

Kelley v. Northern States Power Com.

213 F. App'x 506 (8th Cir. 2007)
Decided Jan 24, 2007

No. 06-2734.

Submitted: January 11, 2007.

Filed: January 24, 2007.

Appeal from the United States District Court for the District of Minnesota.

Before MURPHY, HANSEN, and SMITH, Circuit Judges.

PER CURIAM.

Bruce Kelley appeals from the district court's dismissal of this hybrid action under § 301 of the Labor-Management Relations Act (LMRA). Mr. Kelley sued his former employer, Northern States Power Company n/k/a Xcel Energy and the [NSP/Xcel] Pension Plan, alleging among other things that they failed to pay the amount due under his disability/retirement plan in violation of the Employee Retirement Income Security Act (ERISA), [29 U.S.C. §§ 1001- 1461](#) (2006). He also brought claims against the IBEW Local No. 23, his former union that refused to proceed to arbitration with his grievance, alleging that it breached its duty of fair representation and discriminated against him on the basis of his disability in violation of the Americans with Disabilities Act (ADA), [42 U.S.C. §§ 12101- 12213](#) (2006), and the Minnesota Human Rights Act (MHRA), Minn. Stat. §§ 363A.01-.41 (2004).

The district court¹ granted summary judgment in favor of the defendants on all claims, finding that Mr. Kelley presented no evidence that would allow a reasonable fact finder to conclude that the union's handling of his grievance was arbitrary, discriminatory, or in bad faith, see [Martin v. Am. Airlines, Inc.](#), 390 F.3d 601, 606 (8th Cir. 2004), or that the union discriminated against him on the basis of his disability. Having found no breach of duty by the union, the court also dismissed his ERISA claims against his employer in accordance with [Waldron v. Boeing Co.](#), 388 F.3d 591, 594 (8th Cir. 2004). We find no error in the district court's decision, but we decline appellees' request to remand for an award of attorney fees for the filing of a frivolous lawsuit.

¹ The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

The judgment of the district court is accordingly affirmed pursuant to Eighth Circuit Rule 47(B).
