No. 23-3126

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DONETTA RAYMOND, et al.,
Plaintiffs-Appellants,

v.

SPIRIT AEROSYSTEMS HOLDINGS, et al.,
Defendants-Appellees.

On Appeal from the United States District Court
for the District of Kansas

BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANTS AND IN FAVOR OF REVERSAL

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STATEMENT OF INTEREST

Congress charged the Equal Employment Opportunity Commission (EEOC) with administering and enforcing federal laws prohibiting workplace discrimination, including the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621 *et seq*. This appeal implicates whether the pattern-or-practice framework articulated in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977), is available for a claim premised on a one-time reduction in force. Because the EEOC has a substantial interest in the proper interpretation of the laws it enforces, including the appropriate frameworks for their analyses, it files this amicus curiae brief pursuant to Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUE[1]

1. Whether a one-time reduction in force can form the basis for ADEA liability under the *Teamsters* pattern-or-practice framework.

[1] The EEOC takes no position on any other issue on appeal.

STATEMENT OF THE CASE

A. Statement of the Facts

The plaintiffs allege that Spirit Aerosystems, Inc., and Spirit Aerosystems Holdings, Inc. (collectively Spirit), intentionally discriminated against older workers when it laid off 271 employees from a 4,000-worker Wichita, Kansas manufacturing facility in a 2013 reduction in force. R.1115 at 2.[2] They also argue that the discrimination carried over to the failure to subsequently rehire many of the plaintiffs. *Id*. at 3. The plaintiffs claim that Spirit adopted several new policies in carrying out the reduction in force and subsequent hiring that targeted older workers. *Id*. at 2-3. They sought to pursue their claims challenging the reduction in force and the subsequent failure to hire under a pattern-or-practice liability framework in the district court. *Id*. at 3-4.

[2] The record in this case is extensive and includes multiple decisions from the district court that are implicated on appeal. Because we address only an issue of law in the district court's May 16, 2023, decision, R.1115, we briefly recite the relevant facts as recounted in that decision.

B. District Court's Decision

The district court granted summary judgment to Spirit on the ADEA claims premised on the pattern-or-practice theory regarding both the reduction in force ("RIF") and the failure to later hire certain plaintiffs.

The court first questioned whether "a company RIF, in and of itself," could be the basis for liability under the pattern-or-practice framework. R.1115 at 49-50. Assuming that a RIF could fit within the pattern-or-practice framework, the court nonetheless held that the plaintiffs failed to raise a genuine issue of material fact that Spirit engaged in a pattern or practice of discrimination toward older workers while carrying out its reduction in force. *Id*. at 50-69.

Addressing the failure-to-hire claim premised on a pattern-or-practice theory, the court held that the plaintiffs did not present sufficient evidence that the failure to hire them stemmed from discriminatory animus. *Id*. at 76-83.

SUMMARY OF ARGUMENT

The district court correctly assumed that a one-time reduction in force could form the basis for ADEA liability under the pattern-or-practice framework. Several decisions, including from this Court, have explored the

contours of pattern-or-practice liability within the context of a one-time reduction in force without expressing concern over that factual circumstance. Although one-time reductions in force are temporally contained, they often affect a significant portion of the employer's workforce and are almost invariably carried out under express policies set by the employer. These general circumstances make reductions in force well-suited to the pattern-or-practice analysis. This Court should affirm that the framework applies here.

ARGUMENT

The pattern-or-practice liability framework is often referred to as the *Teamsters* framework, after *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977). The *Teamsters* decision dealt with pattern-or-practice liability in a suit brought by the government under section 707(a) of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-6(a). *See Teamsters*, 431 U.S. at 328. But the Court articulated a liability framework that is generally available to the government and private plaintiffs seeking to establish a discrimination claim based on an employer's pattern or practice of discrimination, including under the ADEA. *See Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 876 n.9 (1984); *see also Thiessen v. Gen. Elec. Cap.*

Corp., 267 F.3d 1095, 1106 (10th Cir. 2001) (discussing pattern-or-practice framework in ADEA case); *and see Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125, 1129 (10th Cir. 2009) (confirming *Thiessen*'s holding that pattern-or-practice framework applies to ADEA claims).

In *Teamsters*, the Court explained that the pattern-or-practice framework applies when the plaintiff can show that "racial discrimination was the company's standard operating procedure[,] the regular rather than the unusual practice." *Teamsters*, 431 U.S. at 336. Calling upon the legislative history of Title VII's section 707 to further illuminate the framework, the Court explained that an employer engages in a pattern or practice of discriminatory conduct "where denial of rights consists of something more than an isolated, sporadic incident, but is repeated, routine, or of a generalized nature." *Id*. at n.16 (quoting 110 Cong. Rec. 14270 (1964)).

Claims premised on the *Teamsters* framework are typically litigated "in two or more stages." *Thiessen*, 267 F.3d at 1106. In the first stage, the plaintiff, often on behalf of a class of similarly situated individuals, is tasked with establishing that an employer has "engaged in a pervasive pattern of . . . discrimination." *Cooper*, 467 U.S. at 875 (citing *Franks v.*

Bowman Transp. Co., 424 U.S. 747, 772 (1976)). During this stage the employer has an opportunity to rebut the plaintiff's "proof [as] either inaccurate or insignificant." *Teamsters*, 431 U.S. at 360. If a plaintiff successfully demonstrates a pattern or practice of discrimination, the plaintiff is immediately entitled to class-wide injunctive relief. *Cooper*, 467 U.S. at 876.

If the plaintiff seeks individual relief for class members, the proceedings move on to a second stage to determine whether each member was individually a victim of the discriminatory practice. At this second stage, the plaintiff enjoys a "presumption that the individual class members had been discriminated against." *Id*. at 875.

I. The *Teamsters* liability framework can apply to a one-time reduction in force.

The *Teamsters* decision and precedent applying the liability framework show that a one-time reduction in force can be analyzed under the pattern-or-practice framework.[3] Because the government in *Teamsters*

[3] The plaintiffs also challenged the subsequent failure to hire certain plaintiffs as a pattern or practice of discrimination. Our analysis focuses on the reduction in force because the district court expressly questioned whether a plaintiff can ever prevail in the first stage of the pattern-or-practice framework based on a one-time reduction in force. We argue here

claimed that the employer enforced discriminatory hiring, assignment, and promotion policies over a number of years, the Court did not address whether a one-time, but widespread, application of a company's discriminatory policy fit within the pattern-or-practice framework. *See United States v. T.I.M.E.-DC, Inc.*, No. CIVIL 5-868, 1972 WL 280, at *3 (N.D. Tex. Oct. 19, 1972) (describing evidence of discrimination "over the years"). But circuit courts have applied the *Teamsters* framework to one-time reductions in force without expressing concern over the fact that the reductions in force were one-time occurrences.

Precedent from this Court suggests that a one-time reduction in force can fit within the pattern-or-practice framework. For instance, in *Apsley v. Boeing Co.*, 691 F.3d 1184 (10th Cir. 2012), the plaintiffs challenged as discriminatory a reduction in force that took place when Boeing sold its Wichita Division facilities to Spirit AeroSystems. As part of the sale, Boeing terminated the entire 10,671-person Wichita Division. Spirit then rehired

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that, as a matter of law, the one-time nature of a reduction in force is not dispositive of the pattern-or-practice question. Of course, a case in which the plaintiffs allege not only a discriminatory reduction in force but also a carry-through of discrimination into subsequent failures to hire has an even stronger claim that the framework applies.

8,354 of the terminated employees, based on recommendations Boeing compiled. *Id*. at 1193. The panel affirmed the district court's grant of summary judgment to the defendants, but did so because the plaintiffs' evidence did not show systematic discrimination, not because a one-time reduction in force is categorically insufficient to establish a pattern or practice of discrimination. *See id*. at 1200 (defendant "recommended and hired over 99% of the older employees they would have been expected to recommend and hire in the absence of any discrimination"); *id*. at 1203 (other evidence established only that some individual managers acted with discriminatory motives). In other words, the plaintiffs lost because their evidence was not strong, not because they challenged a one-time reduction in force.

In *Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125 (10th Cir. 2009), this Court confirmed that the *Teamsters* framework could be applied in the ADEA context in a case challenging a single reduction in force. *Id*. at 1126. Although the court did not discuss whether the plaintiffs established that the employer engaged in a pattern or practice of discrimination based on that reduction in force, it did not express hesitation in remanding the case to the district court to do just that. *Id*. at 1131.

Finally, in *EEOC v. Sandia Corp.*, 639 F.2d 600 (10th Cir. 1980), this Court upheld the trial court's determination that the employer engaged in a pattern or practice of discrimination against older workers in a one-time reduction in force that took place in February 1973. *See id*. at 621, 628. Spirit argued in the district court that *Sandia* involved multiple layoffs, but that is not correct. Though the panel recounted that another layoff was scheduled later in 1973, *id*. at 604, this Court appears to have relied only on statistical evidence as to the February 1973 layoff in affirming liability, *id*. at 605-08. The trial court had also held that Sandia engaged in a pattern or practice of discriminatory salary delays, but that claim was not fully resolved before the appeal giving rise to the *Sandia* opinion and therefore was not implicated on appeal. *See id.* at 605 n.2.

Other circuits are in accord with this Court. In *Adams v. Ameritech Services, Inc.*, 231 F.3d 414 (7th Cir. 2000), for instance, the Seventh Circuit reversed the district court's summary judgment grant to the defendant on the plaintiff's pattern-or-practice argument stemming from a one-time reduction in force. Noting that "the fundamental analysis of RIF cases is no different from the analysis appropriate to other forms of discrimination," *id*. at 422, the court held that the plaintiffs had enough summary judgment

evidence to move forward on their pattern-or-practice theory, *id*. at 433. *See also EEOC v. McDonnell Douglas Corp.*, 191 F.3d 948, 953 (8th Cir. 1999) (like *Apsley*, affirming summary judgment to employer based on weakness of statistical evidence, but not indicating that a one-time reduction in force is categorically inappropriate for pattern-or-practice analysis).

This makes sense. An employer who adopts an intentionally discriminatory policy, as the plaintiffs here allege Spirit did, has adopted a "practice" of discrimination. And applying that practice to the entire relevant workforce demonstrates a pattern of discrimination. *Cf. Teamsters*, 431 U.S. at 336 n.16 (term "pattern or practice" is "not intended as a term of art, and the words reflect only their usual meaning"). An employer who adopts an intentionally discriminatory policy and then applies it to a substantial chunk of its employees should not be exempt from the pattern-or-practice liability framework merely because it does so in one fell swoop.[4]

[4] Here, of course, the plaintiffs have also argued that Spirit's failure to hire certain plaintiffs stemmed from the same discriminatory purpose that motivated the reduction in force. The repeated acts of discrimination bolster the plaintiffs' claim that the pattern-or-practice framework should apply.

II. The cases Spirit cited in the district court do not establish that a one-time reduction in force cannot be analyzed under the pattern-or-practice framework.

In the district court, Spirit cited three out-of-circuit district court decisions, two of which were unpublished, to support its argument that a one-time reduction in force cannot be analyzed under the pattern-or-practice framework. Those cases are of course not binding on this Court. And none can be fairly read to categorically exclude a one-time reduction in force from the pattern-or-practice framework.

The one published district court case that Spirit cited, *Sperling v. Hoffman-La Roche, Inc.*, 924 F. Supp. 1346 (D.N.J. 1996), is distinguishable because the plaintiffs failed to identify an intentionally discriminatory policy or practice that could be attributed to the employer. In that case, the plaintiffs challenged a one-time reduction in force as causing both a disparate impact based on age and as demonstrating a pattern or practice of intentional discrimination against older workers. *Id*. at 1349. The employer carried out its reduction in force by circulating a set of guidelines for line managers to consult while otherwise allowing the managers to exercise their discretion in deciding whom to terminate. *Id*. at 1351. To support its intentional discrimination claim, and its pattern-or-practice

theory, the plaintiffs claimed that the employer "intended and/or knew that giving the line managers discretion would result in intentional discrimination." *Id*. at 1360. The court found no evidence to support that theory and therefore no basis to conclude that the employer engaged in a pattern or practice of discrimination in carrying out its reduction in force. *Id*. at 1360-61; *see also id*. at 1362 (calling the theory "a disparate impact claim and not a pattern-or-practice claim"). The court went out of its way to note that if the evidence were different, for instance if "a company gave managers the discretion to make termination decisions only as a ruse to conceal a systematic, discriminatory policy, then that company could be found to have engaged in a pattern or practice of discrimination." *Id*. at 1364.

After engaging in this analysis, the *Sperling* court added that the plaintiff's evidence also did not fit within the pattern-or-practice framework because the reduction in force was a "one-shot event." *Id*. Because there was no indication that the employer was going to engage in similar discrimination going forward, there was no call for "classwide prospective injunctive relief," which the court said is "the main reason for bringing a pattern-or-practice claim." *Id*. This statement was likely dicta

and did not form the basis for the court's conclusion on pattern-or-practice liability.

Nonetheless, the court in *Oinonen v. TRX, Inc.*, another case Spirit relied on, cited *Sperling* for the proposition that "a 'one-shot' event cannot constitute a pattern or practice of discrimination." *Oinonen*, No. 3:09-1450, 2010 WL 396112, at *4 (N.D. Tex. Feb. 3, 2010). As discussed above, that was not the central holding in *Sperling*. Moreover, the *Oinonen* court took the "one-shot event" language from *Sperling* out of context by decoupling it from the lack of a need for classwide prospective injunctive relief.

But even *Oinonen* does not stand for the proposition that a reduction in force is categorically ineligible for the pattern-or-practice analysis. In that case, the court dismissed the plaintiffs' claim asserting a pattern or practice of discrimination where the plaintiffs failed to identify any specific facts suggesting that the defendant had a discriminatory motive. *Id*. at *3-4. The plaintiffs relied instead on statistics and conclusory allegations, failing to identify the defendant's specific practices that were allegedly discriminatory. *Id*.

Finally, Spirit cited *Murphy v. Philadelphia Gas Works and Gas Works Employees' Union of Philadelphia*, No. 83-0950, 1984 WL 48971 (E.D. Pa. Feb.

9, 1984). But the plaintiff in that case did not pursue a claim under the pattern-or-practice framework. Rather, the plaintiff argued that his employer's refusal to promote him pursuant to a new evaluation procedure was a continuing violation, tolling the limitations period for filing his EEOC charge. The court held that it was not "a continuing standard operating procedure" because the plaintiff's "denial of promotion was a single event," not a "continuing pattern or practice." *Id*. at *3. Moreover, there was no evidence in the record regarding the nature of the new evaluation procedure. *Id*. at *1 n.1. The court simply did not analyze whether the *Teamsters* framework could apply and therefore *Murphy* has no bearing on the issue.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's assumption that a one-time reduction in force can be assessed under the pattern-or-practice framework.

Respectfully submitted,

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November 13, 2023

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 2,681 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Book Antiqua 14 point.

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CERTIFICATE OF SERVICE

I certify that on November 13, 2023, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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