

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-5124

September Term, 2001

00cv01074

Wilbert B. Harris,

Appellant

Filed On: April 30, 2002 [674613]

v.

Postmaster General of the United States Postal Service,
Appellee

Appeal from the United States District Court for the District of Columbia

Before: SENTELLE, RANDOLPH, and GARLAND, *Circuit Judges*.

J U D G M E N T

Harris, a Postal Service employee, appeals from a judgment of dismissal entered by the District Court based on his failure to exhaust his administrative remedy and improper attempt to split his “mixed case.” We consider the appeal on the record and briefs of the parties and determine that the issues presented occasion no need for an opinion. *See* Fed. R. App. P. 36; D.C. Cir. Rule 36(b). It is

ORDERED, ADJUDGED, and DECREED that the judgment of dismissal entered by the District Court is hereby affirmed. “An aggrieved person may initially file a mixed case complaint with an agency . . . or an appeal on the same matter with the [Merit Systems Protection Board] . . . , but not both.” 29 C.F.R. § 1614.302(b). Although Appellant raised only a discrimination claim before the Postal Service EEO, that claim stemmed from his improper termination - an action that could be appealed to the Merit Systems Protection Board (MSPB). Therefore, it must be considered a mixed case complaint. *See* 29 C.F.R. § 1614.302(a)(1). Appellant was required to have both his discrimination claim and his improper termination claim decided in the forum he initially elected - the MSPB. By failing to raise his discrimination claim before the MSPB, Appellant failed to exhaust his administrative remedies and cannot now seek review of that claim before the courts.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Michael C. McGrail

Deputy Clerk