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DiGiacomo v. Teamsters Pension Trust Fund of Philadelphia and Vicinity—Employment Law—ERISA—The Third Circuit Holds That Vesting and Accrual of Benefits Should Be Treated Differently with Respect to Breaks-In-Service Provisions in Pre-ERISA Pension Plans

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THE Employee Retirement Income Security Act ("ERISA"), a highly complex statute created to regulate and protect employee retirement benefits, was signed into law by Richard Nixon in 1974 and became effective January 1, 1976.[1] Among its many features, ERISA renders powerless so-called "break-in-service" provisions in pension plans, which otherwise cause an employee to forfeit earned benefits due to a break occurring in the employee's service before benefits vest. The statute defeats a break-in-service provision by requiring a plan to credit an employee for years of service accrued both before and after a break-in-service.[2] In order to facilitate a smooth transition into the ERISA standards, the Act specifically permits the terms of a pre-ERISA pension plan to trump the requirements of the Act and give effect to a provision that would disregard a break-in-service occurring before January 1, 1976.[3] The controversy that has split the Circuit Courts of Appeal arises because this exception appears in the ERISA section pertaining to the *vesting* of retirement benefits and is not repeated in the section governing *accrual* of benefits.[4] In *DiGiacomo v. Teamsters Pension Trust Fund of Philadelphia*

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1. 29 U.S.C. § 1002 (2000).

2. Employee Retirement Income Security Act (ERISA) § 203, 29 U.S.C. § 1053(b)(1) (2000) [hereinafter ERISA statutes will be referred to using their original name and section number after being cited to once]; Employment Retirement Security Act (ERISA) § 204, 29 U.S.C. § 1054(b)(1) (2000) [hereinafter "ERISA § 204"].

3. ERISA at § 203(b)(1)(F).

4. *Id.* § 203(a)(1).

and Vicinity, the Third Circuit ruled on the validity of such a break-in-service provision in a pre-ERISA pension plan that provided for forfeiture of accrued benefits.[5] The immediate question before the court was whether the exception permitting the forfeiture of vested benefits should also extend to the forfeiture of accrued benefits.[6] The Third Circuit incorrectly held that vesting and accrual should be treated differently under ERISA.[7] Dismissing the sound reasoning of the Seventh, Fifth, and Eighth Circuits, the court relied instead on selective statutory interpretation from the Second Circuit that focused on the absence of the exception in the accrual section.[8] A more complete statutory analysis would honor the integrity of the entire statute, lest one part be construed in such a way as to render another part inoperative or useless. Further, the legislative history of ERISA supports the conclusion that Congress intended to treat accrual and vesting similarly with regards to break-in-service provisions.[9]

Alfred DiGiacomo participated in the Teamsters Pension Trust Fund of Philadelphia and Vicinity ("the Fund") for ten and one-half years, leaving in 1972.[10] For the next five years, DiGiacomo experienced a "break in service," during which he worked outside covered union employment.[11] He returned to "covered employment" in 1978.[12] When DiGiacomo applied for his retirement benefits twenty years later, the Fund only credited him for his last twenty years of service and (under a break-in-service provision in the terms of the plan) disregarded the ten and one-half years worked before 1972.[13] DiGiacomo admitted the Fund construed the provisions of the pre-ERISA pension plan in accordance with proper contractual interpretation, but argued ERISA should trump the plan's terms.[14]

After exhausting his administrative remedies under ERISA, DiGiacomo brought suit in the United States District Court of the Eastern District of Pennsylvania, arguing that the Fund did not have the right to disregard his years that accrued before his break-in-service.[15] He contended that calculations for accrual and vesting of benefits should be treated differently under ERISA, and a break-in-service provision that denies credit for a pre-ERISA break is only permitted when computing

5. 420 F.3d 220, 222 (3d Cir. 2005).
6. *Id.* at 225.
7. *Id.* at 228.
8. *Id.*; *see also* McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund, 320 F.3d 151, 153 (2d Cir. 2003); Jones v. UOP, 16 F.3d 141, 143 (7th Cir. 1994); Redmond v. Burlington N. R.R. Co. Pension Plan, 821 F.2d 461, 467 (8th Cir. 1987); Dorn v. Int'l Paper Co., No. 01-1196, 2002 U.S. Dist. LEXIS 27016, at *12-15 (W.D. La. Nov. 6, 2002).
9. *See DiGiacomo*, 420 F.3d at 220-22 (Alito, J., dissenting) (citing S. Rep. No. 93-383, 1974 U.S.C.C.A.N. 4890, 4929, 4935-56; H.R. Conf. Rep. No. 93-1280, 1874 U.S.C.C.A.N. 4670, 4671).
10. *Id.* at 221.
11. *Id.*
12. *Id.*
13. *Id.* at 222.
14. *Id.* at 220.
15. *Id.* at 220.

vested benefits.[16] The district court disagreed and decided the exception in ERISA that permits forfeiture of vested benefits under certain conditions also extends to a computation of accrued benefits.[17] Since the Fund was thus permitted by the statute to disregard DiGiacomo's years that had accrued under the pre-ERISA plan, the district court granted the Fund's Rule 12(b)(6) motion to dismiss for failure to state a claim.[18]

On appeal, the Third Circuit limited itself to the same question: whether, as a matter of law, ERISA required the Fund to include the ten and one-half years of service before the pre-ERISA break when calculating DiGiacomo's accrued benefits.[19] The majority flatly disregarded the reasoning of two previous Third Circuit cases, which supported the district court's holding in favor of the Fund, and dismissed them as having no precedential value.[20] But Judge Alito, in his dissent, found no reason to depart from the court's previous decisions on the issue and argued that the ERISA section regarding accrual must be read together with the rest of the Act, including the section governing vesting standards.[21] Yet the majority, overly eager to follow a recent opinion from the Second Circuit, held that accrual and vesting should be treated differently under ERISA and reversed the judgment of the district court.[22]

The Third Circuit began its analysis by explaining the distinction between accrual and vesting, namely that vested benefits are merely the "nonforfeitable subcategory of accrued benefits."[23] The former is "the rate at which an employee earns benefits to put in his pension account," while the latter is "the process by which an employee's already-accrued pension account becomes irrevocably his property."[24] ERISA section 204, governing accrual of benefits, requires that all years of participation be credited in computing accrual benefits, "beginning at the earliest date on which the employee is a participant in the plan."[25] Though the statute discusses accrued benefits earned before its implementation,[26] it makes no mention of how those benefits are to be treated if a break-in-service has occurred. ERISA section 203, governing the vesting of benefits, similarly requires all years of service to be credited in determining vested benefits, but makes an express exception for pre-ERISA plans with a break-in-service provision:

16. *Id.* at 224.
17. *Id.* at 228.
18. *Id.* at 222 n.4.
19. *Id.* at 225.
20. *Id.* at 224 (discussing Haas & Cass v. Boeing Co., No. 90-7414, 1992 U.S. Dist. LEXIS 13240 (E.D. Pa. Sept. 4, 1992), *aff'd without opinion*, 993 F.2d 877 (3d Cir. 1993); Tanzillo v. Local Union 617, Int'l Bhd. of Teamsters, 769 F.2d 140 (3d Cir. 1985)).
21. *DiGiacomo*, 420 F.3d at 228-31 (Alito, J., dissenting).
22. *Id.* at 228.
23. *Id.* at 223 (citing 29 U.S.C. § 1002(19) (2000)) (internal quotation marks omitted).
24. Cent. Laborers' Pension Fund v. Heinz, 541 U.S. 739, 749 (2004).
25. ERISA § 204(b)(4)(A); *see also id.* § 204(b)(1)(D).
26. *Id.* § 204(b)(1)(D)(i).

> . . .all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded: (F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date.[27]

While both sections insist that an employee be given credit for all years worked, section 203(b)(1)(F) permits a small exception for vesting calculations under plans that were in effect before ERISA, while section 204 fails to make any reference to the issue. The court noted the circuit courts of appeal are split over whether the difference in the statutory text between the vesting and accrual sections evidences clear congressional intent to treat them differently in this context.[28] The Seventh Circuit realized vesting and accrual are interdependent, and reached the logical conclusion that an exception for vesting extends to accrual calculations as well.[29] In contrast, the Second Circuit placed great emphasis on the fact that the language of section 204 does not contain such an exception as that found in section 203, and despite the illogical conclusions and inconsistent results of such an application, nonetheless held that Congress did not intend to permit the exception to extend to accrual as well as vesting.[30]

The Seventh Circuit, in *Jones v. UOP*, was presented with a pre-ERISA pension plan that forfeited years worked before an employee's break-in-service.[31] The court considered whether ERISA overrode the provision of the pension plan by mandating that the pre-break years be counted, when a "simple contract interpretation" would have upheld the agreement in the plan to forfeit those years.[32] Writing for the court, Judge Posner observed that in ERISA "the purpose of section 204 [on accrual] is to prevent the employer from defeating the vesting section, which immediately precedes it in the statute, by backloading benefits (that is, making benefits accrue very slowly until the employee is near retirement age)."[33] The accrual section prohibits backloading in a pension plan by requiring that each year accrues benefits, and the very distinct problem of breaks-in-service is, conspicuously, not addressed therein.[34] But it is presumptuous to infer that the omission of an express reference to breaks-in-service in the accrual section overrides the very provisions given effect in the vesting section.[35] Rather, section 204 should be read in the context of

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27. *Id.* § 203(b)(1)(F).

28. *DiGiacomo*, 420 F.3d at 224-25; *see also supra* note 8.

29. Jones v. UOP, 16 F.3d 141, 143 (7th Cir. 1994); *see also* McClain v. Retail Food Employers Joint Pension Plan, 413 F.3d 582, 586-87 (7th Cir. 2005) (affirming *Jones*).

30. McDonald v. Pension Plans of the NYSA-ILA Pension Trust Fund, 320 F.3d 151, 153 (2d Cir. 2003).

31. *Jones*, 16 F.3d at 142.

32. *Id.*

33. *Id.* at 143.

34. ERISA § 204(b)(1)(D); *see Jones*, 16 F.3d at 143-44.

35. *Jones*, 16 F.3d at 143.

section 203, whereby equal accrual rates are utilized to prevent an employer from circumventing the vesting requirements of section 203.[36] Otherwise, the result would create a windfall not intended by the drafters of ERISA.[37]

The Second Circuit expressly departed from *Jones* in *McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund*.[38] The court affirmed a district court holding that gave considerable weight to the silence of section 204 on breaks-in-service, positing that "had Congress intended to permit pre-ERISA break-in-service provisions to apply when calculating accrued benefits, it could have done so."[39] The Southern District of New York conducted a lengthy analysis of ERISA, the legislative history behind the Act, and the interpretive guidelines and regulations issued by relevant agencies, and concluded that the plain language of the statute "precludes a plan from excluding years of service based on its pre-ERISA break in service rules when calculating an employee's accrued benefit."[40]

After summarizing the relevant case law, the Third Circuit correctly began its analysis by undertaking the task of statutory interpretation, but erred by narrowly selecting interpretive principles to produce the desired result. The majority began by noting that "a court must begin with the language of the statute."[41] Though this first canon of statutory interpretation is unchallenged, the court modified it with a second principle, that "it is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omit it in another."[42] The majority relied entirely upon the omission in section 204 of any provision permitting forfeiture of pre-break benefits. It concluded that because section 204 requires an employee be credited for all "years of participation," but lacks a break-in-service exception, Congress intended to override the express language of section 203 that permits forfeiture of pre-break benefits.[43] The court was clearly misguided in its interpretation of the statute's plain language by utilizing such an arbitrary selection of statutory interpretation principles. The principle that Congress acts intentionally when it uses different language between sections of a statute is not the only interpretive guidance for the courts. Another

36. *Id.* at 144.

37. *Id.* The majority dismissed Posner's interpretation of ERISA by noting that the plaintiff in *Jones* sought double credit for pre-break years, something not present in the instant case, though nothing in Posner's reasoning suggests that the years must be counted if they are only single credits. DiGiacomo v. Teamster Pension Trust Fund, 420 F.3d 220, 226 (3d Cir. 2005).

38. McDonald v. Pension Plan of NYSA-ILA Pension Trust Fund, 320 F.3d 151 (2d Cir. 2003).

39. *Id.* at 159; *see also* McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund, 153 F. Supp. 2d 268, 280-81 (S.D.N.Y. 2001).

40. *NYSA-ILA Pension Trust Fund*, 153 F. Supp. 2d at 286-88.

41. *DiGiacomo*, 420 F.3d at 227 (citing Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002)).

42. *Id.* (citing BFP v. Resolution Trust Corp., 511 U.S. 531, 537 (1994)); *see also* City of Chicago v. Envtl. Def. Fund, 511 U.S. 328, 338 (1994).

43. *DiGiacomo*, 420 F.3d at 228.

"cardinal principle of statutory construction" is that a statute should be construed so as not to render another part inoperative, superfluous, or meaningless.[44] The Third Circuit incorrectly chose to isolate section 204 from the rest of the ERISA and, in doing so, colored the meaning of certain terms that otherwise depend upon the context of the entire statute for their meaning. The majority advanced no authority for its decision to read one section of a statute in isolation from the rest of the legislative text.

A textually sound reading of the statute would include the entire ERISA text, and an integrated analysis of the statute's plain language would reach a result that not only effectuates the purpose of the accrual section, but also permits the vesting section to retain its full meaning and effect. Section 204, in defining years to be credited toward accrual benefits, provides that the time should begin accruing "at the earliest date on which the employee is a participant in the plan."[45] It also contains a cross-reference to section 202 of ERISA that requires "all years of service" to be credited to an employee.[46] The silence of section 204 with respect to forfeiture, when read in isolation, appears to mean that those accrued benefits cannot ever be disregarded. However, a congressional report explaining the purpose of section 204 indicates that the section should be read together with section 203:

> The primary purpose of [minimum accrual rates] is to prevent attempts to defeat the objectives of the minimum vesting provisions by providing undue "backloading", i.e., by providing inordinately low rates of accrual in the employee's early years of service when he is most likely to leave the firm and by concentrating the accrual of benefits in the employee's later years of service when he is most likely to remain with the firm until retirement.[47]

This purpose is most efficiently achieved by requiring "all years of service" to be credited equally toward vesting, lest slowly accruing benefits defeat the vesting requirements of section 203.[48] If an employee's rights have vested, but there are few or no accrued benefits under a backloaded plan, the heightened vesting standards of section 203 would be entirely irrelevant.[49] Since it is clear that section 204 is intended to empower the vesting requirements of section 203, it necessarily follows that if the two are so entwined, the one should not be made to defeat the strength of the other by reading it apart.[50] Indeed, the dissent in *DiGiacomo* declared that "Congress evidently understood accrual as simply the handmaiden to

44. *See* TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001); Dept. of Revenue of Or. v. ACF Indus., 510 U.S. 332, 340-341 (U.S. 1994); Jenkins v. Heintz, 124 F.3d 824, 833 (7th Cir. 1997).

45. ERISA § 204(b)(4)(A).

46. *Id.*; *id.* § 202(b)(1).

47. H.R. Rep. No. 93-807 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 4670, 4688.

48. *See* Jones v. UOP, 16 F.3d 141, 143 (7th Cir. 1994).

49. *See* McClain v. Retail Food Employers Joint Pension Plan, 413 F.3d 582, 587 (7th Cir. 2005).

50. *Id.*

vesting."[51] When the two sections are read together, the omission of a forfeiture provision in section 204 becomes completely immaterial, and the inference dissolves that it conveys an unequivocal, non-forfeitable right to accrued benefits.[52] The inevitable result of section 204's textual isolation is that the strength of the exception in section 203 is entirely emasculated if those same accrued benefits cannot be disregarded because of section 204. Reading section 204 out of context contravenes the clear prohibition against interpreting one part of a statute so as to render another part inoperative, meaningless, and irrelevant.[53]

Regardless of whether the statute is characterized as sufficiently "unambiguous" to rely only upon a "plain language" analysis, an examination of the legislative history is warranted, especially considering the circuits are split over the issue at hand. The majority in *DiGiacomo* relied on the a priori assumption that the statute is unambiguous and declined to examine the legislative intent behind it, though it referenced competing analyses from two district courts.[54] In *Haas & Cass*, the Eastern District of Pennsylvania examined the legislative history and the regulations promulgated by the Department of Labor concerning ERISA.[55] The language in a Joint Statement issued by Congress clearly demonstrates that the legislature viewed accrual and vesting in the same category. Rules regarding breaks-in-service for both accrual and vesting appear together in a section of the Joint Statement that contains the introduction: "rules with respect to breaks-in-service for vesting and benefit accrual."[56] The same section of the Statement further confirms that a pension plan may apply the break-in-service rules (if it is a pre-ERISA pension plan) as "*provided under the plan*," even if that plan forfeits some previous years.[57] Of course, this language is codified in section 203(b)(1)(F), but the majority in *DiGiacomo* insisted on limiting its effect to vesting only (because it technically does not appear in section 204 in the final version of ERISA), despite the clear legislative intent to extend it to both vesting and accrual. Yet, if any doubt remains as to Congress' intent to subject accrual rights to the vesting requirements, the general section of the Joint Statement regarding *accrual* provides that the *vesting*

51. DiGiacomo v. Teamster Pension Trust Fund, 420 F.3d 220, 230 (3d Cir. 2005).

52. *Id.* at 229 n.15, 230 (Alito, J. dissenting).

53. J.S. No. 406, *as reprinted in* 1974 U.S.C.C.A.N. 5038, 5056.

54. *DiGiacomo*, 420 F.3d at 228 n.14. *Contrast* Haas & Cass v. Boeing Co., No. 90-7414, 1992 U.S. Dist. LEXIS 13240, at *14-18 (E.D. Pa. Sept. 4, 1992), *aff'd without opinion*, 993 F.2d 877 (3d Cir. 1993) (holding Congress intended accrual and vesting to be treated alike with respect to pre-ERISA forfeitures), *with* McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund, 153 F. Supp. 2d 268, 276 (S.D.N.Y. 2001) (holding Congress intended accrual and vesting to be treated differently with respect to pre-ERISA forfeitures).

55. *Haas & Cass*, 1992 U.S. Dist. LEXIS 13240, at *14-18.

56. J.S. No. 406, *as reprinted in*, 1974 U.S.C.C.A.N. 5038, 5051-52 (emphasis added) (containing the cross-referencing text in ERISA § 202(b) that extends to accrual in § 204 which is intended to prevent backloading, and the forfeiture provision for vesting found in § 203(b)(1)(F)).

57. *Id.*

rules "are to apply to all accrued benefits, including those which accrued before the effective date of the provision (subject, however, to the break-in-service rules discussed above)."[58] Finally, the Department of Labor regulations clarify that for time accrued before the implementation of ERISA, it is the pre-ERISA pension plan that governs the forfeiture of any accrued credits, not ERISA.[59]

The reasoning presented by the Southern District of New York in *McDonald*, which the majority in *DiGiacomo* relied upon, inexplicably reached the opposite conclusion from *Haas & Cass*. The court addressed the same Joint Statement and confessed that the text "appears to support defendants' position," and that "defendant's reading of the legislative history is a plausible one."[60] Nevertheless, it refused to read the Joint Statement as applying to both vesting and accrual, because the legislative history never expressly states that accrual is subject to vesting.[61] The disparity between the accrual and vesting sections in the final statute created too onerous a presumption that Congress intended them to be severed from each other. Concerning the Department of Labor regulations, the court predictably disregarded them on the same technicality. Though the substance of the regulations declare that a pre-ERISA pension plan has the power to forfeit benefits, the court noted that the regulations do not explicitly authorize section 203(b)(1)(F) to apply to accrual.[62] Determined to reach a predetermined result, both the *McDonald* and *DiGiacomo* courts simply refused to acknowledge any legislative history confirming "that section 204 was not designed to afford any right to a guaranteed retirement benefit apart from the Act's minimum vesting standards."[63] The inevitable consequence conveys precisely the type of windfall not at all intended by the drafters of ERISA.[64]

The examination of the legislative history and the pertinent agency regulations soundly contradict the result of the Third Circuit's statutory analysis in *DiGiacomo*. The decision to read the minimum standards for accrual in section 204 separately from the vesting provision of section 203 renders a portion of a highly complex statute inoperative and irrelevant. Further, this isolated reading of the "plain language" conveys incredible deference upon a silent inference created by "a lacuna in a complex and

58. *Id.* at 5056.

59. 29 C.F.R. § 2530.204-1(b), 2(b).

60. McDonald v. Pension Plan of the NYSA-ILA Pension Trust Fund, 153 F. Supp. 2d 268, 288 (S.D.N.Y. 2001).

61. *Id. But see* DiGiacomo v. Teamster Pension Trust Fund, 420 F.3d 220, 230 (2d Cir. 2005) (Alito, J., dissenting) (noting that the absence of this technical language in the history lacks persuasiveness, since "the reports on the embryonic legislation usually do not discuss accrual or, when they do, discuss it only under the rubric of vesting").

62. *NYSA-ILA Pension Trust Fund*, 153 F. Supp. 2d at 281-84.

63. Jones v. UOP, 16 F.3d 141, 143 (7th Cir. 1994). In dissent, Judge Alito noted that the majority, relying on *McDonald*, decided that all accrued years must be counted under ERISA. This conclusion betrays the majority's predisposed desire for a particular result, as the question is not whether benefits must accrue every year, but whether certain accrued benefits may be forfeited. *DiGiacomo*, 420 F.3d at 230 (Alito, J., dissenting).

64. *See DiGiacomo*, 420 F.3d at 231; *see also supra* note 24.

highly reticulated statute."[65] Section 204 cannot be read without the context of the entire statute. Standing by itself, section 204 does provide the answer to one question sought by the Third Circuit, whether DiGiacomo's benefits accrued under the Teamsters' pre-ERISA pension plan for each year before his break-in-service.[66] The answer is, emphatically, yes. However, section 204 alone cannot answer the more important query, whether those accrued benefits can be disregarded under a break-in-service provision in the same pre-ERISA plan. The plain language of the statute, the entire statute, as supported by the legislative history, makes it clear that benefits accrued before a break-in-service may be disregarded because they have not vested. To permit otherwise would create a statutory anomaly. The Third Circuit erred by departing from the sound statutory interpretation set forth by its own district courts and has taken a position on the weaker side of a split among the Circuit Courts of Appeal.

65. McDonald v. Pension Plan of NYSA-ILA Pension Trust Fund, 320 F.3d 151, 158 (2d Cir. 2003) (quoting defendant's brief).

66. *See DiGiacomo*, 420 F.3d at 223, 228-29.