In the

Supreme Court of the United States

UNITED PARCEL SERVICE, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 80-169
	)	
WILLIAM MITCHELL	)	
	)	
	)	

Washington, D.C.
February 24, 1981

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ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

UNITED PARCEL SERVICE, INC., Petitioner,	
v.	No. 80-169
WILLIAM MITCHELL	

Washington, D.C.

Tuesday, February 24, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:10 o'clock a.m.

APPEARANCES:

BERNARD G. SEGAL, ESQ., Schnader, Harrison, Segal & Lewis, 1719 Packard Building, Philadelphia, Pennsylvania 19102; on behalf of the Petitioner.

DAVID JAROSLAWICZ, ESQ., 2 Lafayette Street, New York, New York 10007; on behalf of the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in United Parcel Service, Incorporated, against William Mitchell.

Mr. Segal, you may proceed whenever you are ready.

ORAL ARGUMENT OF BERNARD G. SEGAL, ESQ.,

ON BEHALF OF THE PETITIONER

MR. SEGAL: Mr. Chief Justice, and may it please the Court:

The facts of this case are very simple. The Petitioner, United Parcel Service, was charged with having discharged unfairly an employee, who was charged with having falsified his timecard and claiming payment for time that he did not work. His union took his case through the grievance procedure, all the way to arbitration before a joint panel, regularly constituted, which, under the collective bargaining agreement issues awards which are final and binding.

Seventeen months later, Mitchell, the Plaintiff, sued United Parcel Service and the union under Section 301 of the Labor Management Relations Act, seeking reinstatement and back pay, charging that the union had failed to represent him fairly in the arbitration proceedings. Both parties moved to dismiss, the District Court did dismiss, the Court of Appeals reversed, and held unlike the District Court which

says that a statute of limitations of 90 days which applied to actions to vacate arbitration awards, does not apply -- but rather, the regular statute of limitations applying to contract claims did apply. The petition for certiorari was then filed by the employer only. It involved --

QUESTION: The union, Mr. Segal, did not file?

MR. SEGAL: The union did not file.

QUESTION: And does the judgment stand, then, as to it?

MR. SEGAL: I would suppose that the judgment stands and that the case would be remanded unless this Court were to order otherwise, which on occasion it has done, but very rarely.

The --

QUESTION: Well the union remains a party to the case though?

MR. SEGAL: It is a party to the case.

QUESTION: It's a respondent, isn't it?

MR. SEGAL: It is a respondent in the case, just as it has been.

QUESTION: Well isn't it entitled to file a brief for or against the judgment below?

MR. SEGAL: It has done so, we have been in consultation with the union and while I am not here to argue its cause, if the Court should have any questions I would endeavor

to answer them.

QUESTION: Well Mr. Segal, if you prevailed, what would be the status of the case against you?

MR. SEGAL: If we prevailed, it would be up to this Court and there have been differences on this Court, as Mr. Justice Brennan, you know, quite recently on this kind of issue, on whether they are divisible, whether they should be divisible, whether the Court should, itself, ordain a rule, if it were finally to get around to what the dissenters most recently said I guess, in the Occidental case. Then my guess is, it would apply it to both. Otherwise, the Plaintiff would be out by virtue of the 90 day statute of limitations; as to us, it would go back on a remand as to the union. While the petition was pending the Third Circuit decided the Liotta case, which was really on all fours with what the District Court did -- held that a 90 day statute in these very facts would apply. The case has very real significance, very important significance in labor management relations throughout the United States and the potential impact may best be seen, perhaps by the fact that the International Brotherhood of Teamsters with its almost two million members and its 80 to 100 thousand collective bargaining agreements, has filed a brief amicus curiae and that the AFL-CIO with its 15 and 1/2 million members has likewise filed a brief, taking very strong positions.

QUESTION: But different?

MR. SEGAL: But different. Quite different. But both of which would have the Plaintiff out of this Court.

QUESTION: And the union?

MR. SEGAL: And the union, correct. I start with the proposition that this Court has long favored arbitration as a fair, fast and final --

QUESTION: Well if we applied that same notion to joint board decisions --

MR. SEGAL: Yes, Mister --

QUESTION: This wasn't arbitration?

MR. SEGAL: This was an arbitration in terms of our agreement with the --

QUESTION: Well, it was the end of the line, and --

MR. SEGAL: And it was the end of the line, --

QUESTION: But there was not an independent arbitrator?

MR. SEGAL: This Court has expressly stated that a joint panel decision is an arbitration award.

QUESTION: Wasn't that in the Railway Labor Act context though, Mr. Segal?

MR. SEGAL: No, it was -- Justice Brennan, it was in a Railway Labor Act, it was in a seaman's case and I have a vague recollection that it was in a teamster case, but I'm not sure. However, no one has ever questioned that, the

conclusiveness and the collective bargaining agreement makes it very clear that that is as final and binding as if it went to arbitration.

In 1960, this Court decided the landmark trilogy of steelworkers cases. And that contains of course, the leading statement that the role of the courts must be to encourage arbitration of disputes in labor management negotiations -- and not to substitute their views on the merits of contract claims for the views of the arbitrators. And that's been emphasized throughout and we think that is important in this case.

Hines v. Anchor Motor Freight established that Section 301 actions might be brought against an employer and a union, although the alleged breach was by arbitration; that was the first case and that's why I mentioned it. But I might say that no statute of limitations was involved in the Hines case, and I think anyone who reads the case would feel that if there were a statute it would have been tolled by virtue of the really monstrous facts there: an employee having been found guilty, when two years later a clerk in a motel admitted that he had stolen the money and not the employee.

Now, then came Hoosier and I think that's about the last case I want to mention, because that's a case which although involving neither arbitration nor conduct that

would have been an unfair labor practice, did opt to look to the state for the appropriate limitation period. I mention it only because it was the first case and following the procedure mandated by Hoosier, that's what was done here, on the authority of that case.

Mitchell's claim was a suit, we maintain, to vacate an arbitration award, to say that if the arbitration award was still outstanding and as final and binding as indeed it is, Mitchell would simply have no cause of action.

QUESTION: Well wasn't Hoosier some time before?

MR. SEGAL: 1960.

QUESTION: So it was before Hines, a good deal before Hines?

MR. SEGAL: Yes. But Hines' real significance, I think, Mr. Justice White, is it was the first case where an arbitration was gone into and overturned. The sanctity of arbitration -- there were a lot of articles at the time; whether that was going to be seriously affected but it wasn't and I think the reason it wasn't is that as I say, if the issue had been a statute of limitations, it would have definitely been tolled under those facts.

QUESTION: Hoosier involved, as I remember, a claim for breach of a collective bargaining contract under Section 301. Not -- it didn't involve arbitration, did it?

MR. SEGAL: Hoosier?

QUESTION: Hoosier.

MR. SEGAL: Hoosier did not.

QUESTION: No. It was a claim -- under 301.

MR. SEGAL: It involved neither arbitration nor conduct that would have been an unfair labor practice, that is --

QUESTION: Right, merely a breach of a collective bargaining contract.

MR. SEGAL: Right, precisely.

Now, prior to this case, every district court in the country that had tried the issue, and I think it's significant because they know right at the scene of the action how important arbitration and the sanctity and the continuance of arbitration instead of strikes, is; every one of them, except the court that was reversed in the Liotta case, over the years, has decided on a 90-day statute of limitations and has decided that any such attacks, are attacks on the award unless you get rid of the award -- you simply can't proceed any further. It stands as an absolute bar.

QUESTION: Well Mr. Segal, the 90-day -- what's the source of the 90-day --

MR. SEGAL: The 90-day is the New York statute --

QUESTION: Yes.

MR. SEGAL: -- applying to arbitration.

QUESTION: But you're saying, every district court around the country, they were applying their own state statutes, I take it --

MR. SEGAL: Well Your Honor, around the country, there are 42 --

QUESTION: Yes.

MR. SEGAL: -- statutes, and 37 of them are --

QUESTION: Are 90 days.

MR. SEGAL: -- for 90 days or less. Now three of them are for the term of court --

QUESTION: Anyway, anyway, they applied a statute that relates to overturning arbitration agreements?

MR. SEGAL: There's only one statute that's a year. Everybody else is 90 days, except for one for 100 days.

QUESTION: But they all borrow, don't they, each district court borrows the appropriate state statutes?

MR. SEGAL: Yes, yes, Justice Rehnquist.

QUESTION: How many statutes are less than 90 days, Mr. Segal?

MR. SEGAL: Five -- wait a minute, I think there are five; it's three or five.

QUESTION: Well there's no point made anyway that the 90 days is too short?

MR. SEGAL: Well, I'll come to that in a moment, if

I may. I just want to point out the Plaintiff's position here. The Plaintiff's position has now shifted somewhat, from the 6-year statute that he tried in the courts below to a three-year statute which he takes the position, would apply to the union but not the employer, because it involves malpractice for instance and that can't apply to the employer and so on.

Then he takes the position that if the United Parcel were the Plaintiff in a Section 301 action, only a 90-day statute would apply. But somehow if it becomes the Defendant a six-year contract statute applies. And that is the situation in which we now find ourselves. Now I think it's significant that even the Court below and the only other Court that refused to apply a 90-day statute of limitations, the Sixth Circuit, said and I quote them: that the effect of a judgment for the discharged employee -- I substituted the words discharged employee -- the effect of a judgment for the discharged employee would be to nullify the arbitral decision. That's the precise language quoted by both those courts; the only two that have opted for a longer statute.

I think where the Court of Appeals went wrong was in focussing on the underlying claim rather than the relief sought, and said the underlying claim is the collective bargaining agreement. And since that's a contract, why we

move right over to that word contract in the six-year statute.

QUESTION: Well are you saying that this is in substance, Mr. Segal, a claim of ineffective assistance by the union? But described in some other terms in the complaint?

MR. SEGAL: Yes. It comes a little curiously, because the very day after the arbitration had been submitted, just in passing I might say, the Plaintiff wrote a letter to the president of the Teamsters, Joe -- Joe Purcell and Donald Mason -- business agents for the local, have done a tremendous job in my behalf, however, because of the company's unreasonable position, I have been compelled to hire an attorney to protect my civil rights. And I might say, he hired that attorney the day of the arbitration award. There was no hardship here, to a 90-day, if he'd gone ahead with it. But he waited for some reason for 17 more months and then changed his position that the union had not given him a faithful representation.

We believe --

QUESTION: Mr. Segal, what statute of limitations usually applies around the country to claims of unfair representation, just against the union? Suppose this suit had been filed only against the union, --

MR. SEGAL: The 90-day statute now, it happens --

QUESTION: Well, it's -- he wouldn't be -- have they applied that 90-day --

MR. SEGAL: 90-day arbitration award --

QUESTION: Yes.

MR. SEGAL: The 90-day statute. The District Court's -- Justice White.

QUESTION: So they've applied, whether they are suing the union alone or with the employer?

MR. SEGAL: Yes. But I would say that --

QUESTION: And what if there's only --

MR. SEGAL: -- it's very unusual for them not to include the employer as a favorite target.

QUESTION: Particularly after Hines v. Anchor Motor Freight.

MR. SEGAL: Particularly -- that's correct, Mr. Justice Rehnquist. So we feel that having failed to file this action under the 90-day statute that he just isn't in this Court. We believe that -- I started to say, about the substantive claim -- the reason I believe that that's a flaw in the reasoning of the Court is that every arbitration has an underlying claim and if you're not going to worry about procedure at all and you're going to look at the underlying claim, then there is no arbitration really, involving an employee that doesn't have an underlying claim of contract. So all these decisions would have to be no-no.

They now go to the contract 5 or 6 years, in virtually all the states, and the fact that there was an arbitration is just washed out. I submit to Your Honors that if that ever happened, we'd go back to strikes in place of arbitration in the solution of industrial disputes in this country.

QUESTION: Or possibly we'd go back to Congress and say maybe Congress ought to enact the statute.

MR. SEGAL: Yes, only that takes a little while, Mr. Justice Stevens, I have found in my experience. And --

QUESTION: Ultimately they did it in the antitrust area, though, as you know?

MR. SEGAL: Yes, that's -- I should say that usually takes a little while.

QUESTION: Mr. Segal, have any of the -- have any suggestions ever cropped up in any of these cases before, that Congress has already enacted a statute to --

MR. SEGAL: There's a lot of -- briefs --

QUESTION: The suggestion is, in this case, that Congress has already adopted the statute, 10(b).

MR. SEGAL: The 10(b) and that of course would involve an unfair labor practice, and there's a little difficulty in applying that to the employer. And you run into a whole gamut of reasoning, I would say that frankly if the Court and the federal government generally were to want

leave the multiplicity, as you, Mr. Justice White, urged way back in Hoosier, of 50 states, that probably that would be the best place to go. Some people think the best place to go would be, to use the analogy -- for this Court to use the analogy of the U.S. Arbitration Statute, often called the Federal Arbitration Statute which has a 90-day.

Everybody who has opted, as I say, it isn't only the district courts, it isn't only the legislatures, but the Congress has opted for 90 days.

QUESTION: Well isn't the theory under 10(b) is that as applied to a case like this, that if you want to reopen the result of a collective bargaining procedure, you should do so within six months?

MR. SEGAL: That's exactly it.

QUESTION: And that this is collective bargaining?

MR. SEGAL: That's precisely the reasoning and there's a great amount of support in logic, and in labor management practice for that view. I certainly don't decry it. We're here on a petition asking for the 90-day, but I would scarcely leave in mourning if the Court opted for the six months. And I think, more importantly, labor and management, preferring the shortest possible period that's fair and 90 days, federal and state, has been regarded as a fair time. Now --

QUESTION: As a practical matter, Mr. Segal, in

terms of corporate accounting purposes, perhaps requirements of the SEC, on every discharge case would the -- either good practice or SEC demands require that the corporation set up a contingency reserve for a suit that might come 5 years and 11 months afterward?

MR. SEGAL: Mr. Chief Justice, half my professional life has been in the field of labor relations. And as a former associate, sometime opponent, sitting on the bench knows, Mr. Justice Brennan, I would say that if we go to a six year, labor management relations become impractical in America. We're talking here about a discharge. We have contracts that are 1, 2 or 3 years of duration. It would mean that when you sit down to negotiate a contract out there, forget discharges -- you have serious arbitrations on seniority rights, what are the seniority rights -- on meanings of clauses, this point is made very well in the Teamster's brief, and likewise in the AFL-CIO brief. You would have chaos in labor relations if we had to sit around in labor management relations for the first time six years, so that when you come to a one-year contract you've got five years of arbitration outstanding where you're not sure of whether what the arbitrator said a contract means in broad, important means, whether that will hold or won't hold. So that its impact is very large indeed. Now, there's a small point I'll just mention in passing, the

Court of Appeals was just in error in holding that Mitchell had no standing to sue under New York State law. He lost sight of the case of Vaca v. Sipes, decided by this Court; there was an appellate division case too, it's taken up fully in our brief, and I mention it only in passing. But the Court, curiously, and I must say with the greatest of deference to the bench, which I hold in high regard, that I cannot understand the Court's emphasis on the unfairness of a 90-day statute.

QUESTION: Mr. Segal, turning to the last paragraph of the Court of Appeals' opinion in this case, the sentence on page 813, where it says applying the 6-year limitation period of 213(2) provides for relatively rapid disposition of labor disputes without undermining the employees ability to vindicate his rights through 301 actions. Do you understand that?

MR. SEGAL: I though it was a misprint, most frankly, Mr. Justice Rehnquist. I reread the opinion so that it is -- I do not understand that, and I do not understand how, as I say with the greatest of deference, three judges sitting in conference in the face of the fact that every legislature that has acted has decided 6-5-4-3-2, all are too long, but the Congress of the United States has so decided that every one of the district courts that decided the case, other than the Liotta, were reversed, would

sit there and bemoan the unfairness to employees of a 90-day statute and yet, that is a major factor in its opinion. It has this fact I just mentioned, the lack of standing which is certainly erroneous, it has that this would be basically unfair and what it's saying is that the policy of labor management relations in America is basically unfair, that what unions and management want is basically unfair. That what the legislatures of the country have virtually unanimously opted for is unfair; that what the Congress of the United States said in at least three statutes, 90 days is unfair. If it just upped the statutory interpretation, I'd say, well it's an error. It's an erroneous statutory interpretation because of forgetting this underlying basis -- theory and being misled by it. This leaves me, as the sentence that you quoted, Mr. Justice Rehnquist, nonplussed.

Now, I point out to this Court that apart from the unfairness, just being --

QUESTION: Mr. Segal, on this question of unfairness, it's a little bit of an unusual case because we have the union which, if we accept the allegations of the complaint and the theory of the complaint, has violated its duty of representing the employee fairly --

MR. SEGAL: Well we think it should have a section 301 suit to test that.

QUESTION: But it must file within 90 days?

MR. SEGAL: Within 90 days, that's right.

QUESTION: What if the facts that form the basis of the claim of unfair representation do not come to the attention of the employee within the 90-day period?

MR. SEGAL: Well then you have the tolling of the statute.

QUESTION: Does the New York statute provide for tolling of the 90-day period?

MR. SEGAL: Yes, and incidentally so does the federal statute, so does the -- Uniform Act.

QUESTION: Well because we're relying on the New York statute here. And there is a doctrine in New York that the 90-day suit to set aside an arbitration award is tolled --

MR. SEGAL: Mr. Justice Stevens, as I understand it, it's a right which a plaintiff has absent statutory provisions for tolling; that if you can demonstrate fraud or misconduct -- but it does have it there, because it says that you can set aside the award in three contingencies, one is misconduct.

QUESTION: Well I understand that the tolling for fraud is one thing, but it isn't always true that the mere lack of knowledge of the facts on which your cause of action is based is a sufficient ground for tolling.

MR. SEGAL: No, I agree with that.

QUESTION: And that's what might be involved in this kind of case.

MR. SEGAL: In such a case, Mr. Justice Stevens, you weigh the public considerations and the public consideration for the 90-day as opposed to a six-year labor management relation, is so much greater than the situation of the employee who sits on his rights -- if he doesn't sit on his rights in the first place, most arbitral boards have shown that they will reconsider the matter. There is nothing that is -- these are managements and labor representatives and they're not heartless, so we can assume that if it went to them they would -- this is a situation where a man just left his job where 7 supervisors -- and each filed statements that they saw him leave and he doctored up his record. Well in this case, I would say the 90 days is a good rule.

QUESTION: Well of course if the facts are that clear you don't really need a statute of limitations, do you?

MR. SEGAL: That's precisely -- well, I don't know, the facts aren't that clear five and a half years later.

QUESTION: He has this burden of course, not you.

MR. SEGAL: The supervisors are gone, things have changed. Well, I want to leave myself some time --

QUESTION: May I just ask one question, Mr. Segal?

MR. SEGAL: Yes.

QUESTION: You recall that in Hoosier, there's a footnote on this, footnote 9 -- what do you suppose that means? Other questions would be raised if the case presented a state law characterization of 301 suits reasonably described the nature of the cause of action, but required application of an unusually short or long limitation period, for example -- under the New Mexico statute, where it must be commenced within 60 days following the date of discharge.

MR. SEGAL: I read that, and I thought it was just trying to leave the door open in a kind of excessive question; that's how I read it.

QUESTION: You don't think it reflects upon the fairness, at least, of the 60 day statute?

MR. SEGAL: Oh, yes but the Court had no facts before it, it didn't know what the Mexican statute provided for and neither do I. So that, Your Honors, as I leave you with the fact that what the Plaintiff seeks here is precisely what he sought in the arbitration award, before the Arbitration Panel, his objective is the same, his motive is the same and unless he gets rid of that, he cannot prevail and

he's too late to get rid of that.

MR. CHIEF JUSTICE BURGER: Mr. Jaroslawicz.

ORAL ARGUMENT OF DAVID JAROSLAWICZ, ESQ.,

ON BEHALF OF RESPONDENT

MR. JAROSLAWICZ: Mr. Chief Justice and may it please the Court: Whatever the statute of limitations may be in a section 301 claim, it is not the statute of limitations to vacate an arbitration award. At least, insofar as the employee goes and that's Mr. Mitchell, or any other American worker, and I think it strange to see here today, labor and management lined up on one side and nobody on the side of Mr. Mitchell, and saying, if he claims sometbing is wrong, give him a forum to have his complaint heard. If this were true--

QUESTION: Isn't that the -- doesn't that permeate the whole structure of federal law on industrial relations, to resolve matters as quickly as possible?

MR. JAROSLAWICZ: Absolutely, Mr. Chief Justice. And that's precisely the point. In those cases where the employee has a chance to be heard in the arbitration and the union doesn't sell him out, then he has no 301 claim in the first place. The only time he ever gets to a section 301 claim is where he has a more than probable showing that the union sold him out, that he never had a hearing below and then his forum is the courthouse. Until he can get by those two basic standards, he doesn't have a 301 claim;

then the arbitration is binding.

QUESTION: Is that an unfair labor practice on the part of the union?

MR. JAROSLAWICZ: It might be construed an unfair labor practice yes, Your Honor.

QUESTION: Well what is it if those two events occur; that the union sells him out and he then has a forum in the courthouse, what is the nature of his action, what is it for and what statute of limitations is it governed by?

MR. JAROSLAWICZ: I believe, Justice Rehnquist, that it's a statutory claim, and I think it's most analogous to a 1983 action under the civil rights law. If you take, for example, an employee who works for an agency of some sort, state agency. And he has outspoken views on abortion or minority rights, which his supervisor doesn't agree with and he fires him for that. He then goes ahead and files a 1983 claim, which, similarly to Section 301, has no built-in statute of limitations.

QUESTION: But United Parcel Service isn't a state agency, is it?

MR. JAROSLAWICZ: No, but United Parcel Service, Justice Rehnquist, is his employer. And there's a collective bargaining agreement, and --

QUESTION: There's no 1983 claim, because --

MR. JAROSLAWICZ: No, there was no 1983 --

QUESTION: -- it has to be under color of state law.

MR. JAROSLAWICZ: -- claim, no, no. This case does not have a 1983 claim, Your Honor.

QUESTION: No, it couldn't.

MR. JAROSLAWICZ: I'm simply saying that the most analogous situation is that of a 1983 claim where all the Courts have said that the statute of limitations to be applied is the state statutes for a claim upon a statutory claim, which in New York is three years, in other states it might be two years.

QUESTION: Well my question as to whether or not it's an unfair labor practice was prompted by the amicus brief filed in this case by the AFL CIO, which suggests that the proper statute of limitations is that supplied by Section 10(b) of the Labor Act.

MR. JAROSLAWICZ: Which would be, I believe, the six month statute.

QUESTION: A six month statute.

MR. JAROSLAWICZ: Which is what they are opting for. And I don't believe it can be, Your Honor. And the reason for that is the decision in Vaca v. Sipes, Justice Stewart. Because as was pointed out there, an employee in this situation cannot obtain complete relief unless both the employer and the union are in the suit together. Because you have an employee as Mr. Mitchell, who after 13 years was discharged.

You can't say to him we'll give you money, although money is nice, he wants his job back, he wants his seniority back, he wants his pension rights, and he wants his job where he lives and he has worked for 15 years. This is -- his discharge was improper.

Now the other reason I say that this --

QUESTION: You think it contributes to the -- what permeates the whole industrial relations statutory structure, to allow the employee to wait five years and 11 months and then bring a lawsuit of this kind?

MR. JAROSLAWICZ: Well there are two answers to that, Mr. Chief Justice. One is, most meritorious claims the employee is not--who's out of work and has no money is not going to wait until the end of the statute and say, I'm going to take it down to the line and see what happens.

Certainly, if an employee does that, the Court can limit his damages by saying he should have mitigated.

And finally, --

QUESTION: You mean, applying a laches doctrine against him?

MR. JAROSLAWICZ: There could be a laches doctrine precisely.

QUESTION: In the face of a six year statute?

MR. JAROSLAWICZ: If the union can show or the employer can show that an employee had deliberately waited

knowing of his right and that the employer had been harmed because it hired other people in the interim; laches might very well be applicable.

QUESTION: But that's not a contract action, which is traditionally governed by a statute of limitations it's an equitable action that's governed by laches.

MR. JAROSLAWICZ: No, Your Honor, the actions by the employee against the employer, it is the Plaintiff's position or Mitchell's position, that it would be either a breach of contract action -- because the collective bargaining agreement has now been breached. In the alternative, it is a statutory claim brought pursuant to Section 301. But one thing it is not is an action to vacate an arbitration award.

QUESTION: No, but either one of the two that you mention is the sort of thing that's governed by a traditional statute of limitations and not by any doctrine of laches, isn't it?

MR. JAROSLAWICZ: If Your Honor pleases, I didn't say it should be governed by laches, I was responding to the Chief Justice's question as to what happens if an employee waits for six years and I said if he waits properly because there's a valid reason, then the statute would be his cutoff point. If he waits improperly, then the doctrine of laches might apply.

QUESTION: Isn't there a brand new law, statute of limitations? Isn't there a brand new one, because right after this I'm going to ask you to give me a case.

MR. JAROSLAWIC : Well perhaps laches is the wrong pigeonhole to put it in, Your Honor, but in labor cases --

QUESTION: I thought that the statute of limitations meant if you filed it within the period of 20 years it's under the statute and you don't have to explain to anybody under any circumstances, am I right?

MR. JAROSLAWICZ: Yes, Justice --

QUESTION: Am I right?

MR. JAROSLAWICZ: Yes. But when the case got to --

QUESTION: So where'd you get laches in there?

MR. JAROSLAWICZ: -- trial, the Court could mitigate his damage and say I'm not going to let you recover for waiting 19 years.

QUESTION: Give me a case on that.

MR. JAROSLAWICZ: Where there are frequent cases --

QUESTION: No, cite me one, cite me one.

MR. JAROSLAWICZ: I'll be happy to --

QUESTION: I'll even take a justice of the peace case.

MR. JAROSLAWICZ: Where an employee is out of work because he's been discharged and for a year he doesn't get another job when a job is available to him, and sits

back. The arbitrator or judge then says to the employee, I'm not going to give you damages for the time you could have worked --

QUESTION: This is a arbitrator-judge -- what is this you called this man?

MR. JAROSLAWICZ: If there was an --

QUESTION: I'm talking about a judge-judge. That's the one that deals with the statute of limitations, right? Now give me a judge who said that although you were within the statute of limitations, I'm going to say you are too late.

MR. JAROSLAWICZ: I cannot refer, Your Honor, to a case of that nature.

QUESTION: I don't think you can.

QUESTION: Laches is purely an equitable --

MR. JAROSLAWICZ: Laches is an equitable defense. Which is available to the employer in a case where it's properly available, not to the statute --

QUESTION: It's not available in a legal action when there's a statute of limitations, as my Brother Marshall suggests.

MR. JAROSLAWICZ: I agree with --

QUESTION: You're not arguing laches, you're just arguing the duty to mitigate, which reduces the damage claim. That's all you're arguing.

MR. JAROSLAWICZ: Yes, that's basically --

QUESTION: And that assumes you're in Court, that you have passed the statute of limitations bar and now you're talking about damages.

MR. JAROSLAWICZ: And I believe that he has a right to get to Court. And I don't believe the statute was meant to vacate an arbitration award.

QUESTION: Would you agree with Judge Timbers' statement in the -- for the Second Circuit that six years is not -- is a relatively rapid disposition?

MR. JAROSLAWICZ: I believe Justice Timbers took that from this Court's decision in Hoosier. Where this Court in Hoosier, said that six years was relatively rapid and in that case, admittedly, the Court was choosing between a 20 year statute and a six year statute, and so the Court indicated that six years was relatively rapid and sufficient to meet labor policy and that's where I believe Judge Timbers adopted that from.

And the reason I say to the Court that it can't be a motion to vacate an arbitration award, is that nobody even in this Court, argues that the Plaintiff's remedy or the employee's remedy is to go back and have a new arbitration. If this were truly an attempt to vacate an arbitration award, as it is where there's corruption of an arbitrator, the employee's remedy is to go back to a new arbitrator

where there won't be corruption and he'll have a fair opportunity to be heard before the arbitrator. But that is not a section 301 claim.

A section 301 claim is a separate claim, which the statute and Congress has given an employee, it says if you didn't have a fair hearing and the union sold you out, whether it's arbitration or anything else, you have a right to be here. And that's what Vaca said and that's what Hines said.

I think it's also interesting to see that the union in this case, in filing of a brief, said we should have the same statute of limitations as the employer. The employer, in its reply brief said, we don't want the same statute of limitations as the union, we get a different statute of limitations. I believe the reason for that is that the union clearly knows that it cannot possibly argue that the statute of limitations as against the union is 90 days to vacate an arbitration award because there is no arbitration award to be vacated against the union.

While the employer has a superficially appealing argument, it says you're really trying to vacate an arbitration award. But that's not so. The arbitration was between the union and the employer, the employee's right may have been at stake, but he never had a chance to be heard and his rights weren't adjudicated, if not, he would

never get to the section 301 claim. And I say that if the union or the employer wanted to bypass the arbitration award or vacate it, if you will, here the statute of limitations is 90 days, because that's the agreement between them. But when it comes to the employee, it's not 90 days, and under the standing issue, which I think the Second Circuit probably recognized, he would have no standing in the State of New York to even bring the proceeding, the New York Court of Appeals has said if you're unhappy with what your union did, you bring a separate action, a 301 action, against your union, but you can't interfere in the arbitration, which is a proceeding between the union and the employer.

That, Your Honor, is basically Mitchell's position. Thank you. Unless the Court has any questions?

QUESTION: I do have a question. There is nothing, or am I wrong on this, in the complaint, or no facts are alleged which account for the failure to file more promptly. Is that correct?

MR. JAROSLAWICZ: No facts in the complaint.

MR. CHIEF JUSTICE BURGER: Very well. Do you have anything further, Mr. Segal?

MR. SEGAL: Nothing, if it please the Court.

MR. CHIEF JUSTICE: Thank you, gentlemen. The case is submitted.

(Whereupon at 10:50 o'clock a.m. the hearing in the above matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 80-169

UNITED PARCEL SERVICE, INC.,

v.

WILLIAM MITCHELL

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: William J. Wilson