Proskauer

Third Circuit Refuses to Enforce Preliminary Reinstatement Order Issued By OSHA

Proskauer Whistleblower Defense on **November 20, 2024**

On October 15, 2024, the U.S. Court of Appeals for Third Circuit declined to enforce a preliminary reinstatement order issued by OSHA in favor of two purported whistleblowers under SOX, holding that the former employees lost Article III standing after they abandoned the administrative process to instead challenge their terminations though a separate civil action in federal court. *Gulden v. Exxon Mobil Corp.*, No. 23-1859.

Background

This case relates to OSHA's October 2022 order requiring ExxonMobil Corp. to immediately rehire two computational scientists who alleged that they were discharged in retaliation for leaking to the media their concerns about improper conduct by the Company. The scientists then initiated a lawsuit for injunctive relief in the U.S. District Court for the District of New Jersey seeking enforcement of OSHA's preliminary reinstatement order after the Company refused to comply.

As we previously reported, in April 2023 the district court granted the Company's motion to dismiss after determining that it lacked subject-matter jurisdiction to enforce preliminary reinstatement orders. The scientists then timely appealed to the Third Circuit.

While the scientists were trying to enforce the preliminary order in federal court, the administrative adjudication remained active and had been ongoing for more than 1,150 days. In June 2024, the scientists exercised their rights under SOX's "kick-out" provision, which allows whistleblowers to sue in federal court if their administrative complaint is not resolved within 180 days. The ALJ dismissed the administrative proceeding on July 2, 2024. The Company then moved to dismiss the Third Circuit appeal on mootness grounds.

Court's Reasoning and Decision

The Third Circuit held that the scientists could not enforce the preliminary reinstatement order because it was extinguished when the administrative proceeding was dismissed, which resulted in them losing Article III standing to bring a claim seeking to enforce the order.

Although the scientists had the requisite injury-in-fact because the Company refused to comply with the reinstatement order, they could not satisfy the redressability requirement. The Court explained that "the statutory and regulatory limitations of the Department of Labor's powers leave no doubt that a preliminary reinstatement order does not survive dismissal of the underlying administrative proceeding – especially after a SOX whistleblower elects to sue in federal court."

Implications

This decision appears to underscore that federal courts are unlikely to enforce preliminary reinstatement orders issued by OSHA and will instead wait until a final order is issued after the completion of the administrative process.

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