

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5447

September Term, 2005

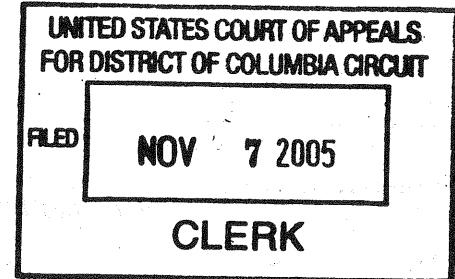
03cv02084

Filed On:

Dena Briscoe, Individually and as class representative
of Brentwood facility employees who are represented
by the American Postal Workers Union, et al.,
Appellants

v.

John E. Potter, United States Postal Service
Postmaster General in his individual capacity, et al.,
Appellees



Appeal from the United States District Court
for the District of Columbia
No. 03cv02084

BEFORE: SENTELLE, TATEL, and GARLAND, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia, and on the briefs of the parties and oral arguments by counsel. The court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. Rule 36(b).

Plaintiffs claim various officials at the United States Postal Service (USPS) violated their rights under both the procedural and "substantive" components of the Fifth Amendment's Due Process Clause. Specifically, the complaint alleges that the defendants intentionally misrepresented the safety of USPS's Brentwood Processing and Distribution Center in Washington, D.C., where the plaintiffs were working when they were exposed to anthrax in October 2001. Relying on *Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388 (1971), the plaintiffs claim the USPS officials should be personally liable for money damages. The District Court dismissed the complaint.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5447

September Term, 2005

We conclude the plaintiffs' *Bivens* claims are precluded by an "elaborate, comprehensive scheme" that Congress has provided to govern employees' injuries in federal workplaces. *Bush v. Lucas*, 462 U.S. 367 (1983); see also *Schweiker v. Chilicky*, 487 U.S. 412, 424-25 (1988). Under the Federal Employees Compensation Act (FECA), the government must "pay compensation . . . for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty." 5 U.S.C. § 8102(a). FECA provides the exclusive remedy for Richmond's injuries. See *Johansen v. United States*, 343 U.S. 427, 439-40 (1952) (FECA is the "exclusive right to Government employees for compensation, in any form, from the United States. . . . [FECA's] comprehensive plan for waiver of sovereign immunity, in the absence of specific exceptions, would naturally be regarded as exclusive.") (emphasis added). It is therefore

ORDERED AND ADJUDGED that the District Court's dismissal of the complaint is affirmed.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. See FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:


Michael C. McGrail

Deputy Clerk