In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2796

PHILLIP L. MILES,

Plaintiff-Appellant,

v.

JULIE ANTON,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.
No. 3:20-cv-246 — **Robert L. Miller, Jr.**, *Judge*.

ARGUED MAY 24, 2022 — DECIDED AUGUST 2, 2022

Before EASTERBROOK, WOOD, and BRENNAN, *Circuit Judges*.

WOOD, *Circuit Judge*. While incarcerated at Indiana State Prison, Phillip Miles was fired from his commissary job by Officer Julie Anton because he missed work to attend a Muslim prayer service. Miles sued Anton in her personal capacity for violating his rights under the First Amendment. But because Miles did not file a formal grievance before filing, the district court found that he had failed to comply with the Prison Litigation Reform Act's exhaustion requirement, see 42 U.S.C.

§ 1997e(a). The court thus granted summary judgment to Anton. Because the policy, properly understood, excepted his claim from the prison's administrative process, however, there was no required step that Miles failed to take. We therefore reverse and remand the case for further proceedings.

I

A

On July 22, 2019, Officer Austin Nunn hired Miles for a job in the Indiana State Prison commissary, with the understanding that Miles would miss work on Fridays from 12pm to 2pm to attend the prison's weekly Jumu'ah Muslim prayer service. Officer Julie Anton was to serve as Miles's supervisor in the commissary. Mere weeks later, on August 2, Anton refused to allow Miles to attend Jumu'ah, threatening that he would be "done" in the commissary if he left for the service. But Miles went anyway. According to Officer Nunn's sworn affidavit, Anton proclaimed that "[Miles] cannot go every week to Jumu'ah" and announced that if he did, she would fire him under the guise of poor work performance. Sure enough, Anton fired Miles later that day based on a work evaluation that accused Miles of stealing kitchen supplies. After Miles received news of his firing on August 5, he tried to resolve the issue with Anton informally, but he never received a response from her. Miles acknowledges that he did not lodge a formal grievance against Anton in relation to these events.

Soon after, Miles filed a grievance disputing the allegation of theft as well as the negative work evaluation. On August 13, he was exonerated of the accusation of theft, and on August 26, his negative work evaluation was reversed. Those decisions allowed him to apply for new work assignments

elsewhere in the prison. Officer Anton is no longer employed by the Indiana Department of Correction.

B

In March 2020, while acting *pro se*, Miles sued Anton in her individual capacity in federal district court under 42 U.S.C. § 1983, alleging that Anton violated his First Amendment rights by refusing to let him attend religious services and then retaliating against him when he nonetheless did so. The district court rejected Miles's request for recruited counsel but allowed his First Amendment claims to proceed. Anton then moved for summary judgment, relying on the affirmative defense furnished by the exhaustion requirement of the Prison Litigation Reform Act (PLRA). See 42 U.S.C. § 1997e(a). She contended that Miles's failure to file a formal grievance specifically focused on his firing before bringing this action was inconsistent with the prison's grievance procedures and therefore warranted dismissal under the PLRA.

Indiana State Prison maintains an administrative process that prisoners must use when pursuing a grievance against an officer. First, the prisoner must try to resolve the issue informally by raising it with the relevant official. Prison Grievance Policy § X. Second, the prisoner must submit a "State Form 45471 Offender Grievance" to the Offender Grievance Specialist within ten business days of the incident. *Id.* § XI. Third, if the Offender Grievance Specialist rejects the claim, the prisoner has five business days after receiving the response to appeal the negative decision to the Warden or the Warden's designee. *Id.* § XII. And fourth, if the prisoner disagrees with the resolution of the appeal, he has five business days to lodge a subsequent appeal to the "Department Offender Grievance Manager," whose decision is final. *Id.* § XIII.

Here's the rub: not all issues are subject to this four-step administrative process. Section IV(A) lists examples of issues that are eligible for administrative review, while section IV(B) lists examples of issues that are not eligible. Most notably, "an offender may initiate the grievance process" in response to the "[a]ctions of individual staff." *Id.* § IV(A). But "matters inappropriate to the offender grievance process" include "classification actions or decisions" such as "loss of a job." *Id.* § IV(B).

The district court granted Anton's motion for summary judgment, finding that Miles's complaint did not fall within the "classification actions" exception because he was objecting not to the loss of his job as such, but rather to his unconstitutional treatment at the hands of an individual staff member. This distinction, however, does not hold up under scrutiny. Whatever her motivation, Anton's decision to fire Miles was a "classification action" connected to the "loss of a job." It is therefore not grievable under the plain language of the policy.

II

A

We evaluate grants of summary judgment *de novo*, viewing all facts in the light most favorable to the non-moving party. *FKFJ, Inc. v. Vill. of Worth*, 11 F.4th 574, 585 (7th Cir. 2021). Moreover, "exhaustion is an affirmative defense, and consequently the burden of proof is on the prison officials." *Kaba v. Stepp*, 458 F.3d 678, 680 (7th Cir. 2006). Given the combination of these two standards, we must construe all factual disputes in Miles's favor and then consider whether Anton

has demonstrated beyond dispute that Miles acted inconsistently with the PLRA's exhaustion requirement.

The PLRA requires a prisoner to exhaust "such administrative remedies as are available" before bringing an action challenging prison conditions. 42 U.S.C. § 1997e(a). A suit filed before the prisoner has exhausted these remedies "must be dismissed." *Perez v. Wisconsin Dep't of Corr.*, 182 F.3d 532, 535 (7th Cir. 1999). But the PLRA's exhaustion requirement "contains one significant qualifier: the remedies must indeed be 'available' to the prisoner." *Ross v. Blake*, 578 U.S. 632, 639 (2016). This qualification has led to two paths that excuse a prisoner from the normal duty to exhaust. If a remedy is "officially on the books" but the remedy is incapable of use *in practice*, perhaps because the prison's grievance processes have not been maintained or are unduly difficult to navigate, then the duty to exhaust falls away. See *id.* at 643–44 (outlining three different kinds of practical unavailability). Likewise, there is no duty to exhaust if a remedy for an issue is not "officially on the books"—that is, provided for in the text of the written grievance policy—in the first place.

This case falls into the latter category, where the text of the grievance policy is dispositive. As we noted earlier, section IV(A) (titled "Matters Appropriate to the Offender Grievance Process") provides "[e]xamples of issues about which an offender may initiate the grievance process." The district court found that the third item in that list—"[a]ctions of individual staff, contractors, or volunteers"—encompassed Miles's complaint. But section IV(B) (titled "Matters Inappropriate to the Offender Grievance Process") provides more detailed "[e]xamples of non-grievable issues," and that list names

"[c]lassification actions or decisions, which include loss of a job."

Though Anton's decision to fire Miles was no doubt an "action[] of individual staff," that open-ended and all-encompassing provision is limited by the more specific section IV(B) exceptions. Narrowing a document's general or default language so as to render it compatible with specific exceptions is a mainstay of legal interpretation. *Cf. RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("[I]t is a commonplace of statutory construction that the specific governs the general."); *N.L.R.B. v. SW General, Inc.*, 137 S. Ct. 929, 941 (2017) ("The general prohibition on acting service by nominees yields to the more specific authorization allowing officers up for reappointment to remain at their posts."). And while a prison's grievance policy is admittedly not a statute subject to every norm of statutory interpretation, there is a strong case for reading the section IV(A) default language to accommodate the enumerated exceptions. Because *every* issue a prisoner might confront will be connected to the "actions" of individual correctional officers, reading the section IV(A) provision expansively would transform the formal grievance process into a universal requirement. But that would not square with sections IV(A) and IV(B), which together create a careful regime in which some issues are grievable and others are not. The policy is therefore best read as barring prisoners from grieving an officer's hiring or firing decision.

B

The question, then, is whether Miles is challenging Anton's decision to fire him as opposed to some other action separate from that decision. The district court saw a distinction between the firing decision and the reason behind it—Anton's

allegedly unconstitutional refusal to accommodate Miles's religion. But the proposed distinction between Anton's action and its constitutional implications lacks footing in the language of the policy. The policy categorizes *actions* as grievable or non-grievable without regard for their motivating reasons or downstream consequences. Firing decisions are excepted from the administrative process, full stop. That is true whether the resulting injury stems from to a constitutional or statutory violation, perhaps by reflecting discrimination or retaliation, or instead is a normal incident of prison life. Because Anton's firing of Miles is the *action* at the crux of the First Amendment claims, Miles was not required to engage the grievance process before he turned to federal court.

Beyond the policy's plain language, it makes practical sense for a grievance regime to be ordered around actions rather than the legal theories used to support or oppose them. When a prisoner encounters an event or action and quickly must decide whether to file a grievance (recall that Indiana State Prison provides only ten business days), he cannot be expected to know how that event will figure into a future suit brought in federal court. This is not only because prisoners typically lack legal expertise, but also because legal claims require time to develop. Miles's constitutional retaliation claim, for example, may have taken shape only after he learned from Officer Nunn and others that Anton had announced that the firing was pretextual or was based on anti-Muslim bias. Indeed, administrative grievance processes can help facilitate fact-finding to illuminate what an officer did and why. See *Woodford v. Ngo*, 548 U.S. 81, 95 (2006) (observing that these processes are valuable because "witnesses can be identified and questioned while memories are still fresh, and evidence can be gathered and preserved"). The district court's

distinction between the treatment reflected in Anton's firing decision and the firing decision itself assumes that prisoners will have their legal claims formed at the outset. That puts the cart before the horse.

If at this point there is any ambiguity remaining, we resolve it in Miles's favor for multiple reasons. First, an official "must show beyond dispute that remedies were available" before the court should dismiss on the basis of the affirmative defense. *Ramirez v. Young*, 906 F.3d 530, 534 (7th Cir. 2018). Ambiguous policy language is not beyond dispute by definition, and so resolving interpretative ambiguity against the official goes hand in hand with our practice of placing the broader burden of proof with the official.

Second, and as the Supreme Court has remarked, the exhaustion requirement creates an incentive for prisoners to make full use of whatever administrative process a prison chooses to create. This helps managers monitor officer-prisoner relations and resolve complaints quickly, and also reduces inefficient uses of the federal courts. See *Woodford*, 548 U.S. at 93–94. But vague or confusing grievance provisions open to multiple interpretations can sow distrust among prisoners and undercut these benefits. See *id.* at 102 (observing that effective grievance systems are "perceived by prisoners as providing … a meaningful opportunity for prisoners to raise meritorious grievances"). Administrators have broad leeway to tailor grievance rules to their institutions. If it wishes to do so, Indiana State Prison is free to amend section IV to strike a different balance between grievable and nongrievable issues. But whatever the rules may be, they must be written clearly if the grievance system is to function predictably and meaningfully.

C

Miles also alleges that he can produce facts that would show that the grievance process was unavailable to him in practice. He says that correctional officers had instructed him not to lodge a grievance after his firing. We need not explore this, given our reading of the policy. If textualism is for anyone, it must be for everyone, including those who are incarcerated. Because the written policy excepted his case from the administrative process, Miles had complied with the PLRA's exhaustion requirement when he brought his suit in federal court. We therefore REVERSE and REMAND the case for further proceedings.