A. Cline v. General Dynamics Land Systems, Inc.

1. Introduction

The Age Discrimination and Employment Act, 29 U.S.C. §§ 621, et seq. ("ADEA") prohibits employers from discriminating against employees on the basis of their age. 29 U.S.C. § 623(a). Indeed, the purpose of the ADEA is to promote the employment of older persons based on their ability, rather than age, and to prohibit arbitrary age discrimination. See Hodgson v. First Federal Sav. & Loan Ass'n of Broward Co. Fla., 455 F.2d 818, 820 (5th Cir. 1972). In the recent case of Cline v. General Dynamics Land Systems, Inc., 296 F.3d 466 (6th Cir. 2002), *cert. granted*, 71 USLW 3504, 123 S.Ct. 1786, 155 L.Ed 2d (2003) ("Cline II"), the Court considered whether the ADEA "provides a cause of action for employees within the protected class who claim their employer discriminated against them on the basis of age because of the employer's more favorable treatment of older employees, also within the class." Cline II, 296 F.3d at 467. In overruling the district court, the United States Court of Appeals for the Sixth Circuit held that the ADEA does provide a cause of action for members of a protected class to sue their employer for discriminating against younger employees in the same protected class.

General Dynamics Land Systems, Inc. ("General Dynamics") appealed the decision by the Sixth Circuit to the Supreme Court of the United States, and, in turn, the Court granted *certiorari*. The Supreme Court—in a 6-3 decision—reversed the decision of the Sixth Circuit, and held that "[w]e see the text, structure, purpose, and history of the ADEA, along with its relationship to other federal statutes, as showing that the statute does not mean to stop an employer from favoring an older employee over a younger one." General Dynamics Land Systems, Inc. v. Cline, __ U.S. __, 2004 WL 329956, at * 9 (Feb. 24, 2004) ("Cline III"). The following will discuss how the Court arrived at its conclusion.

2. Factual Background

This case arises out of the United States District Court for the Northern District of Ohio. The dispute involves 169 plaintiffs of a putative class who are present or former employees of General Dynamics. Cline v. General Dynamics Land Systems, Inc., 98 F.Supp 2d 846, 847 (N.D. Ohio 2000) ("Cline I"). Each of the plaintiffs in the suit were between 40 and 50 years of age on July 1, 1997. Id. Their relationship with General Dynamics was governed by a collective bargaining agreement with General Dynamics. Id.

There are two collective bargaining agreements at issue in this case. Id. The first agreement was in effect prior to July 1, 1997 ("CBA1"). Id. CBA1 provided for continued heath insurance benefits for retirees. Id. After the termination of CBA1, General Dynamics and the plaintiffs re-negotiated the provision regarding health insurance benefits for retirees. Id. The new provision, which was included in the new collective bargaining agreement ("CBA2"), "provided that continued retiree health insurance benefits would be provided only for employees who were at least fifty years of age on July 1, 1997, the effective date of CBA2." Cline I, 98 F. Supp. 2d at 847.

The plaintiffs were divided into three subgroups. The first group — the "Cline Group" — consisted of 183 current employees who were eligible for retirement health insurance benefits under CBA1, but not under CBA2. Id. The next group — the "Dodd Group" — consisted of ten employees who retired prior to July 1, 1997, in order to preserve their benefits under CBA1. Id. The third group — known as the "Diaz Group" — consisted of three employees who retired after July 1, 1997, and did not receive the continued health insurance benefits to which they would have been entitled under CBA1. Id.

Plaintiffs brought suit under the ADEA and analogous Ohio state law claiming that CBA2 violates their rights by discriminating against them on the basis of their age. Id. They sought declaratory and injunctive relief, damages, and costs and fees. Cline I, 98 F. Supp. 2d at 847.

General Dynamics moved to dismiss on the basis that age discrimination in favor of employees over the age of 50 does not violate applicable federal and state anti-discrimination law. Id. In essence, General Dynamics' argument was that the ADEA does not countenance a cause of action for reverse discrimination. Id. Plaintiffs, however, denied that they were asserting a claim for reverse discrimination, but, rather, that they were wrongfully denied existing job benefits to which they had previously been entitled based on their age. Id. at 848.

3. The District Court Opinion

As an initial matter, the court conceded that CBA2 "facially discriminates on the basis of age by creating two classes of employees: employees over the age of fifty, who are entitled to retiree health care benefits, and employees under the age of fifty, who are not." Id. However, the Court summarily dismissed plaintiffs' argument that they were wrongfully denied existing job benefits, and noted that "it would have been permissible under ERISA for Plaintiffs' union and the Company to agree to abrogate the retiree health insurance benefit programs for *all* current employees in CBA2." Cline I, 98 F. Supp. 2d at 848 (emphasis in original). The Court further noted that "[t]he fact that the benefits were available under CBA1 is not relevant to a determination of whether entitling only employees over the age of fifty to retiree health care benefits violates [the] ADEA." Id. Thus, the Court concluded that "[t]he sole issue before this Court is whether the employer may legally provide a benefit to workers over the age of fifty, while denying that same benefit to workers below the age of fifty." Id.

The Court concluded that the plaintiffs had not alleged any facts upon which they could prevail on their age discrimination claim. Id. The Court rested its decision on two points. First, the Court reasoned that no federal court has ever held a claim of reverse age discrimination to be cognizable under the ADEA. Id. The second point supporting the Court's holding was that "Congress' purpose in enacting [the] ADEA was to address the problems faced by *older* workers, not workers who suffered discrimination because they are too young." Cline I, 98 F. Supp. 2d at 848 (cite omitted). In dismissing plaintiffs' claims, the Court analyzed plaintiffs' claims under Ohio state law using the same legal test. The Court determined that the analysis under either cause of action was identical. Id. at 848, n. 1. The Court did not address plaintiffs' claims for declaratory and injunctive relief.

4. The Circuit Court Opinion

The Sixth Circuit—in a 2-1 decision written by Circuit Judge Ryan—did not agree with the holding of the district court. Indeed, the Court held that "[o]n the facts of this case, the ADEA does provide the plaintiffs a cause of action and that they have made out an actionable claim." Cline II, 296 F.3d at 467. In reaching its holding, the Court chided the district court for failing to apply statutes consistently with their plain language. Id. The Sixth Circuit rested its decision on the plain language of the ADEA. Indeed, Section 623(a)(1) of the ADEA provides that:

> It shall be unlawful for an employer –
>
> (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age.

29 U.S.C. § 623(a)(1). Based on the language of the statute, the Court concluded that:

> This language clearly and unambiguously forbids employers from defining the terms and benefits of "any individual['s]" employment based solely on his or her age. In § 631(a), Congress declared that "any individual" means those "individuals who are at least 40 years of age." 29 U.S.C. § 631(a). Thus by the law's plain language, an employer may not discriminate against any worker age 40 or older on the basis of age. Those younger than age 40 are not protected by the ADEA.

Id. at 469. (citation omitted). The Court observed that to reach the conclusion adopted by the District Court, one would have to infer that the term "any individual" means only "older workers." Id.

The Sixth Circuit reproved the district court for its interpretative reading that led it to conclude that "the ADEA does not prohibit an employer from discriminating on the basis of age, against 'any individual' who is a member of the ADEA's protected class, but only prohibits discrimination against those in the protected class who are 'older' than the favored employees." Id. The Sixth Circuit determined that the plain language of the ADEA would not support such a construction.

The Sixth Circuit then turned its attention to the conclusion by the district court that the ADEA does not recognize claims of reverse age discrimination. In particular, the district court relied on the opinion of the United States Circuit Court of Appeals for the Seventh Circuit in Hamilton v. Caterpillar, Inc., 966 F.2d 1226 (7th Cir. 1992). The Sixth Circuit determined that the Hamilton decision and its progeny assign too much weight to the general language contained in Congress' Statements of Findings and Purpose contained in the ADEA in which Congress referred to the need to protect "older persons" or "older workers." Cline II, 296 F.3d at 470. See also 29 U.S.C. § 621(a) - (b). The Court pointed out that the ADEA does not define the term older person, and that its holding would do nothing to defeat the congressional intent to protect older workers and older persons. Id.

The Sixth Circuit further concluded that its holding was unchanged regardless of whether 29 U.S.C. § 621 was inconsistent with 29 U.S.C. § 623. The Court noted that "[i]n § 621 Congress declared its intention to protect older workers, and in § 623 and § 631 it identified the older workers it intends to protect as 'any individual' age 40 or older." Id. at 471.

In addition, the Court questioned the validity of the term "reverse discrimination." The Court observed that:

> [W]hat the district judge and others mean when they conclude that the ADEA does not prohibit "reverse discrimination" is that otherwise prohibited discrimination is permitted if the victims are literally (statutorily) within the protected class, but are a group within the class who in most cases are the beneficiaries of discrimination against others.

Id. However, the Court concluded that "[a]ll the plaintiffs are members of the protected class created by § 631(a) and all properly alleged they are denied job benefits due to their age. Therefore the protected class should be protected; to hold otherwise, is discrimination plain and simple." Id. The Court also pointed out that Hamilton and its progeny reached their respective conclusions concerning reverse discrimination in contravention of the EEOC's interpretation of the ADEA. Cline II, 296 F.3d at 471. In its interpretative regulations, the EEOC concluded that "[i]t is unlawful . . . for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over." 29 C.F.R. § 1625.2(a).

The Court concluded by observing that the fact that some members of the protected class were benefited by the change to the collective bargaining agreement, while other members of the protected class were harmed by the alterations to the collective bargaining agreement does not change the conclusion that the statute was designed to prohibit age discrimination against any individual within the protected class. Cline II, 296 F.3d at 472. Accordingly, the Court reversed the district court's ruling on the motion to dismiss. Id. On

remand, the Sixth Circuit directed the lower Court to address the plaintiffs' declaratory judgment argument and to consider whether the plaintiffs made out an actionable claim under the Ohio Civil Rights Act. Id.

Circuit Judge Cole wrote a separate concurrence. In essence, Circuit Judge Cole agreed that the plain language of the ADEA compelled the result reached by the majority. However, he "entertain[ed] serious doubts as to whether Congress specifically intended to allow persons ages forty and over to recover for so-called reverse age discrimination." Id. at 472 (Cole, J., *concurring*).

District Judge Williams—who was sitting by designation—wrote a strong dissent. He took issue with the notion that while the clear purpose of the ADEA was to protect older people, the majority's opinion, was more concerned with the problems faced by younger employees. Id. at 476 (Williams, J., *dissenting*). Moreover, Judge Williams was concerned that the ADEA was not designed to interfere with collective bargaining, and he believed that the majority's opinion called into question the validity of seniority and early retirement plans across the country. Cline II, 296 F.3d at 476 (Williams, J., *dissenting*).

5. The Supreme Court Opinion

As noted above, the Supreme Court reversed the decision of the Sixth Circuit in a 6-3 decision authored by Justice Souter. The Court framed the issue before it as follows "[t]he . . . [ADEA] forbids discriminatory preference for the young over the old. The question in this case is whether it also prohibits favoring the old over the young." Cline III, 2004 WL 329956, at * 3. The Court held that the ADEA does not prohibit an employer from favoring the old to the detriment of the young. Id.

The Court began its analysis by citing the operative language under the ADEA that prohibits discrimination against "any individual . . . because of such individual's age." Id. at * 3-4. See also 29 U.S.C. § 623(a)(1). The Court conceded that this provision could be read in two different ways, but that a natural reading of the provision, coupled with "Congress's interpretative clues," leads to "an understanding of discrimination as directed against workers who are older than the ones getting treated better." Cline III, 2004 WL 329956, at * 4. In reaching this conclusion, the Court first concentrated on the studies, debates, and prefatory language leading to the passage of the ADEA. In so doing, the Court concluded that "[t]he prefatory provisions and their legislative history make a case that we think is beyond reasonable doubt, that the ADEA was concerned to protect a relatively old worker from discrimination that works to the advantage of the relatively young." Id. at * 5.

The Court bolstered this conclusion in three distinct ways. First, the Court concluded that the fact that the legislative record was devoid of evidence that younger workers were suffering at the expense of their elders was not remarkable because common experience indicates that discrimination because of age "is naturally understood to refer to discrimination against the older." Id. at * 5. Thus, the lack of evidence indicates that there was no "social problem [that] required a federal statute to place a younger worker in parity with an older one." Id. The Court also observed that if Congress was concerned with protecting the younger, against the older, "it would not likely have ignored everyone under 40." Id. Finally, the Court observed that prior to the instant case, "[t]he Courts of Appeals and District Courts have read the law the same way, and . . . have enjoyed virtually unanimous accord in understanding the ADEA to forbid only discrimination preferring young to old." Cline III, 2004 WL 329956, at * 6. The Court concluded that "[t]he very strength of this consensus is enough to rule out any serious

claim of ambiguity, and congressional silence after years of judicial interpretation supports adherence to the traditional view." Id.

The Court then addressed three arguments stressed by the dissenting justices, the plaintiffs, and the Equal Employment Opportunity Commission (the "EEOC"). First, the Court addressed the argument that the statute's meaning is plain when the term "age" is given the same meaning throughout. The Court determined that although there is a presumption that identical words used in different parts of an act are intended to have the same meaning, "[t]he presumption . . . thus relents when a word has several commonly understood meanings . . ." Id. at * 7. The Court concluded that that "age" is such a word, and, moreover, the word must be read in context. Id. at * 7. Importantly, the Court observed that:

> The point here is that we are not asking an abstract question about the meaning of "age"; we are seeking the meaning of the whole phrase "discriminate . . . because of such individual's age," where it occurs in the ADEA, 29 U.S.C. § 623(a)(1). As we have said, social history emphatically reveals an understanding of age discrimination as aimed against the old, and the statutory reference to age discrimination in this idiomatic sense is confirmed by legislative history.

Id. The Court determined that when the word "age" is read in context, the context informs the reader that "age" means one thing in § 623(a)(1), and another thing in § 623(f). Id. Thus, the presumption of uniformity cannot operate in this case. Cline III, 2004 WL 329956, at * 7.

The next contrarian argument considered by the Court revolves around comments made by Senator Yarborough—who was a sponsor of the ADEA— on the Senate floor. Senator Yarborough was presented with a hypothetical involving discrimination between two individuals in the same protected class, one older and one younger. Id. at * 8. Senator Yarborough concluded that "'[t]he law prohibits age being a factor in the decision to hire, as to one age over the other, whichever way [the] decision went.'" Id. (citing 113 Cong. Rec. 31255 (1967)).

Although the Court conceded that it had given great weight to Senator Yarborough's comments in the past, it reasoned that "a single outlying statement cannot stand against a tide of context and history, not to mention 30 years of judicial interpretation producing no apparent legislative qualms." Id. (citations omitted).

Finally, the Court considered an EEOC regulation which stated that "[i]f two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make the determination on the basis of some other factor." 29 C.F.R. § 1625.2(a) (2003). The Court declined to defer to the agency's interpretation of its governing statute because the EEOC's interpretation is "clearly wrong." Cline III, 2004 WL 329956, at * 9. Moreover, the Court observed that deference is only called for when the devices of judicial construction fail. Id. In this case, the Court noted that the statute is "structured and manifestly intended to protect the older from the younger." Id. Accordingly, the Court held that that "[w]e see the text, structure, purpose, and history of the ADEA, along with its relationship to other federal statutes, as showing that the statute does not mean to stop an employer from favoring an older employee over a younger one." Id.

Three justices—Scalia, Thomas and Kennedy—dissented from the majority opinion. Justice Scalia's opinion was brief. He argued that the EEOC's interpretation is "neither foreclosed by the statute nor unreasonable." Id. at * 11 (Scalia, J., *dissenting*). Accordingly, Justice Scalia "would defer to the agency's authoritative conclusion." Cline III, 2004 WL 329956, at * 11 (Scalia, J., *dissenting*).

In an opinion joined by Justice Kennedy, Justice Thomas separately dissented. Justice Thomas argued that the plain language of the statute authorizes "suits brought by the relatively young when discriminated against in favor of the relatively old." Id. at * 12 (Thomas,

J., *dissenting*). In the alternative, Justice Thomas argued that "[a]t the very least, it is manifestly unclear that [the statute] bars *only* discrimination against the relatively older." Id. (Thomas, J., *dissenting*). Justice Thomas concluded that his interpretation was bolstered by the EEOC's interpretation, and the only legislative history relevant to the issue; namely, Senator Yarborough's comments on the Senate floor. Id. at * 13 (Thomas, J., *dissenting*).

Justice Thomas also took issue with the majority's reliance on "social history" as an interpretative tool. Indeed, Justice Thomas observed that "the Court has never defined 'social history' in any previous opinion, probably because it has never sanctioned looking to 'social history' as a method of statutory interpretation." Id. at * 13 (Thomas, J., *dissenting*). Justice Thomas noted that the majority's "social history" analysis would prevent a white worker from recovering under Title VII, since there is no record of whites suffering at the expense of racial minorities. Cline III, 2004 WL 329956, at * 15 (Thomas, J., *dissenting*). Ultimately, Justice Thomas concluded that the majority had resorted to "interpretive sleight of hand" to avoid the plain language of the ADEA. Id. at *16 (Thomas, J., *dissenting*).

6. Conclusion

In the end, the resolution of the issue of whether a subgroup of a protected class may sue for discrimination based on favored treatment of another subgroup within a protected class rested with the United States Supreme Court. The Court concluded that there was no cause of action for the relatively young to sue an employer for discriminatory treatment that favored the relatively old. In so doing, the majority harmonized the law on this matter, which weighed heavily in favor of majority's decision. Id. at * 6. However, the end result is likely to spark controversy, particularly in light of Justice Thomas' vigorous dissent on the issue of the use of "social history" as an interpretive tool.