

University of Pittsburgh School of Law

Scholarship@PITT LAW

Cases

Roz Litman Archive

2-19-1987

Gavalik c Continental Can Co.

Westlaw

Follow this and additional works at: <https://scholarship.law.pitt.edu/roz-litman-cases>



Part of the [Law Commons](#)

Recommended Citation

55 USLW 2439

This Case Brief is brought to you for free and open access by the Roz Litman Archive at Scholarship@PITT LAW. It has been accepted for inclusion in Cases by an authorized administrator of Scholarship@PITT LAW. For more information, please contact leers@pitt.edu, shephard@pitt.edu.



KeyCite Yellow Flag - Negative Treatment

Disagreed With by [Anderson v. Consolidated Rail Corp.](#), 3rd Cir.(Pa.), July 23, 2002



KeyCite Overruling Risk - Negative Treatment

Overruling Risk [Price Waterhouse v. Hopkins](#), U.S.Dist.Col., May 1, 1989

812 F.2d 834

United States Court of Appeals,
Third Circuit.

Robert GAVALIK, Frank Grelo, Joseph Urban,
Anthony Ulyan, Donald A. Berger, Ronald
Clarke, Henry Foster, George Patterson, Joseph
Kellerman, Robert Pavlik, Phillip Farley, Thomas
Riley, Thomas Warren and Francis Humenik

v.

CONTINENTAL CAN COMPANY.

Albert J. JAKUB, Fred Cipriana, Jr., Anthony J.
Bernardo, Thomas A. Mulligan, William T. Tarr,
Donald W. Roberts, Ernest Wirbecki and George W.
Stepanic on behalf of themselves and others similarly
situated Alfred Borrelli, Jr., Michael Di Iorio, Anthony
Folino, Thomas E. Johnston, Robert Kapolka, John
C. Kincel, Peter A. Romain, Harry H. Smith, Melvin
J. Smith, Jack A. Stull and Ernest B. Taddeo, on
behalf of themselves and others similarly situated

v.

CONTINENTAL CAN COMPANY,
a member of Continental Group, Inc.

Appeal of Robert GAVALIK,
et al. and Albert J. Jakub, et al.

Appeal of CONTINENTAL CAN COMPANY,
U.S.A., a member of the Continental Group, Inc.

Nos. 85–3597, 85–3615.

|

Argued June 6, 1986.

|

Decided Feb. 19, 1987.

|

Rehearing and Rehearing In Banc

Denied Feb. 19, 1987.

Synopsis

Class actions alleging institution and implementation of liability avoidance scheme by employer operated to prevent employees from attaining eligibility for employee benefits in violation of Employee Retirement Income Security Act section proscribing interference with protected rights were consolidated, and single class action was certified. The United States District Court for the Western District of Pennsylvania entered judgment for employer after trial of liability phase of litigation. Employees appealed, and employer cross-appealed. The Court of Appeals, A. Leon Higginbotham, Jr., Circuit Judge, held that: (1) Pennsylvania six-year residuary statute of limitations governed the action; (2) employees were not required to exhaust arbitral remedies before bringing action; and (3) employees should not have been required to prove that “but for” employer’s decision to abort their pension eligibility they would have remained at work.

Reversed and remanded with directions.

West Headnotes (26)

[1] **Federal Courts** Federally created rights **Labor and Employment** Time to sue and limitations

170B Federal Courts

170BXV State or Federal Laws as Rules of
Decision; Erie Doctrine

170BXV(B) Application to Particular Matters

170Bk3022 Procedural Matters

170Bk3034 Limitations and Laches

170Bk3034(3) Federally created rights
(Formerly 170Bk424)

231H Labor and Employment

231HVII Pension and Benefit Plans

231HVII(K) Actions

231HVII(K)1 In General

231Hk633 Time to sue and limitations

Period of limitations for action pursuant to Employee Retirement Income Security Act section proscribing interference with protected rights and applicable enforcement provision, which do not provide specific statute of limitations, is determined by reference to

Gavalik v. Continental Can Co., 812 F.2d 834 (1987)

55 USLW 2439, 8 Employee Benefits Cas. 1047

state statute of limitations governing cases most analogous to cause of action asserted by plaintiffs. Employee Retirement Income Security Act of 1974, §§ 502, 510, 29 U.S.C.A. §§ 1132, 1140.

21 Cases that cite this headnote

[2] Labor and Employment ⚙️ Time for proceedings; limitations

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk856 Time for proceedings; limitations
(Formerly 296k83.1, 296k83)

Pennsylvania six-year residuary statute of limitations applicable to state law claims analogous to employment discrimination and wrongful discharge governed action under Employee Retirement Income Security Act section proscribing interference with protected rights; clarifying *Wilson v. Garcia*, 471 U.S. 261, 105 S.Ct. 1938, 85 L.Ed.2d 254; *Knoll v. Springfield Township School District*, 763 F.2d 584 (3d Cir.). Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140; 42 Pa.C.S.A. § 5527(6).

26 Cases that cite this headnote

[3] Labor and Employment ⚙️ Time for proceedings; limitations

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk856 Time for proceedings; limitations
(Formerly 296k83.1, 296k83)

National Labor Relations Act six-month limitations period did not govern action under Employee Retirement Income Security Act section proscribing interference with protected rights alleging that institution and implementation of liability avoidance scheme by employer operated to prevent employees from attaining eligibility for employee benefits. National Labor Relations Act, § 10(b), as

amended, 29 U.S.C.A. § 160(b); Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

1 Cases that cite this headnote

[4] Labor and Employment ⚙️ Exhaustion

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk854 Exhaustion
(Formerly 296k140)

Employees who brought action alleging institution and implementation of liability avoidance scheme that operated to prevent employees from attaining eligibility for employee benefits in violation of Employee Retirement Income Security Act section proscribing interference with protected rights were not required to exhaust arbitral remedies under pension plan before bringing suit. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

5 Cases that cite this headnote

[5] Federal Courts ⚙️ Questions of Law in General

170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)2 Standard of Review
170Bk3566 Questions of Law in General
170Bk3567 In general
(Formerly 170Bk754.1, 170Bk754)

Court of Appeals' standard of review of issues involving interpretation and application of legal precepts is plenary.

3 Cases that cite this headnote

[6] Labor and Employment ⚙️ Motive and intent; pretext

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General

55 USLW 2439, 8 Employee Benefits Cas. 1047

[231Hk793](#) Pensions and Benefits

[231Hk797](#) Motive and intent; pretext

(Formerly 296k66.1, 296k63.1, 296k63, 296k66)

Plaintiff in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights must demonstrate that defendant had specific intent to violate ERISA; proof of incidental loss of benefits as result of termination will not violate the statute. Employee Retirement Income Security Act of 1974, § 510, [29 U.S.C.A. § 1140](#).

[82 Cases that cite this headnote](#)

[7] Labor and Employment 🔑 Motive and intent; pretext

[231H](#) Labor and Employment

[231HVIII](#) Adverse Employment Action

[231HVIII\(A\)](#) In General

[231Hk793](#) Pensions and Benefits

[231Hk797](#) Motive and intent; pretext

(Formerly 296k63.1, 296k63)

Essential element of proof under Employee Retirement Income Security Act section proscribing interference with protected rights is specific intent to engage in proscribed activity, and proof of specific intent to interfere with attainment of pension eligibility, regardless of whether interference is successful and regardless of whether participant would actually have received benefits absent interference, will ordinarily establish violation of statute. Employee Retirement Income Security Act of 1974, § 510, [29 U.S.C.A. § 1140](#).

[43 Cases that cite this headnote](#)

[8] Labor and Employment 🔑 Exercise of rights or duties; retaliation

[231H](#) Labor and Employment

[231HVIII](#) Adverse Employment Action

[231HVIII\(B\)](#) Actions

[231Hk859](#) Evidence

[231Hk863](#) Weight and Sufficiency

[231Hk863\(2\)](#) Exercise of rights or duties; retaliation

(Formerly 296k141)

Evidentiary burden in case alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights may be satisfied by introduction of circumstantial evidence. Employee Retirement Income Security Act of 1974, § 510, [29 U.S.C.A. § 1140](#).

[2 Cases that cite this headnote](#)

[9] Labor and Employment 🔑 Presumptions and burden of proof

[231H](#) Labor and Employment

[231HVIII](#) Adverse Employment Action

[231HVIII\(B\)](#) Actions

[231Hk859](#) Evidence

[231Hk861](#) Presumptions and burden of proof

(Formerly 296k86)

Employees alleging discrimination under the Employee Retirement Income Security Act bear burden of making out prima facie case of discrimination. Employee Retirement Income Security Act of 1974, § 510, [29 U.S.C.A. § 1140](#).

[3 Cases that cite this headnote](#)

[10] Labor and Employment 🔑 Pensions and Benefits

[231H](#) Labor and Employment

[231HVIII](#) Adverse Employment Action

[231HVIII\(A\)](#) In General

[231Hk793](#) Pensions and Benefits

[231Hk794](#) In general

(Formerly 296k86)

To establish prima facie case under Employee Retirement Income Security Act section proscribing interference with protected rights, employee must demonstrate prohibited employer conduct taken for purpose of interfering with attainment of any right to which employee may become entitled. Employee Retirement Income Security Act of 1974, § 510, [29 U.S.C.A. § 1140](#).

122 Cases that cite this headnote

[11] **Federal Civil Procedure** 🔑 Employees

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak184 Employees
170Ak184.5 In general

In context of class action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights, it is not enough for class representative to prove validity of his own claim, but rather, class representative must establish that discrimination was employer's standard practice. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

1 Cases that cite this headnote

[12] **Labor and Employment** 🔑 Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk859 Evidence
231Hk861 Presumptions and burden of proof
(Formerly 296k86)

If class establishes prima facie case under Employee Retirement Income Security Act section proscribing interference with protected rights by preponderance of the evidence, burden of production shifts to employer to introduce admissible evidence of legitimate, nondiscriminatory reason for challenged actions. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

55 Cases that cite this headnote

[13] **Labor and Employment** 🔑 Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions

231Hk859 Evidence

231Hk861 Presumptions and burden of proof
(Formerly 296k87)

If employer fails to rebut presumption of discrimination that arises from prima facie case established by class in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights, district court must enter judgment for class. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

9 Cases that cite this headnote

[14] **Labor and Employment** 🔑 Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk859 Evidence
231Hk861 Presumptions and burden of proof
(Formerly 296k86)

If employer carries its burden of rebutting presumption of discrimination arising from prima facie case established by class in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights, presumption of discrimination drops from case and class representative is afforded opportunity to demonstrate that employer's articulated reason is pretextual. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

52 Cases that cite this headnote

[15] **Federal Courts** 🔑 Matters of Substance

170B Federal Courts
170BXVII Courts of Appeals
170BXVII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BXVII(D)2 Particular Grounds of Review
170Bk3402 Matters of Substance
170Bk3403 In general
(Formerly 170Bk612.1, 170Bk612)

Issue of whether liability avoidance plan of employer itself violated Employee Retirement

55 USLW 2439, 8 Employee Benefits Cas. 1047

Income Security Act section proscribing interference with protected rights had been raised before district court, and thus could be considered on appeal, under allegations of complaint asserting that employer secretly devised and implemented liability avoidance program whose role was to prevent employees from attaining eligibility for pensions and asserting that through alleged conduct employer had discharged, suspended, and discriminated against employees for purposes of interfering with their attainment of rights under company's benefit plans, in violation of ERISA section. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

61 Cases that cite this headnote

[16] Labor and Employment 🔑 Pensions and Benefits

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk794 In general
(Formerly 296k63.1, 296k63)

Employee Retirement Income Security Act section proscribing interference with protected rights is designed to prevent injury to employees' protected rights, not merely to redress injury after goals of discriminatory plan have been effectuated. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

1 Cases that cite this headnote

[17] Labor and Employment 🔑 What Constitutes Adverse Action

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk823 What Constitutes Adverse Action
231Hk824 In general
(Formerly 296k63.1, 296k63)

Actual deprivation of rights is not prerequisite to holding employer liable to class under

Employee Retirement Income Security Act section proscribing interference with protected rights; the challenged act need not have caused actual deprivation or have actually interfered with attainment of pension eligibility to be found violative of ERISA section. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

21 Cases that cite this headnote

[18] Labor and Employment 🔑 Motive and intent; pretext

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk797 Motive and intent; pretext
(Formerly 296k63.1, 296k63)

Bad faith is not element of claim alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

[19] Labor and Employment 🔑 Equitable relief; injunction

Labor and Employment 🔑 Motive and intent; pretext

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)3 Actions to Enforce Statutory or Fiduciary Duties
231Hk658 Judgment and Relief
231Hk660 Equitable relief; injunction
(Formerly 296k87)

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk797 Motive and intent; pretext
(Formerly 296k63.1, 296k63)

Employer's maintenance of liability avoidance scheme with specific intent to interfere with

55 USLW 2439, 8 Employee Benefits Cas. 1047

employees' pension eligibility was in itself classwide violation of Employee Retirement Income Security Act section proscribing interference with protected rights that entitled employees to injunctive relief, wholly apart from determination of whether individual employees were actually laid off in accordance with scheme. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

4 Cases that cite this headnote

[20] Labor and Employment ← Causal connection; temporal proximity

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk798 Causal connection; temporal proximity

(Formerly 296k86)

Burden of persuasion on plaintiff employees in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights did not require employees to prove that “but for” employer's consideration of employees' impending pension eligibility, employees would have remained at work, but rather, required only proof that “but for” the impermissible consideration, employees would not have lost work. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

1 Cases that cite this headnote

[21] Labor and Employment ← Causal connection; temporal proximity

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk798 Causal connection; temporal proximity

(Formerly 296k63.1, 296k63)

Employee Retirement Income Security Act section proscribing interference with protected

rights requires no more than proof that desire to defeat pension eligibility is a determinative factor in challenged conduct. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

1 Cases that cite this headnote

[22] Federal Civil Procedure ← Discrimination and civil rights actions in general

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak184 Employees
170Ak184.10 Discrimination and civil rights actions in general

Once class representative has met burden of persuasion on ultimate issue of whether employer intentionally discriminated against class, each individual member of class is presumptively entitled to relief.

2 Cases that cite this headnote

[23] Labor and Employment ← Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk859 Evidence
231Hk861 Presumptions and burden of proof
(Formerly 296k86)

Scope of presumption of discrimination, in employer's acts arising from liability avoidance plan that impermissibly discriminated against employees to prevent attaining of eligibility for employee benefits, extended to discrete acts that were specifically contemplated to implement plan, including designation of particular employees as permanently laid off, institution of flagging system so employer would be informed if employees designated as laid off were paid, and imposing work force reduction on particular plant, for purposes of employees' action alleging violation of Employee Retirement Income Security Act

section proscribing interference with protected rights. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

[1 Cases that cite this headnote](#)

[24] Labor and Employment 🔑 Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk859 Evidence
231Hk861 Presumptions and burden of proof
(Formerly 296k86)

Presumption of discrimination arising from employees' proof of liability avoidance program designed to avoid employees' attaining eligibility for employee benefits did not automatically extend to employer's decision to close particular manufacturing operation, even though liability avoidance program specifically contemplated shifting business volume so as to avoid incurring additional pension liability, for purposes of employees' action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

[25] Labor and Employment 🔑 Presumptions and burden of proof

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk859 Evidence
231Hk861 Presumptions and burden of proof
(Formerly 296k86)

Regardless of whether class representative discharges his burden of persuasion in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights by offering

direct proof of discrimination, circumstantial proof of discrimination, or proof of mixed motivation, presumption that particular employment decisions during period in which discriminatory policy was in force were made in pursuit of policy attached to each individual class member's claim that he was victim of discriminatory policy. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

[23 Cases that cite this headnote](#)

[26] Labor and Employment 🔑 Causal connection; temporal proximity

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(A) In General
231Hk793 Pensions and Benefits
231Hk798 Causal connection; temporal proximity
(Formerly 296k63.1, 296k63)

Employees were improperly required to prove that “but for” employer's decision to abort employees' pension eligibility they would have remained at work, where employees had established employer's liability avoidance plan designed to prevent employees from attaining eligibility for employee benefits was discriminatory and that employer's challenged actions were impermissibly discriminatory, in action alleging violation of Employee Retirement Income Security Act section proscribing interference with protected rights. Employee Retirement Income Security Act of 1974, § 510, 29 U.S.C.A. § 1140.

[2 Cases that cite this headnote](#)

All Citations

812 F.2d 834, 55 USLW 2439, 8 Employee Benefits Cas. 1047