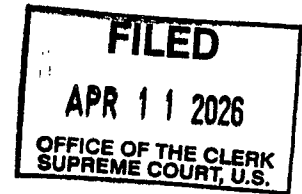


25-7506
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



SHEILA FOSTER,
Petitioner,

v.

ROBERT JESEL; MIKE KLEMM; IAMAW DISTRICT LODGE 141,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the six-month statute of limitations for a duty-of-fair-representation claim under the Railway Labor Act, 45 U.S.C. § 151 *et seq.*, is subject to equitable tolling when a union and its representatives repeatedly misrepresent that they are pursuing arbitration of an employee's grievance, thereby inducing the employee's reasonable delay in filing suit.
2. Whether a district court abuses its discretion by dismissing a complaint with prejudice on statute-of-limitations grounds, without permitting discovery or leave to amend, when the plaintiff has pleaded specific facts showing ongoing union misrepresentations and diligent inquiry that could support tolling under *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), and Fifth Circuit precedent.
3. Whether the Railway Labor Act's duty-of-fair-representation doctrine preempts state-law claims for breach of contract and misrepresentation when those claims arise solely from a union's failure to perform representational duties expressly set forth in a collective-bargaining agreement, or whether courts may instead apply uniform federal standards without selective invocation of preemption or choice-of-law principles.

LIST OF PARTIES

Petitioner: SHEILA FOSTER

Respondents: Robert Jesel, Mike Klemm, and IAMAW District Lodge 141.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. App. 1a-5a) is unreported and is reproduced in the Appendix hereto. The final judgment of the United States District Court for the Southern District of Texas (Pet. App. 6a) is also unreported and is reproduced in the Appendix.

JURISDICTION

The Fifth Circuit Court of Appeals entered its judgment on January 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

29 U.S. Code § 160 (b): "Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an

answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28."

STATEMENT OF THE CASE

Petitioner Sheila Foster worked for United Airlines and was represented by Respondent IAMAW District Lodge 141 under the Passenger Service Agreement (PSA), the collective-bargaining agreement governing her employment. After sustaining a serious on-the-job knee injury, Foster requested reasonable accommodations and transfers. United denied those requests and terminated her employment. Foster then filed a formal grievance with her union representative, Respondent Robert Jesel.

From August 2019 through September 2022, union officials repeatedly assured Foster that her grievance would be arbitrated. They told her arbitration was "scheduled," that the union "100% agree[d]" with her position, and that they "disagree[d]" with [United's] decision to terminate" her. These representations continued even after Foster expressed intent to sue United; the union informed her that her claims would be "placed on hold" until any litigation settled. Foster relied on these assurances and delayed filing suit.

On September 2, 2022, Jesel notified Foster that the union had closed her file and would not pursue arbitration. (5th Cir. Op. at 2). Foster filed this action on September 9, 2024, alleging breach of contract and misrepresentation. She invoked federal-question jurisdiction because the claims arose from the union's breach of representational duties under the PSA, a matter governed by the Railway Labor Act (RLA).

The district court dismissed the complaint with prejudice, holding that Foster's claims were duty-of-fair-representation (DFR) claims under the RLA subject to a six-month statute of limitations that had expired. (Pet. App. 6a; 5th Cir. Op. at 2). At the March 11, 2025 hearing, Foster's counsel argued that repeated misrepresentations warranted equitable tolling and further factual development. The district court rejected that argument.

The Fifth Circuit affirmed. It held that Foster's state-law labels could not evade RLA preemption because the claims rested entirely on the union's alleged breach of representational duties under the PSA. (5th Cir. Op. at 3-4). On the limitations issue, the court ruled that the six-month period began running on September 2, 2022, when Foster received clear notice that arbitration would not be pursued. Any earlier misrepresentations (which ended by September 16, 2021) could not toll the period after that date. Dismissal with prejudice was proper because amendment would be futile. (5th Cir. Op. at 4-5).

REASONS FOR GRANTING THE WRIT

This case presents three recurring and important questions of federal labor law that warrant this Court's review. The decision below (1) improperly forecloses equitable

tolling of RLA DFR claims despite specific allegations of union misrepresentations that induced delay, (2) permits district courts to dismiss such claims with prejudice without any factual development, and (3) blesses selective application of RLA preemption and choice-of-law principles. Each issue conflicts with this Court's precedents and undermines the uniform national labor policy Congress enacted in the Railway Labor Act.

The Fifth Circuit's refusal to apply equitable tolling to RLA DFR claims based on union misrepresentations warrants review.

This Court has long recognized that the duty of fair representation is a federal obligation implied from the RLA and the National Labor Relations Act. *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944); *Vaca v. Sipes*, 386 U.S. 171 (1967); *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). In *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983), the Court borrowed the six-month limitations period from National Labor Relations Act, § 10(b), as amended, 29 U.S. Code § 160 (b), for hybrid DFR claims and emphasized that equitable doctrines remain available to prevent injustice.

The complaint here pleads exactly the facts that should trigger tolling: repeated, affirmative misrepresentations by union officials that arbitration was forthcoming, that the union agreed with Foster's position, and that her claims were being actively pursued, assurances that continued until the very day the file was closed. Foster relied on those statements and only learned the truth when Jesel sent the September 2, 2022 closure notice. The Fifth Circuit nevertheless held that any pre-2022

misrepresentations could not toll the period after the “clear notice” date. (5th Cir. Op. at 5).

That bright-line rule cannot be squared with *Del Costello* or with the equitable principles this Court has applied in labor cases. Lower courts are split on the precise contours of tolling in DFR actions involving union concealment or misrepresentation. Some circuits permit tolling when the plaintiff shows reasonable reliance on union assurances; others, like the Fifth Circuit here, impose a rigid accrual rule once any notice is received. This Court should grant certiorari to clarify the standard and restore the equitable balance Congress and this Court intended for DFR claims.

■ Dismissing a DFR complaint with prejudice, without discovery or amendment, when tolling facts are pleaded is an abuse of discretion that merits review.

The district court and the Fifth Circuit acknowledged Foster’s tolling allegations yet dismissed the case with prejudice under Federal Rule of Civil Procedure 12(b)(6). (5th Cir. Op. at 5 (citing *Doe 1*, 150 F.4th at 677)). That approach contravenes *Iqbal* and *Twombly*’s command that a complaint need only plead “factual content that allows the court to draw the reasonable inference” of liability. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Foster’s complaint does far more: it details specific dates, communications, and the union’s own contradictory statements.

By cutting off discovery into the exact nature, frequency, and effect of the misrepresentations, the courts below prevented Foster from developing the very facts that could establish tolling. This Court has repeatedly cautioned against premature

dismissal of claims that turn on equitable considerations best resolved after some factual development. Review is necessary to prevent district courts from converting the liberal pleading standard into an insurmountable barrier for employees who rely in good faith on their union's representations.

The selective invocation of RLA preemption and choice-of-law principles undermines the uniformity Congress sought in the Railway Labor Act.

The Fifth Circuit correctly noted that Foster's claims arise under the RLA and are therefore governed by federal law. (5th Cir. Op. at 3-4). Yet the opinion below leaves unresolved Petitioner's core argument that unions and carriers cannot selectively invoke RLA preemption when it benefits them while relying on state or other federal law when it does not. This "cherry-picking" is inconsistent with *Thomas v. LTV Steel, Inc.*, 34 F.3d 221 (5th Cir. 1994), and with the uniform federal scheme mandated by the RLA.

The issue recurs frequently in airline and railroad labor disputes. Employees are told their claims are fully preempted by the RLA's grievance machinery, until that machinery fails them, then face the same preemption as a shield against any remedy. Certiorari is warranted to confirm that RLA preemption is not a one-way ratchet but must be applied consistently to protect both the statutory grievance process and the employee's federal right to fair representation.

This case is an ideal vehicle.

The facts are clean and fully developed in the record. The Fifth Circuit's decision is final. The legal issues are squarely presented and have broad implications for the

millions of workers covered by RLA collective-bargaining agreements. No vehicle better suited for resolving these recurring questions is likely to reach this Court soon.

CONCLUSION & PRAYER FOR RELIEF

The petition for a writ of certiorari should be granted.

Dated: April 13, 2026

Respectfully submitted,



Sheila Foster, Pro Se