Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 854

Record No. 6330

In the

Supreme Court of Appeals of Virginia

at Richmond

PAUL L. PEARMAN

v.

INDUSTRIAL RAYON CORPORATION

FROM THE CIRCUIT COURT OF ALLEGHANY COUNTY

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6330

VIRGINA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 14th day of January, 1966.

PAUL L. PEARMAN, Plaintiff in error,

against

INDUSTRIAL RAYON CORPORATION, Defendant in error.

From the Circuit Court of Alleghany County
Earl L. Abbott, Judge

Upon the petition of Paul L. Pearman a writ of error is awarded him to a judgment rendered by the Circuit Court of Alleghany County on the 17th day of June, 1965, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Industrial Rayon Corporation was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

★ ★ ★ ★ ★

page 1]

★ ★ ★ ★ ★

MOTION FOR JUDGMENT

To The Honorable Earl L. Abbott, Judge of the said Court

The Plaintiff, Paul L. Pearman, respectfully moves the Circuit Court of Alleghany County Virginia for a judgment against the defendant Industrial Rayon Corporation, in the sum of Three Thousand and Seven Hundred and Forty-three dollars and Sixty cents ($3,743.60) plus interest from the date of May 15, 1961 and in support thereof alleges the following:

(1) By Agreement dated June 20, 1959 between the Virginia Textile Union and Industrial Rayon Corporation the said Company agreed under Article XIV of the said Agreement to pay one (1) week's severance pay for each year of plant service for employees with at least two (2) year's plant service.

(2) The said Company further agreed under Article IX of the said Agreement to pay one (1) week's vacation with forty (40) hours pay to its employees and additional six (6) days for holidays.

(3) The said Company has failed to keep its agreement with the said Union and the said Plaintiff. The said Plaintiff was a member of the said Union and was an employee of the said Company until May 15, 1961 and he has not been paid to date.

(4) The plaintiff was given notice of the termination of his employment due to the fact the Industrial Rayon Corporation closed its operation in Covington, Virginia.

WHEREFORE plaintiff demands judgment against the defendant in the sum of Three Thousand and Seven Hundred and Forty-three dollars and Sixty cents ($3,743.60).

page 2]

Respectfully,

PAUL L. PEARMAN
By Counsel

★ ★ ★ ★ ★

page 5]

★ ★ ★ ★ ★

ORDER

This day came the plaintiff stating that for good cause shown the time for filing an answer or other pleadings in the above action was extended by order of this Court dated May 19, 1964, giving the plaintiff 30 days from the date of said order to do so; and showing good cause for an additional extension of time for the filing of said answer and other pleadings, there being no objection, the time for filing said answer and pleadings is hereby extended 15 days from the date of entry of this Order.

ENTERED: August 7 1964
EARL L. ABBOTT
Judge

★ ★ ★ ★ ★

page 6]

★ ★ ★ ★ ★

RESPONSIVE PLEADING AND GROUNDS OF DEFENSE

To The Honorable Earl L. Abbott, Judge of the said Court:

The defendant, Industrial Rayon Corporation, by counsel, answers the plaintiff's Motion for Judgment in the above styled action and respectfully says as follows:

(I) It denies that an agreement, dated June 20, 1959, was entered into between the Virginia Textile Union and the Industrial Rayon Corporation, but admits that such a contract was executed on January 20, 1959, and that it contained an agreement by the Company, Industrial Rayon Corporation, under Article XIV *if* the said Agreement to pay

one (1) week's severance pay for each year of plant service to employees with at least two (2) *year's* plant service whose employment was severed solely because of technological change.

(II) It denies the allegations of Paragraph (2) of said Motion for Judgment, and again denies that the said contract was dated June 20, 1959, but on the contrary dated January 20, 1959.

(III) It admits that plaintiff was an employee of defendant until May 15, 1961, but denies each and every other allegation contained in Paragraph (3) of said Motion for Judgment and alleges to the contrary that the contract upon which plaintiff relies expired and became null and void on January 19, 1960 and was not in effect at the time plaintiff's employment was terminated.

page 7] (IV) It admits the allegations of Paragraph (4) of the plaintiff's Motion for Judgment.

(V) It alleges that even if the contract were in *affect* at the time of termination, the severance pay clause (Article XIV) would not provide for severance pay in the event of a permanent shutdown of the plant.

(VI) It further alleges that even if the contract might be considered as having been in existence at the time Mr. Pearman, the plaintiff, was terminated, his claim for severance pay, holiday pay, and vacation pay would have been disallowed because he did not fully meet the qualifications required by the contract.

WHEREFORE the defendant, Industrial Rayon Corporation, respectfully prays that the plaintiff's Motion for Judgment be dismissed and that the contract upon which the plaintiff relies be declared null and void and of no effect from the 20th day of January, 1960.

Respectfully submitted

INDUSTRIAL RAYON CORPORATION
By Counsel

HALE COLLINS
WILLIAM T. WILSON
Counsel for the Defendant

★ ★ ★ ★ ★

Filed Aug. 25-1964

F. E. DILLARD, Clerk

page 8]

★ ★ ★ ★ ★

REQUEST FOR ADMISSIONS UNDER SECTION 8-111.1, CODE OF VIRGINIA (1950) ANNOTATED

Plaintiff, Paul L. Pearman requests Defendant, Industrial Rayon Corporation within thirty (30) days of service of this request to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the documents attached hereto marked Exhibit A, are true copies of similar documents released and distributed by said defendant.

2. That each of the following statements is true.

(a) Industrial Rayon Corporation terminated its operations in its nylon plant at Covington, Virginia, toward the end of December, 1960.

(b) Industrial Rayon Corporation terminated its operations in its rayon plant at Covington, Virginia, around May 15, 1961.

(c) Industrial Rayon Corporation consolidated its rayon textile yarn operations in its Painesville, Ohio Plant.

(d) Industrial Rayon Corporation in consolidating its rayon textile yarn manufacture in the Painesville, Ohio Plant, moved material and equipment from the Covington, Virginia Plant to the Painesville, Ohio Plant.

(e) The president of Industrial Rayon Corporation, Frederick L. Bissinger, said that the concentration of the rayon-producing operations at Painesville will enable more efficient operations and will place the Company in a better position to serve the needs of its customers in the tire and textile yarn fields.

page 9] (f) That Industrial Rayon Corporation, Covington, Virginia Plant, has never given written

notice to Virginia Textile Workers Union, Independent, of a desire to modify or terminate the agreement dated January 20, 1959, between said parties.

(g) That Paul L. Pearman was employed by Defendant, from July 19, 1929, until May 15, 1961.

(h) That Paul L. Pearman at the time of termination was paid an hourly rate of Two and 45/100 Dollars ($2.45).

PAUL L. PEARMAN
By Counsel

ERWIN S. SOLOMON
By G. J. GREGORY
Counsel for Plaintiffs
Hot Springs, Virginia

and

G. J. GREGORY
Co-Counsel for Plaintiffs
Clifton Forge, Virginia

* * * * *

Received & filed 12/11/64

F. E. DILLARD, Clerk

* * * * *

page 11]

* * * * *

ORDER

It hereby appearing to the Court that counsel have agreed that defendant be granted a further extension of time to file answer to the Request for Admissions until March 29, 1965, it is hereby ORDERED that defendant file its answer to the Request for Admissions filed against it by March 29, 1965.

ENTERED:
EARL L. ABBOTT
JUDGE

★ ★ ★ ★ ★

page 12]

★ ★ ★ ★ ★

ANSWER TO REQUEST FOR ADMISSIONS

The defendant, Industrial Rayon Corporation, for its answer to the Request for Admissions under Section 8 111-1, Code of Virginia (1950), as amended, filed upon it on the 11th day of December, 1964, says as follows:

I. Regarding Paragraph One (1):

The documents attached, marked Exhibit A, are true copies of similar documents prepared for newspaper release and distribution to news media by Industrial Rayon Corporation.

II. Regarding Paragraph Two (2):

(a) Industrial Rayon Corporation terminated its operations of its nylon plant at Covington, Virginia, toward the end of January, 1961.

(b) Industrial Rayon Corporation terminated its operations in its rayon plant at Covington, Virginia, toward the end of April, 1961.

(c) Industrial Rayon Corporation consolidated its rayon textile yarn operations in its Painesville, Ohio, plant, although such consolidation did not include any marketable product previously made at its Covington operation.

(d) Industrial Rayon Corporation did move a small amount of material and equipment from the Covington, Virginia, plant to the Painesville, Ohio, plant.

page 13] (e) Mr. Bissinger did make these statements in paragraph (e) as indicated by the newspaper releases.

(f) Industrial Rayon Corporation, Covington, Virginia, plant did not give written notice to Virginia Workers Union, Independent, of a desire to modify or terminate the agreement dated January 20, 1959, between said parties as the contract was terminated by the action of the Virginia Textile Workers Union, Independent, themselves.

(g) Paul L. Pearman was employed by the defendant from July 19, 1929 through May 14, 1961.

(h) Paul L. Pearman at the time of termination was paid on the basis of an hourly rate of $2.34 per hour.

INDUSTRIAL RAYON CORPORATION
By Counsel

WILLIAM T. WILSON
HALE COLLINS
Counsel for the defendant

★ ★ ★ ★ ★

Received & filed 3-29-65

F. E. DILLARD, Clerk

page 14]

★ ★ ★ ★ ★

MOTION TO DISMISS

To: The Honorable Earl L. Abbott, Judge of said Court:

The defendant, Industrial Rayon Corporation, by counsel, respectfully moves this Court to dismiss the Motion for Judgment in the above case for the following reasons:

(1) Plaintiff has no standing to sue in this Court upon the contract between Virginia Textile Union Workers and the Industrial Rayon Corporation because he does not allege, and it does not otherwise appear from the pleadings, that he ratified said contract.

(2) This Court does not have jurisdiction of the subject matter in order to enforce the collective bargaining agreement which is sought to be enforced by the plaintiff, because this matter must be tried in a Federal Court.

(3) Even if Paul L. Pearman is the proper plaintiff before this Court, and even if this Court has jurisdiction of the

subject matter, the plaintiff has not complied with the grievance procedure as set forth in the contract upon which he sues.

WHEREFORE, the defendant, Industrial Rayon Corporation, respectfully prays that the Court will dismiss the Motion for Judgment in the above styled case for the reasons hereinabove set forth.

page 15]

INDUSTRIAL RAYON CORPORATION
By Counsel

★ ★ ★ ★ ★

Received & filed 3-29-65

F. E. DILLARD, Clerk

★ ★ ★ ★ ★

page 19]

★ ★ ★ ★ ★

This day came the defendant, Industrial Rayon Corporation, by counsel, upon its Motion to Dismiss the Motion for Judgment in the above case; upon the exhibits and authorities filed therewith; and was argued by counsel.'

And it appearing to the Court that the allegations contained in ground number "(1)" of said Motion to Dismiss are without basis, it is ADJUDGED and ORDERED that the same be and is hereby overruled.

It further appearing to the Court that the allegations contained in ground number "(2)" of said Motion to Dismiss should be sustained and that this Court does not have jurisdiction of the subject matter in the above case, it is therefore ADJUDGED and ORDERED that said case be and is hereby dismissed.

It still further appearing to the Court that it is unnecessary to consider the merits of ground number "(3)" of said Motion to Dismiss, the same is not passed upon at the present time.

The plaintiff, Paul L. Pearman, by counsel, respectfully excepts to the above orders of the Court.

ENTERED:

EARL L. ABBOTT
Judge
June 17, 1965

★ ★ ★ ★ ★

page 21]

★ ★ ★ ★ ★

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The Plaintiff, Paul L. Pearman, hereby gives notice, pursuant to the provisions of Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia, of his Appeal from that certain final Order entered in the above styled case on June 17, 1965, in which the Court upholding the Defendant's Motion to Dismiss the Motion for Judgment ruled in effect, as follows:

1. Plaintiff has standing to sue in this Court upon the Contract between Virginia Textile Workers Union, Independent and Industrial Rayon Corporation, even if he does not allege he ratified said contract.
2. That the Court does not have jurisdiction of the subject matter in order to enforce the collective bargaining agreement which is sought to be enforced by the Plaintiff, because this matter must be tried in a Federal Court.
3. That it is unnecessary for the Court to consider at this time whether or not the Plaintiff has complied with the grievance procedure set forth in the contract.

The following are errors assigned:

1. That the Court erred in dismissing this case on the grounds that it does not have jurisdiction of the subject matter, in that the Court has original and general jurisdiction of all Civil cases at Law, such as this matter; that

page 22] in this case the Defendant's Motion is ill founded since it alleges the Court does not have jurisdic-

tion to enforce the very agreement which the Defendant by its Answer had alleged was null and void at the time of the Plaintiff's *cuase* of action which could give cause for damages or implied contract in this suit; that regardless of the nature of the Agreement, whether written or implied, collective bargaining or not, upon which the Plaintiff bases his cause of action, the Court has jurisdiction; and that the Plaintiff has brought this suit as an individual to collect money due him so that the Court has jurisdiction both potential and active in this case.

2. That the Court not only erred in ruling that it did not have jurisdiction, but further erred in not overruling the Motion to Dismiss the Plaintiff because the Plaintiff had allegedly not complied with the grievance procedure as set forth in the Agreement, which Agreement the Defendant has denied existed at the time *of* the cause of action arose.

Respectfully submitted,
PAUL L. PEARMAN
By Counsel

We hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error was mailed this 15th day of July, 1965, to Hale Collins and William T. Wilson, Counsel for Defendant, Covington, Virginia.

E. S. SOLOMON
Hot Springs
Virginia

G. J. GREGORY
538 Main Street
Clifton Forge, Virginia
Counsels for Plaintiff

By: G. J. GREGORY

Received & Filed: 7-16-65.
F. E. DILLARD, Clerk

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Order — August 7, 1964	3
Responsive Pleading and Grounds of Defense	3
Request for Admissions, etc.	5
Order	6
Answer to Request for Admissions	7
Motion to Dismiss	8
Judgment — June 17, 1965	9
Notice of Appeal and Assignments of Error	10