department and Payroll department to collaborate and attack her pay(42USC1985, 42USC1981a) – She had complained about her white male coworkers in a way consistent with the ethics training mandatory at Rockwell Automation. This is why the complaints that directly impacted he pay from 18cv02742 were restated. It shows that discrimination is incorporated into the company's policies.

21cv02226 asserting intentional Discriminatory Employment Practices, examines the entire employment period based on documents from her initial interview for the technical support position, compared to documents attached to her performance review 2 years later. These documents attached Appendix Y, Z, have the exact same job description but different pay classes. The documents indicate that the plaintiff was hired for Class C but paid under a lesser Class 8e. In the years that followed her hiring the pay stubs are missing the pay rate, suggesting concealment from outside compliance agencies. 21cv02226 was dismissed for failure to state claim and res judicata. Plaintiff provided new evidence to demonstrate wage discrimination and

fraud on the court in the prior proceedings.

Plaintiff states this is a new claim with new fact and a worsening violation, that could not be litigated previously citing Lawlor v. National Screen Corp. 349 US 322 (1955). Plaintiff also states that the evidence presented to the judge in 18cv02742 was fraudulent and provides evidence supporting that statement see Case:1:21-cv-02226-JPC Doc#: 6 Filed: 01/22/22, *Case:* 20-3079 Doc # 9-1 filed: 03/05/2020 and. Plaintiff offers additional evidence of fraud herein intended for litigation in 21cv02226.
The claim was prematurely dismissed on the grounds that the claim could have been asserted in the first action. Stating both cases arose for a set of fact culminating in her separation from Rockwell automation, which is false see Case: 1:21-cv-02226-JPC Doc# 18 Filed 02/22/22 page 11 . The reason plaintiff ended her employment at Rockwell Automation was the harassment and concerns for her safety as stated in the resignation letter(appendix UZ APP 177), stated to the judge in the cmc meeting (appendix UZ APP 173) and to the court of appeals. Her separation had nothing to do with her pay - As describe in 20- 3079 Document 9-1 page 16 (bottom). Plaintiff had no proof that her pay had suffered and certainly not to the extent and the length of time it had. all claims are dismissed

The Plaintiff filed a motion for reconsideration of 21cv02226 stating again that the claim was properly raised but were not litigated and could not be time barred per the Lilly Ledbetter Act and the judge's order stating it would not be litigated. (Case: :21-cv-02226-JPC Doc#: 20 Filed: 03/05/2022) (refer to question 3)
The dismissal was appealed Case:22-3244 Document: 6 File 05/04/2022-The Plaintiff argues the claim was

properly before the court but the Judges introduction of "Dixon" in the order and it's misapplication resulted in his decision not to consider the claim. Also, in conjunction with other acts and statements the Judge violated CJUS-
APR 73.
The judgement of the lower court was upheld stating the wage discrimination claim was litigated or should have been through amendment. The plaintiff filed a motion for reconsideration case:22-3244 Document: 21 File 11/22/2022 pointing out there was no need for amendment because the wage complaint was included in the 2017 and 2018 EEOC filing, properly raised in the initial filing with the court, and throughout the proceeding as the judge stated in his order and opinion- Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 8.

> *Throughout briefing for summary judgment, Townsend's filings have alleged other factual misconduct, including the cancellation of her health insurance and disparate pay structures.48 Townsend did not make these claims in her complaint and cannot use them.49 Townsend cannot rely on these events to form a basis for her claims in this litigation either.Title VII Violations*

He did not consider it part of the 2017 or 2018 EEOC charges despite the phase "Terms and conditions of employment" and "including but not limited to" (refer to question 3). Amending the complaint post judgement cannot change the judge's perception of what was included in the 2018 EEOC filing. Per fed. Civ. R.15(C)(1)(b) there was no path to amendment

because the discovery ordered in docket 58 was not new it had been presented to him in the Final Status meeting and he did not change his opinion at that time despite it being fraudulent (refer to questions 2 and 4). Also, the docket was closed 3 days prior with discovery outstanding. Therefore, the amendment could not have conformed to the evidence.

This establishes that the claim was presented but was not litigated because of the judge's failure to adhere to his own "rule of the court" and request the intake form or apply the definition of "Terms and Conditions of Employment" to an argument HE presented, not the defendant. Both judges agree that the issue of wages and insurance payments were claims, not previously litigated.

QUESTION 2

Should a judgement be vacated when one party presents fraudulent documents to the court, committing fraud on the court. In preparation for this appeal plaintiff identified extensive fraud in discovery documentation. Deliberate fraud with the intent to conceal the truth from a complainant, is addressed by: FRCP 37(b)(2)(A)vi(b) Failure to Comply with a Court Order.(2) *Sanctions Sought in the District Where the Action Is Pending.* (A) *For Not Obeying a Discovery Order* (vi) rendering a default judgment against the disobedient party
Scale Co. v. Computing Scale Co., 261 U.S. 399 (1923), United States v. Throckmorton, 98 U.S. 61 (1878), Davis v. Wal-Mart Stores, Inc., 93 Ohio St. 3d 488, 490 (Ohio 2001)

In addition to making false statements concerning charges filed with the EEOC, if the attorney has evidence provided from the plaintiff's discovery

establishing the facts but misleads the court in it's pleadings, provides false documentation to the court through discovery and that documentation is relied upon by the court to render judgement, would that judgement be considered on the merit?. Once proven to be fraudulent documentation would all charges in that suit be reopened for litigation excluding them from the doctrine of Res Judicata?

FRCP RULE 60(b) provides that the court may relieve a party from a final judgment and sets forth the following six categories of reasons for which such relief may be granted: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party;4) circumstances under which a judgment is void; (5) circumstances under which a judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. F.R.C.P. Rule 60(b)(1)-(b)(6). To be entitled to relief, the moving party must establish facts within one of the reasons enumerated in Rule 60(b).

Case: 1:18-cv-02742-JG Doc #:52 pg4 PageID 638)

Defendant relies on the fraudulent discovery document in her pleadings. Once the judge announced that the plaintiff would lose the lawsuit in the CMC meeting (Appendix UZ) the defendant responded by not participating in good faith with the discovery process- Hazel-Atlas Glass Co. v. Hartford-Empire Co., **322 U.S. 238** (1944). After a subpoenas request and several conferences, Rockwell submitted

fabricated discovery. During the Final Status meeting the judge asked the defendant if discovery produced any evidence of concern with wage discrimination -The defendant answered no, while presenting the chart, the plaintiff was not allowed to speak unless spoken to (Ref 1:2021cv02425) . While judge would not know the information is fabricated. All he sees is a bunch of numbers that all look about the same suggesting that all the employees received approximately the same merit increases. However, the information representing the Plaintiff's wages is fabricated. She has explained in the corrected wage chart see appendix H, F and G. She has provided demonstrations, paystubs, merit announcement letters and other wage documents to support these facts. It stands to reason if her wage information is fraudulent, so is the entire document. The discovery of the fraud was difficult task of reverse calculation and documentation review. 18 hours of possession of the document did not allow it to be discovered.

The chart is fraudulent in it's presentation and information as follows.

The statistical data provided states in the months directly before Mrs. Townsend's son died, in May 2017 she took 75 (which is false)
calls in one month while being assigned to 20 queues, while the white men were assigned to 1, (the only claim the judge would consider from the 2018 EEOC filing). Working 12-hour shifts on the weekends that comes out to 9 calls per day. While on FLMA the coverage emails show that at least 2 people and sometimes 3 were scheduled to cover those 4 calls over a 12-hour shift in her absence. That would be 1.3 calls in 12 hours per person. It also shows another employee-one of the men harassing her, took

74 calls but he only required 1 person to cover him during his absence. This is the fraudulent document the judge refers to in his judgement pointing to Mr. Blakemoore's denial that the queue assignment had no effect on the Plaintiff's workload see Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 pg.7- The judge bases his decision on the fraudulent statistical call data provided. The discovery documents referred to as docket 58 is fraudulent in the following manner. The years are offset until 2016. Example the year identified as 2009 is actually 2008, 2010 is 2009 and so on. The merit increase amounts are falsified. Where there are annotations of "Data not found and N/A" are the years that the plaintiff received no bonus and/or merit increase at all. In 2009 all the other employees of the group received 11.8% bonus and the Plaintiff received nothing. (Case: 1:18-cv-02742-JG Doc #: 53-1 Filed: 12/27/19 and Appendix K no EIP mentioned on the paystub). The subpoena requesting the salary information be collected directly for the internal computer system "E-connect" was denied and the plaintiff was left with an unauthenticated chart delivered at 5pm one day prior to the 11am Status meeting, the judge granted summary judgement immediately afterwards. Considering the corrections identified so far, see Case: 1:18-cv-02742-JG Doc #: 1 Filed: 11/28/18, it shows that the first complaint to her supervisor in 2008 she received no raise/merit increase. In 2009 when the complaint was made to the HR department she received no bonus. According to the chart everyone else receive $8,000 + bonus. Despite doing a great job as team lead, forced to take 50% of the calls for the "Entire" group (Appendix R) her rating was only achievement rating just as everyone else in the group but she did not benefit monetarily as they did.

Further validation of this chart revealed when it was time to calculate the monetary value of the end of year 2009 merit increase her hourly rate was decreased from 32.90 to 31.39 (compare Appendix I and Appendix K) which cancels 2.4 of the reported 4.8% (per the chart) and leaves the 2.4 merit increase she received for her end-of-year 2009 performance (Appendix M compared to I and K). The 31.39 rate was less that the 31.78 rate of 2007. The Reported 4.8% is what the other group employees received in 2008 when the plaintiff was lied to and told no one would receive a merit or bonus that year. The end-of-year 2009 merit increase can be verified by comparing the hourly rate of 2010 to Dec 2009(appendix M to K) The Plaintiff has stated that Rockwell Automation does not allow employees to discuss wages. In the 2003 merit letter the supervisor reminds the plaintiff that wages are not to be discussed with other employees (Appendix X).

2013 the merit increase was 1.3% per the bank statements comparing base pay statements between 2013 and 2014 not the 2.2% reported in the chart.

In the plaintiff's brief in opposition to the motion for summary judgement the plaintiff described a statement made by her supervisor in 2014 during a vigorous conversation concerning her merit increase (Case: 1:18-cv-02742-JG Doc #: 36 Filed: 10/18/19 8). She stated at that time the supervisor's response was "do you want me to take away for the men and give to you" despite her performance being better. She also stated she receive the lowest increase ever that year (Case: 1:18-cv-02742-JG Doc #: 1 Filed: 11/28/18 1 and Case: 1:18-cv-02742-JG Doc #: 36 Filed: 10/18/19 8). This is also mention in the 2017 EEOC intake form. The Defendant was in possession of this intake form when

the motion for summary judgement was filed. In the 2014 end of year merit announcement letter a merit increase of 1.25% percent was announced to the plaintiff, however she only received .6% per her bank statements.
2016 the Plaintiff received no bonus.
2017 merit announcement was after the EEOC filing.
2018 the Plaintiff received a merit increase and bonus despite only working 2 months out of the year.
This is why it is important to restate the facts of the previous case:

What is demonstrated is that once the Plaintiff complained about her white co-workers, she was ferociously attacked across multiple supervisors. her pay, her ability to increase her pay, and in some circumstances, such as sabotaging her ability to achieve KCS certification- even keep her job. 90% of the complaints in 18cv02742 were things that affected her pay directly or indirectly and spanned 5 different supervisors. Also, every retaliatory act she described were with one goal in mind, which was to diminish her income in any way possible, while benefiting the white men and creating an environment that she would want to leave. There were no single incidents, there was one continuous retaliatory effort as she stated, *Plaintiff argued Sosa 920 F.2d at 1455 in Case:* 20-3079 Doc # 9-1 filed: 03/05/2020.

Not properly evaluating an employee's performance and applying an appropriate merit increase could be the act of 1 person in a multibillion-dollar company. However, decreasing their hourly rate in the middle of the year requires collaboration between, the supervisor and manager, the HR department and the Payroll department. Not only is it intentional, collaborative discrimination but it is also Breach-of-

Contract and Embezzlement:

The entire document is an attempt to conceal how Rockwell embezzled 2,000 to 3,000 dollars, in small amounts yearly, from the plaintiffs pay. What appears as small miscalculation at 2 or 3% equates to $2,000.00 to 3,000 per year and much more when considering overtime. All merit amounts are cumulative. The 11.8% bonus was an $8,000 dollar theft.

20-3079 Doc # 9-1 filed: -3/05/2020 page – 9 (and all succeeding filings), in her assignment of errors (item 6) she spoke to the reliance of the judge on the document 58 and how it was presented to him in the Final Pretrial Status meeting. However, the fact that it was fraudulent and the extent to which the document was fabricated was only realized long afterwards requiring extensive research and collection of documents spanning 22 years.
Not only was the fraudulent document presented to the judge but the plaintiff relied on it in her pleadings (incomplete version) - Case: 1:18-cv- 02742-JG Doc #: 53-1 Filed: 12/27/18 pages 4, 7, 9, 11, 12, 16, 17 and 20-3079 pages 74 through 84. Other instances of fabricated documents (including but not limited to):
Case: 1:18-cv-02742-JG Doc #: 52 Filed: 12/20/19 general All statements are based on false discovery documents. Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 pg. 7. Judge Gwin states in reference to the only EEOC charge he would litigate:
"*Rockwell disputes that Townsend received disproportionate call volume. Rockwell cites to*

Investigator Edward Blakemore's phone volume review"
Plaintiff's responsive pleadings:

Case: 1:18-cv-02742-JG Doc #: 36 Filed: 10/18/19 pg5 "This configuration causes a disproportionate number of calls to be directed towards Mrs. Townsend" providing exhibit 1014 and Case:20-3079 Doc # 9-1 filed: -3/05/2020 page 9.

QUESTION 3

Would a Judge who circumvents the arguments between litigants, presenting his own argument, that benefits one litigant, have the responsibility of due diligence to ensure the argument is properly applied to the case and the procedure to do so is followed? When presenting his argument is done in a manner that would benefit, prejudice or interfere with the right to due process of the other litigant, be considered on the "merits"? Would the claims affected be subjected to the principles of Res Judicate in subsequent filings? When misapplying his argument causes omission of a claim that was properly before the court, causing the claim to go litigated, does it become the responsibility of the Plaintiff to attempt to correct his error through amendment? Should not it be required to wait until all outstanding discovery orders issued by the court are satisfied and time given for examination by the requesting litigant. In addition, full consideration of that evidence before the court and any supporting documents which would validate such a deviation from the standard rule of a higher court should be requested?
Ref: Case:20-3079 Doc # 9-1 filed: 03/05/2020 page 9 item 6, 21cv02226 Doc:6 and 22-3244 general.

18cv0247 the initial case resulted in summary Judgement for the defendant, Rejecting the standards of the Sixth Circuit Court, the reason was based on what the judge referred to as the "rule of this court" which restricts the complaint to only

charges that would be investigated by the EEOC charge filing document/Intake form, Citing Dixon v Ashcroft. In "Dixon" (and other citations within) the Sixth Circuit Court of Appeals reversed the trial court's decision and remanded the case back to perform the "Scope of the investigation Test" which requires examination of the intake form. The argument of "Dixon" was not presented by the defendant, it was presented without notice by the judge in violation of FRCP 56(f)(2) which states:
(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may: (1) grant summary judgment for a nonmovant; (2) grant the motion on grounds not raised by a party;or (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

Had the defendant presented this argument, plaintiff would have had the opportunity to present the intake form included on the evidence DVD submitted to the court Jan. 6, 2020. Not giving notice deprived the plaintiff of the ability to defend against it (see Case:22-3244 Document:14 Filed 06/27/2022-General)(Case:22-3244 Document: 9-1 pg 14)
820 F. 2d 194 – Vinson v. Campbell County Fiscal Court 6th Circuit 1987
Giving preclusive effect to state court judgments is, however, inappropriate "where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court." Allen v. McCurry, 449 U.S. 90, 101, 101 S.Ct. 411, 418, 66 L.Ed.2d 308 (1980); see also Haring v. Prosise, 462 U.S. 306, 313, 103 S.Ct. 2368, 2373, 76 L.Ed.2d 595 (1983); Thorburn, 758 F.2d at 1144.
Argued in Plaintiff's motion to continue *Case: 1:18-*

cv-02742- JG Doc #: 69 Filed: 01/10/20 (and in 21cv02226, and 20-3079) she points out that the second EEOC Charge form that reiterates the charges of the first EEOC filing, which joined the two filing together- *Case: 1:18-cv-02742-JG Doc #: 69 Filed: 01/10/20 pg7, Case: 20- 3079 Document: 11 Filed: 04/29/2020 Page: 11 and exhibit 2601/intake form, Case 20cv02226 Doc#6 and Case:22-3244 Document: 6 File 05/04/2022 pg 14).* The Plaintiff points to the wording of the 2018 EEOC charge and intake forms and the phrase "Terms and Conditions" as understood by both litigants. In *Case:20-3079 Doc # 9-1.* The plaintiff explains that she was not given the opportunity to respond to the "Dixon" defense nor was she given the opportunity to comment on the evidence received from the Docket 58(unaware of fraud at that time) magistrate ordered delivery on 1/7/20, The Docket was closed on the 1/5/20 Plaintiff submitted evidence on 1/6/20.

Case: 1:18-cv-02742-JG Doc # 66, page 6 recognizing the EEOC charge form/Intake forms required examination he simply relies on the statements, which he attributes to the defendant (that can't be located in any brief) stating there were no overlapping charges between the two EEOC filings. Rockwell actually argued all charges were in both EEOC filings -Case: 1:18-cv-02742-JG Doc #: 33 Filed: 10/07/19 pg.15. PageID #: 316 and Case: 1:18-cv-02742-JG Doc #: 39 Filed: 10/28/19 pg.7 -Stating "Plaintiff's claims are barred in their entirety" *and all are time-barred.* It was only after the magistrate mandated Rockwell to turn over the wage documents did the defendant refer to the "disparate pay" as a new claim.

The judge asks in the "opinion and order":

"The question, then, is whether any Townsend's second charge claims refer to events involved with her 2017 charge. Rockwell argues that Townsend's claim about her increased October 2017 call volume actually occurred earlier in 2017. And Rockwell says that Townsend's demotion claim actually occurred in 2015"

Comparing the Charge document (without the intake form) from 2017 to that of 2018 cannot answer that question, only the intake form from 2017 (which defendant was provided by the plaint in discovery) and the acknowledgement of the definition of the phrase- "Terms and conditions".
The plaintiff stated from the outset, *(*Case: 1:18-cv-02742-JG Doc #: 1 Filed: 11/28/18 2 of 9. PageID #: 2 , *Case: 1:18-cv-02742-JGDoc #: 36 Filed: 10/18/19 4 of 12 PageID # 529 and 530 with DVD exhibits, Case: 1:18-cv-02742-JG Doc #: 53 Filed: 12/27/19 1 of 2. PageID #: 677/*with exhibits, *Case:20-3079 Doc # 9-1 filed: 03/05/2020 page 12, 13 and 14)* that the increased call volume started in 2009 but through neglect and indifference and finally when the supervisors and managers codified it into the phone system, she then realized they were participating in the harassment - Case: 1:18-cv-02742-JG Doc #s: 1, 36 and 53 Case: 1:18-cv-02742-JG Doc #: 36 Filed: 10/18/19 5 of 12. PageID #: 530 Plaintiff provided 3 exhibits where she's experiencing a higher call volume than the men. But the judge advised in the CMC meeting that no evidence prior to the Oct 2017 EEOC complaint would be considered.
Case:20-3079 Doc # 9-1 filed: 03/05/2020 page 9 Exhibit H establishes a continuing violation. It appears the judge didn't review plaintiff's pleading at all and simply relied on statements from Rockwell.

In the Appeal Case:20-3079 Doc # 9-1 filed:

03/05/2020 page 9-1. The plaintiff questioned due process. **42U.S.C.1983/EQUAL PROTECTION CLAUSE/** The plaintiff contested the effects of the judge not giving adequate time to examine the outstanding wage document. She provides exhibits in two forms, a hard copy with attachments and on flash drive with links to the exhibits to easily access while reviewing the appeal document. She questions the judge's qualification to weigh her evidence (Anderson v Liberty lobby inc., 477 U.S. 242 (1986)). She argues the claims of wage discrimination set out in the initial filing 1:18-cv-02742- JG Doc #: 1 Filed: 11/28/18 PageID # 1, 11 -and expounded on that in docket 53-making a direct correlation to her complaints. Case:20-3079 Doc # 9-1 page 18 She points to fraudulent statistical call data provided in the defendants pleading concerning the 20-queue assignment and the judge's reliance on it in the judgement. In 20-3079 Doc 11 pg 15 plaintiff cites another case over which Judge Gwin presided, Tucker v Needletrades, Indust. & Textiles Emp 407 F.3d 784 (6th Cir. 2005). And in the footnotes of Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 in which he himself defines the terms and condition of employment, however he ignores this wording of the 2018 EEOC charge document – cited by plaintiff in Case:1:21-cv-02226-JPC Doc#: 6 Filed: 01/22/22 page 2 and 20-3079. There is no restriction to "Structural pay" as the judge stated.

https://www.dol.gov/agencies/ofccp/manual/fccm/key-words-and-phrases

US DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Terms and Conditions of Employment: *All aspects of the employment relationship between an employee and his or her employer, including, but not limited to, hiring, compensation, fringe benefits, leave policies, job placement, work environment, work-related rules, work assignments, training and education, and opportunities for promotion.*

The wage discrimination charge began to strengthen in 18cv02742 Doc: 53 establishing a direct correlation between her decrease in wages the years she complained internally to Rockwell supervisors and HR department. As the plaintiff waited for the defendant to comply with court orders the docket was closed on Jan 5, 2020 prior to the defendant's compliance with the court order and submission of the jan. 6, 2020 DVD- argued in Cases: 1:18-cv-02742-JG Doc #: 69 Filed: 01/10/20 and 20-3079 Doc # 9-1 filed: 03/05/2020 page 5, 20-3079 pg12 and 21cv02226 and cv22-3244. 42USC1983 Procedural Due Process Rights.

In an effort to demonstrate she was subjected to different terms and conditions as stated in the EEOC filings, she referenced exhibit 2601, submitted with the appeal filing, containing the charge document and the Intake form which shows that issues surrounding her pay, merit increases and career band had been reported to the EEOC in 2017 and again in 2018 under the phase "Terms and conditions of employment. For 2018 there is no intake form provided in the EEOC online processing of charges. However contrary to many other cases presented to the 6th district, including "Dixon" the case was not sent back to the trial court for the "Scope of the investigation Test". Despite submitting evidence DVD to the trial court on Janurary 6, 2020 and

stamped by the clerk's office, prior to the judgement it was not considered on the record (Case: 1:18-cv-02742-JG Doc #: 68-1 Filed: 01/06/20 1 of 1. PageID #: 796) the judge abused his discretion by withholding the evidence by closing the docket - Case:20-3079 Doc # 9-1 filed: 3/05/2020 page 9 item 6 page 11 plaintiff states the judge erred in not allowing her to speak about the discovery document 58, that showed her wages and merit increases had been affect by discrimination. Case:20-3079 Doc # 15 filed: 04/27/2021 general With the judgement stating the issues of pay disparity/wage discrimination would not be litigated in-Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 pg.8PageID 787, and the court of appeals affirming, the claim cannot be considered litigated.

Both 21cv02226 (Doc: 6, and 15)and 22-3244 the plaintiff argues that the complaint was properly before the previous court and again in 22-3244 supplies the EEOC documents to show the EEOC requirements were satisfied at that time. It was the judges erroneous argument of "Dixon" that caused the claim to go un-litigated (Case:22-3244 Doc:14 Filed:06/27/2022 pg 6)and it's application was contrary to previous cases in that court. Therefore, amendment was not required. (Refer to citations in Appendix AZ). A Plaintiff should not be required to argue against the Judge. Any necessity to amend the complaint was created by the judge's omission of the scope of the investigation test. Not by any unmet obligations of the plaintiff to include the claim. The plaintiff filed an appeal.

See Beloit v. Morgan, 74 U.S.619 (1868) citing *Henderson v. Henderson "held that any action to challenge that judgment could only be made by way*

of appeal.

_"Case 1:21-cv-02226-JPC DOC#: 6 Filed: 01/22/22, and DOC#: 15 Filed: 02/20/22 general and DOC#: 20 Filed: 03/05/22 general – The plaintiff argues: 1. because of the defendants success in delaying deliverance of the discovery document until the judge closed the docket, 2.the judges own words that the claim would not be litigated in 18cv02742. 3. A worsening condition-providing the exhibit representing the wage chart discovery document(doc 58) was fraudulent and discriminatory employment practices, 4. Per the Lilly Ledbetter Fair Pay Act(it could not have been time barred) and the judges intervention with "Dixon v Ashcroft", establishes the un- litigated wage discrimination as a new/un-litigated claim in 21cv02226 (argued Case 1:21-cv-02226-JPC DOC#: 6 Filed: 01/22/22 pgs 5 and 6). And questions whether the judgment was "on the merits-through out these proceedings. There was no need to amend the complaint, the claim was in the initial filing, any necessity to amend was caused by the surprise of "Dixon" and the misinterpretation of the 2018 EEOC charge form.

Case 18cv02742 was amended prior to discovery phase to correct the filing staute. There was no path to amending the complaint per FRCP 15, the docket was closed preventing the outstanding discovery and plaintiff's evidence from entering - FRCP Rule 79. And there was no reason to amend the complaint - Argued 20-3079 Doc # 9-1 filed: 03/05/2020, Case:22-3244 Doc:# 6 filed 05/04/2022 Doc #:14and specifically Case 1:21-cv-02226-JPC DOC#: 15 Filed: 02/20/22 page 3- where the plaintiff points to the complaint filing clearly showing that the plaintiff listed wage discrimination charges in her 18cv02742 complaint, directly and indirectly, but the judge simply states

she did not, in his order and opinion(Case: 1:18-cv-02742-JG Doc #: 66 Filed: 01/08/20 8 of 14) . Here the judge is not referring to the EEOC Charge form, he is talking about the complaint filed with the court- which is blatantly untrue.

QUESTION 4

Plaintiff did not receive full and fair opportunity to litigate the wage discrimination claim. This was due to the actions of the court/judge. Setting the amendment date, withholding plaintiff's evidence, misstating facts by influencing what she could argue in her pleading in reference to "Time Barring" then asking the defendant if there was "overlap" between the filings in his order, blocking the new evidence from being entered into the record prior to his judgement, and surprising the plaintiff with "Dixon" in his final judgement.

Even if amending was necessary, the case could not be amended to conform to the evidence because the evidence was withheld and prevented from the docket. And by setting the amendment date was a clear signal that he would block that as well.

Conclusion

The Plaintiff established her claim in case 1:21:02226 by providing evidence showing the year she made a formal complaint to the HR dept, despite being considered a great team leader and taking the majority of the calls directed to her GROUP she did not receive a merit increase that represented her performance. In fact it was 50% lower than her white male counter parts.

She demonstrated in cv-02226 the 2nd action was a different claim and cause of action. The summary judgement of cv02742 was achieved by falsified data and that fraud, just as they did during

her employment and she listed this in her cv02742 complaint to the court.

She has established that the wage discrimination claim went un-litigated and is not and should not be subjected to the principles of Res Judicata.

Her right to due process was infringed upon and she did not receive a full and fair opportunity to litigate her claims.

The Plaintiff fulfilled all obligations to bring the issue of wage discrimination to the court in the initial filings, motion for reconsideration and Appeal. It was not incumbent upon the Plaintiff to attempt to correct an oversight of the court by attempting to re-add the claim through amendment.

The Plaintiff requires, deserves and is requesting the review of the Supreme Court of the United State.

Respectfully Submitted,

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