NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 18, 2024*
Decided November 14, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 24-1584

TERRY L. LYMON, *Plaintiff-Appellant*, *v*. UNITED AUTO WORKERS UNION, LOCAL 2209, *Defendant-Appellee*.	Appeal from the United States District Court for the Northern District of Indiana, Fort Wayne Division. No. 1:20-CV-169-HAB Holly A. Brady, *Chief Judge*.

ORDER

This is our second time reviewing claims—about events from over a decade ago—that Terry Lymon brought against the United Auto Workers Union, Local 2209. Lymon, who is African American, alleges that at three different times his Union mishandled an employment grievance because of his race. *See* Title VII of the Civil

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* This appeal is successive to case no. 20-3022 and is decided under Operating Procedure 6(b) by the same panel. After examining the brief and record, we have concluded that oral argument is unnecessary. FED. R. APP. P. 34(a)(2)(C).

Rights Act of 1964, 42 U.S.C. § 2000e-2. The district court initially dismissed the three claims as time-barred or unexhausted. In our first decision, *Lymon v. United Auto Workers Union, Loc. 2209*, 843 F. App'x 808 (7th Cir. 2021), we concluded that Lymon alleged grounds that, if proven on remand, could justify equitable tolling for the first two claims, and that the third claim was exhausted and timely. On remand, the court granted the Union's motion for summary judgment. Because the record does not support the grounds that Lymon raised for tolling the time to sue on his first two claims, and he did not provide sufficient evidence of discrimination for his third claim, we affirm.

The following facts are recounted in the light most favorable to Lymon, as the non-moving party. *Palmer v. Indiana Univ.*, 31 F.4th 583, 587 (7th Cir. 2022). The first claim arose in 2004, when Lymon lost his job at General Motors and he asked the Union to contest his discharge. A union representative submitted a grievance, but the Union did not process it. The second claim arose in 2007, when the union representative withdrew the grievance, contending that Lymon did not have a meritorious claim against General Motors. The union representative states that three days after he withdrew the grievance, he called Lymon to notify him of the withdrawal. Lymon maintains that he never received this call (and the Union concedes that it did not mail him notice of the withdrawal). For the purposes of this appeal, we accept Lymon's view.

The third claim arose in 2011, when, after waiting seven years to ask about his grievance and learning that the Union had withdrawn it, Lymon appealed to the local and international levels of the Union to challenge the withdrawal. Both appeals were denied as untimely. Under the Union's constitution, members have 60 days to appeal, beginning when they learn or reasonably should have learned of the contested action. The Union ruled that Lymon missed this deadline because, regardless of whether the representative called Lymon in 2007, Lymon should have inquired and learned of the withdrawal well before 2011.

Litigation came next. After Lymon learned in 2011 that his grievance had been withdrawn, he waited a year, until 2012, to file with the proper agency his charge of race discrimination about events from 2004, 2007, and 2011. The agency inexplicably took eight years to send Lymon his right-to-sue letter, and after Lymon filed this suit in 2020, the district court dismissed the first two claims (from 2004 and 2007) as untimely, and the claim about the internal appeal (from 2011) as unexhausted. In vacating the dismissal of these claims, we explained that the claim from 2011 was exhausted and

"[i]f Lymon can prove his allegation that, through no fault of his own, the union intentionally kept him in the dark … equitable tolling can save his [earlier two] race-discrimination claims." *Lymon*, 843 F. App'x at 808. But we warned that, on remand, "the union may dispute Lymon's allegations, and fact development may reveal that his inquiries were insufficient or that the union's responses were more revealing." *Id.* at 810.

The record developed in precisely this way, and the district court granted the Union's motion for summary judgment. First, it considered Lymon's claim that the Union ignored his grievance in 2004 and wrongly withdrew it in 2007, ruling that those two claims were time-barred by 2020. It also rejected Lymon's plea for equitable tolling, reasoning that the evidence showed that Lymon failed to pursue those claims diligently. It also rejected Lymon's resort to the continuing-violations doctrine because Lymon described two discrete acts of discrimination. Finally, it addressed Lymon's claim that the Union discriminated against him in 2011 when it denied his internal appeal. This claim failed, the court explained, because Lymon did not present sufficient evidence of discrimination.

On appeal, Lymon contests the summary judgment ruling, which we review de novo. *Palmer*, 31 F.4th at 587. Title VII prohibits a union from engaging in race discrimination. 42 U.S.C. § 2000e-2(c). For a claim to be timely under Title VII, the plaintiff must file a charge of discrimination within 300 days of the alleged wrong. *Id.* § 2000e-5. Lymon argues that the Union discriminated against him when it (1) failed to pursue his grievance adequately in 2004 after he was discharged, (2) withdrew his grievance without notice in 2007, and (3) denied his internal appeal in 2011.

The district court correctly ruled that the first two claims are untimely. The events in 2004 and 2007 occurred far more than 300 days before Lymon filed his agency charge in 2012. The court also properly rejected equitable tolling, which requires a plaintiff to diligently seek information about his claim. *Palmer*, 31 F.4th at 588. Although Lymon cannot be faulted for the years of agency inaction after 2012, the undisputed record reflects that Lymon was not diligent before then: To begin, he did not inquire about his 2004 grievance for seven years. The first time he did so was in 2011, four years after its withdrawal in 2007. Second, no evidence suggests that anything prevented Lymon from inquiring sooner, and he does not offer any valid reason why he let his grievance languish for years. Third, and in any event, to receive equitable tolling once he learned in 2011 about the inaction in 2004 and withdrawal in 2007, he had to file his agency charge within a reasonable time (such as days or weeks). *Id.* But Lymon did not

file his charge until a year after learning about his grievance's status. He replies that he had to finish his Union appeals before he could initiate litigation. But Title VII has no exhaustion requirement for internal union processes. *Donaldson v. Taylor Prods. Div. of Tecumseh Prods. Co.*, 620 F.2d 155, 158 (7th Cir. 1980). And exhausting union remedies does not toll the statutory period for filing an agency charge. *Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO, Loc. 790 v. Robbins & Myers, Inc.*, 429 U.S. 229, 236 (1976).

Lymon offers three more responses, but they are unavailing. First, he contends that the district court disregarded our prior decision in which, he insists, we ruled that equitable tolling saves his claims. We did not. We explained that "[i]f Lymon can prove his allegation that, through no fault of his own, the union intentionally kept him in the dark … equitable tolling can save his race-discrimination claims." *Lymon*, 843 F. App'x at 808. As discussed above, because of his unexplained seven-year delay, Lymon has not shown that he was diligent.

Second, Lymon argues that the Union has not produced undisputed evidence that it contacted him about his grievance in 2007. But we have assumed in Lymon's favor that the Union did not call him then, and even with that assumption, Lymon did not meet his burden of showing that despite his diligence some extraordinary circumstance prevented him from filing charges. *See Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005) (citing *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990)).

Third, Lymon argues that the continuing-violations doctrine renders these claims timely, but he is incorrect. He contends that discriminatory acts of the internal appeal process in 2011 fell within the 300 days before he filed his agency charge and relate back to the events of 2004 and 2007. But this doctrine can revive his earlier claims only if Lymon could not have known that he was injured until the events of 2011 had transpired. *See Nat'l R.R Passenger Corp. v. Morgan*, 536 U.S. 101, 114–15 (2002); *Stepney v. Naperville Sch. Dist. 203*, 392 F.3d 236, 240 (7th Cir. 2004). That is not the case here: Lymon was capable of learning many years earlier that the Union was not pursuing his grievance and had withdrawn it.

In Lymon's final claim, he argues that the Union discriminated against him when it denied as untimely his internal appeal in 2011. He maintains that the Union accepted untimely appeals from a comparable white union member, Linda Berning, and from this differential treatment a jury could infer discrimination. To make a prima facie case of discrimination with comparators, the comparators must be similar "in all material respects," such as having the same decisionmakers and engaging in similar conduct.

Coleman v. Donahoe, 667 F.3d 835, 846–47 (7th Cir. 2012). But here, different union members decided Lymon's appeal and Berning's appeal, and the events underlying each internal appeal were different. Further, Lymon must furnish evidence suggesting that the Union's proffered reason for denying his appeal—that it was untimely and he should have known to appeal sooner—was pretext for discrimination. A pretext is a lie, *id.* at 852, and other than the evidence about Berning, which as we just said is insufficient, Lymon offered no evidence that the Union lied.

We note one final matter. The Union defends the judgment on a ground raised but not addressed in the district court: Lymon did not disclose the claims of this suit in his bankruptcy case, which he filed in 2014, and he is therefore judicially estopped from raising them here. Because we have resolved this appeal on other grounds, we too need not reach this issue.

AFFIRMED