

Case Number: No. 01-4071

Case Name: Kenneth R. Smoot, *Plaintiff - Appellant*, v. United Transportation Union; CSX Transportation, Inc., *Defendants - Appellees*.

The Office of the Clerk
United States Court of Appeals, Sixth Circuit
524 Potter Stewart U.S. Courthouse
Cincinnati, Ohio 45202 - 3988

Plaintiff-Appellant Reply Brief

Plaintiff Smoot, pro se, has raised on appeal the constitutional mandate requirement that the punitive damages be adjusted proportionately with the statutory damages, after the District Court failed to apply any reasonable standard to the reduction in same.

I did challenge the amount of punitive damages at the initial appeal in this case, arguing that “. . . the amount of punitive damages was excessive and not supported by the weight of the evidence . . .”, *Tronzo v Biomet*, US Court of Appeals for the Federal Circuit, and further that based on the law, at best, the amount of statutory damages could not exceed the amount as amended by this Court.

The District Court has erred in applying the tri-part standard as established in Gore, first, concerning the alleged reprehensibility of the conduct. The record in this case is clear and was not questioned by the District Court that defendant UTU, by and through its officers and agents, did openly distribute the transcript of the tape, even to the extent of attempting to utilize same for political purposes. This matter has never been disputed. If the conduct was so reprehensible and mandates an excessive award of punitive damages against me when no injunction existed, why did they condone such conduct when carried out by their own officers and agents while an injunction was in effect. Similarly, defendant CSX, was well aware of the conduct of UTU, by and through its officers and agents, however, has never questioned their actions.

The second guidepost in Gore concerns the actual ratio of punitive damages to actual damages. There were no actual damages, since the UTU and CSX opted for statutory damages under the FWA, regardless of the nature of the conduct. The dollar amount was established by this Court. To allege that statutory damages equate to compensatory damages, on the part of both defendants is simply inane. Being pro se I have the ability to look at the issues from a perspective unfettered by large legal fees for engaging in semantical arguments, not in an effort to seek the truth, but, moreover, to maintain the favor of those footing the bills.

The third guidepost in Gore is probably the most interesting “lack of argument” that these Defendants have engaged in to this point. Both have made clear

reference to the issue of “criminal penalties” which exist for the alleged conduct in which I supposedly engaged. If the conduct was, in fact, as egregious as they contend, there is only one question that this Court need contemplate. If the Defendant’s were so concerned with the alleged damage and harm that my alleged conduct would cause, why did they not pursue the “criminal penalties” which would have been available to them?

The answer was counterproductive to their ends, to the extent that if they had collectively pursued this venue, the tape would have been actually subject to review, and someone would have had to listen to the tape, prior to making any determination concerning a violation on my part. The initial District Court in this case was crystal clear that I would be permitted to utilize the tape in my defense. Consequently, the Federal Court determined that my only defense rested in the tape. The District Court in Youngstown, however, never listened to the tape, thus any defense available to me was summarily dismissed. Said “defense” was also denied by this Honorable Court when they refused to “open the box”.

Again, for defendant UTU and defendant CSX, to aver that the mere existence of “criminal penalties” would in any way make a difference, neglects the fact the both had the opportunity to pursue this matter in a criminal jurisdiction, however, since this did not occur, they have relinquished any right to raise this hypothetical issue at this stage. The only criminal actions in this case were always on the part of the Defendants.

Defendants UTU and CSX also continue with the equally specious argument concerning the findings of other Courts. They collectively ignore the simple fact that those rulings were made moot by their own actions. Thus, *arguendo*, even if it were in fact true that I did distribute the transcript of the tape at the Atlanta Convention in 1997, there exists no ruling of any court that would have prevented me from so doing. However, I did not engage in such conduct, and the probative evidence that would have proven such fact was never allowed to be heard by the District Court.

Defendants UTU and CSX continually allege some type of “harm” to their reputations. This is a somewhat whimsical argument to the extent that this was an internal matter, strictly limited to the confines of matters properly and normally handled under the provisions of the Railway Labor Act, as amended. As such, the UTU and CSX exist in a vacuum, interestingly self created and condoned by both, thus their reputations, for purposes of this case, exist only within themselves.

Unlike Biomet, I have asserted, properly and timely, that “. . . if the compensatory damages award is lowered, constitutional requirements mandate that the punitive award be commensurately adjusted”. *Tronzo v. Biomet*.

The similarities between the erroneous conclusions reached in the District Court on remand in this case are striking, when compared to those in Biomet, wherein the Court of Appeals for the Federal District found, “In contrast, in the present case, the district court did not reweigh any evidence, nor did it exercise its discretion computing the damages award. Instead, the court awarded the maximum

damages possible given the lack of competent evidence in the record.” Plaintiff now adds the complete *Tronzo v. Biomet* as my fifth exhibit to the Joint Appendix and believes it has more weight than the “unpublished” cases CSXT has recently averred.

While it is unfortunate that the Defendants were able to use their political power and money to get many of my lawyers behind closed doors in judges chambers to my detriment, it has not prevented me from attempting to document the complete record. To see how skewed this case (1:94CV0485) really was, one need merely compare it’s docket and history to the very premise of the Judicial System, i.e., Rule 1 or the Rules of Civil Procedure, to wit: “They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.” UTU and CSXT have spent over one half million dollars to maintain a corrupt arbitration award in a case that is moving into its ninth (9th) year. Just? They have decimated 45 U.S.C. First, § 153(q), Federal Bankruptcy Law , and the FWA with bad law and are here today to maintain a \$100,000 punitive award based upon an event that they know didn’t occur. Their argument: your attorney’s screwed up and we cheated you “fair and square”. Not much different from their original position in the wiretap, i.e., how dare you have the audacity to catch us lying and cheating? Through a friendly Judge hostile to “pro se litigants”, they turned the “victim” into the “perpetrator” and engaged in an unprecedented persecution of a simply dues paying union member who only wanted my 30 shares of stock I was promised. While their

actions have caused bankruptcy, divorce, and continuing hardships, they will never break my spirit or my belief that I am right.

Respectfully submitted,

Kenneth R. Smoot, Pro se