

1987

May a Federal Court Remand a Case to State Court After Federal Claims Have Been Deleted?

Joseph P. Bauer

Notre Dame Law School, jbauer@nd.edu

Follow this and additional works at: https://scholarship.law.nd.edu/law_faculty_scholarship



Part of the [Courts Commons](#), [Jurisdiction Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Joseph P. Bauer, *May a Federal Court Remand a Case to State Court After Federal Claims Have Been Deleted?*, 1987-1988 Preview U.S. Sup. Ct. Cas. 104 (1987-1988).

Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/813

This Article is brought to you for free and open access by the Publications at NDLScholarship. It has been accepted for inclusion in Journal Articles by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

May a Federal Court Remand a Case to State Court After Federal Claims Have Been Deleted?

by Joseph P. Bauer

Carnegie-Mellon University

v.

Honorable Maurice B. Cohill, Jr.

(Docket No. 86-1021)

Argued November 10, 1987

This case concerns the circumstances under which a lawsuit, properly commenced in a state court and then removed before trial to a federal court, may be sent back (remanded) to the state court.

On one level, this case seems only to involve technical interpretations of federal statutes governing procedure in the federal courts. At another level, however, it involves more general and important issues. Among these are how to allocate judicial power and responsibility between the state and federal courts; the authority of federal judges to expand limitations on federal statutes, through exercising judicial discretion and the rights of individuals to control the forum for litigating their disputes by changing their original complaint.

ISSUES

When an action is originally filed in a state court which asserts claims arising under both state and federal laws, and then removed to federal court, may the federal court send the action back to the state court if the federal claims are deleted from the complaint? Or, in such a situation, is the federal court limited to either retaining the action or dismissing it for lack of jurisdiction?

FACTS

William Boyle, an employee of Carnegie-Mellon University in Pittsburgh, Pennsylvania, was discharged from employment because he refused to accept blame for some improper billings and certain thefts at the University. He and his wife, Carrie Boyle, brought a lawsuit against Carnegie and against John Kordesich, his supervisor at Carnegie, in a Pennsylvania state court. The complaint alleged that he was wrongfully discharged and entitled to recovery under a variety of theories

arising under Pennsylvania state law, including tort, breach of contract, infliction of emotional distress, defamation and misrepresentation. In addition, Boyle asserted that his discharge was based on the fact that he was fifty-six years old, and that this age discrimination was unlawful under the laws both of Pennsylvania and of the United States.

Based on a federal statute which permits certain cases brought in state courts to be removed to federal court (28 U.S.C. section 1441), Carnegie and Kordesich removed the case to the United States District Court for the Western District of Pennsylvania. The Boyles made no objection to the removal, nor did they seek to have the case remanded to the state court.

After a variety of steps leading up to trial, which took about eight months, the Boyles amended their complaint to delete the cause of action arising under the federal Age Discrimination in Employment Act.

Since the Boyles' complaint then asserted claims arising solely under state law, they simultaneously made a motion to remand the case to state court. Carnegie-Mellon objected, asserting that the federal court had authority either to retain the case or to dismiss it, but not to remand it to state court. The court decided to remand the case.

Carnegie and Kordesich then appealed this decision to the United States Court of Appeals for the Third Circuit. Asserting that the federal trial court judge—Judge Maurice Cohill—had abused his discretion in remanding the action, they sought a *writ of mandamus* from the appellate court, to require Judge Cohill to rescind his remand order.

The action was first heard by a three judge panel. By a 2-to-1 decision, the Third Circuit determined that Judge Cohill had abused his discretion in remanding the action, and issued the *writ of mandamus* ordering him to vacate his order. The court of appeals voted to hear the case *en banc* and to vacate the decision of the three judge panel. After the rehearing, the Third Circuit split 5-to-5. This had the effect of upholding the district court's order. Carnegie-Mellon then sought review in the United States Supreme Court.

BACKGROUND AND SIGNIFICANCE

The judicial power of the federal courts is limited. For these courts to have jurisdiction to hear a case, the

Joseph P. Bauer is a Professor of Law and Associate Dean at Notre Dame Law School, Notre Dame, IN 46556; telephone (219) 239-6514.

action must in the first instance fall within Article III of the Constitution, and then within a federal statute. Broadly speaking, there are two major categories of situations in which the federal courts can hear a case: where the plaintiffs and defendants are citizens of different states (diversity jurisdiction), or where the plaintiff asserts a claim which arises under federal law (federal question jurisdiction).

Here, the parties apparently were all citizens of Pennsylvania, and therefore diversity jurisdiction did not exist. If the plaintiffs had asserted claims arising solely under Pennsylvania law, there also would have been no federal question jurisdiction, and therefore this case could have been heard only in a state court. On the other hand, once the plaintiffs asserted a claim under a federal statute (the Age Discrimination in Employment Act), a federal question was presented, and federal court jurisdiction existed over that claim.

In a case decided in 1966—*United Mine Workers v. Gibbs* (383 U.S. 715)—the Supreme Court held that if a plaintiff asserts both state law and federal claims in the same lawsuit, and if those claims arise out of the same transaction or occurrence, the entire case can be brought in federal court, and it can exercise “pendent jurisdiction” over the entire action. This decision was an interpretation both of the judicial power conferred by Article III and the statutory specification of federal jurisdiction found in 28 U.S.C. section 1332. Applying the *Gibbs* test to this case, since all of the Boyles’ claims arose out of the alleged wrongful discharge, they could have commenced the entire action in a federal court.

The right of a defendant to remove an action from state to federal court is entirely statutory, there being no express provision for removal in the Constitution. In 28 U.S.C. section 1441, a defendant is given the right to remove an action to federal court if the action was one over which the federal courts would have had original jurisdiction. Since, as noted, the Boyles could have brought their combined state and federal claims in federal court had they wanted to do so originally, the defendants probably had the absolute right—without seeking permission either of the plaintiffs or from the court—to remove the action. By filing the removal petition with the federal court, removal was automatic, and an objection by the Boyles—had it been made—probably would have been futile. (While neither of the parties challenged the propriety of removal, and both lower courts assumed removal was proper, one of the *amici* argues that removal was unauthorized by the relevant federal statutes. If the Supreme Court agrees with this position, it could decide the case on this ground and would then never reach the issues presented by the parties.)

The particular issue arises once the Boyles obtained leave of the federal court to delete their federal claim, leaving an action arising solely under state law. As

noted, that action could not have been brought originally in federal court, and hence would have been unremovable. In this now altered state of affairs, what should the federal court have done with the action?

Similar problems have been presented in a number of prior lower court cases. About a half dozen of the federal intermediate appellate courts—the courts of appeals—have wrestled with this question, and have reached differing conclusions. In part, it was this split in the circuits which motivated the Supreme Court to take this case and to resolve this question.

One obvious possibility was that the district court could have dismissed the action, allowing the plaintiffs to recommence it in state court. One objection that the plaintiffs might have to this alternative, however, is that in the meantime the statute of limitations on the action might have run, foreclosing any action in any court. Although there is some doubt as to the facts, the plaintiffs here probably would have faced such a bar in state court.

A second possibility is that the federal court could nonetheless have retained the now purely state law action. The *Gibbs* case offers some authority for such a procedure. If a mixed federal-state law action is commenced in a federal court, and the federal claim fails, *Gibbs* held that the court still may, under certain circumstances, retain the nonfederal claims. However, perhaps because of the factual differences of this case, as well as the relatively early stage of the litigation here (before trial had started), the federal court did not follow that option.

Just as the procedure for removal is purely statutory, so is the procedure for remand. The relevant statute (28 U.S.C. section 1447(b)) provides that if “at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case.” Here, however, the removal was *proper*. It was only after the removal occurred and part of the claim was dismissed, that jurisdiction no longer existed. Furthermore, this situation arose because of the unilateral action of the plaintiff.

In this case, the federal district court judge stated that the statute was not the sole source of authority for remand, and that he could exercise “discretion” to remand in situations such as this. Objecting, the defendants asserted that remand can be done only as the statute authorizes, and that the Congress, by passing such a statutory provision, determined not to give judges any such discretion.

This case, then, turns in part on the construction of a federal statute (28 U.S.C. section 1447(b)), and the Supreme Court could decide the case on relatively narrow grounds, basing its decision purely on the proper interpretation of the statute. The Court could, however, take a broader view of the issues.

As noted, this case involves the allocation of judicial

responsibility between the federal and state courts. Approximately 6 to 7 per cent of all federal cases arrive each year in the federal courts by removal from state courts. Whether the parties choose federal or state court is influenced by such varied factors as docket length, location of the courthouse, perceived biases of the judges and juries and differences in rules of procedure and evidence. Thus, a decision on the circumstances in which remand is available will affect both this choice and the caseloads of the two sets of courts.

This case also raises issues of federalism and comity between state and federal courts. Since the action now involves only state law issues, it would appear that a state court is the best forum for resolving the dispute. Retention of the action in federal court would interfere with state interests. This concern led eighteen states to file an *amicus* brief, supporting the Boyles' position and arguing for the propriety of remand.

A third broader issue arises from the exercise of discretion by the federal courts. It is unclear to what extent a federal judge can read a statute expansively, or add a provision not found in its precise language, when the court deems this necessary to achieve justice or to adjust for unexpressed congressional intent. Although the issue arises here in the context of a procedural provision for managing federal litigation, the Court's decision could have implications elsewhere.

Finally, the case does involve competition by the parties for control of the forum for their litigation. In the first instance, if the plaintiffs had omitted any federal claim from the original action, it would clearly have been unremovable, and the defendants would have been relegated to state court. On the other hand, by adding the federal claim, the plaintiffs afforded the defendants the right of removal over which the plaintiffs had no control. Once removal takes place, to what extent should

the plaintiffs have the right to deprive the defendants of a federal forum by deleting claims selectively? Since federal courts have frequently been jealous about protecting their jurisdiction, there may be concerns about possible manipulation by post-removal changes in the complaint.

ARGUMENTS

For Carnegie-Mellon University (Counsel of Record, Walter P. DeForest, III, Mellon Square, 435 Sixth Avenue, Pittsburgh, PA 15219; telephone (412) 288-3383)

1. Prior Supreme Court caselaw indicates that federal statutes provide the exclusive grounds upon which a district court may remand a properly removed action.
2. Policy reasons support the conclusion that a district court may remand an action only pursuant to these statutes; on the other hand, there is no basis for expanding the grounds for remand by exercising judicial discretion.

For Judge Cohill and the Boyles (Counsel of Record, Allan J. Opsitnick, 527 Court Place, Pittsburgh, PA 15219; telephone (412) 391-3299)

1. In *Gibbs*, the Supreme Court gave federal courts broad discretion to exercise pendent jurisdiction.
2. Under *Gibbs*, once a federal claim is dismissed and only state claims remain, federal courts have discretion to retain the entire action, to dismiss the lawsuit, or to remand to state court.

AMICUS BRIEFS

In Support of Judge Cohill and the Boyles

The state of California with seventeen other states, jointly; Department of Water and Power, City of Los Angeles