

The United States Court of Federal Claim

CATHERINE JONES, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant

Plaintiffs, security screeners for the Transportation Security Administration (TSA), seek overtime pay in accordance with the overtime compensation scheme set forth in the Fair Labor Standards Act, (2000). Because we find that the plain language in Section 111(d) of the Aviation and Transportation Security Act (ATSA) unambiguously vests TSA with complete discretion in setting compensation levels for security screeners "notwithstanding any other provision of law," **we GRANT Government's Motion to Dismiss** pursuant to Rules of the Court of Federal Claims (RCFC) 12(b)(6) for failure to state a claim upon which relief can be granted.

Prior Proceedings: Immediately after filing the Complaint, Ms. Jones filed numerous motions for leave to file additional consent forms on behalf of individuals wanting to participate in this litigation. To date, at least 19 similarly situated individuals have joined as additional plaintiffs by exercising their opt-in right under the FLSA. Two months into the litigation, on December 23, 2008, Plaintiffs filed a Motion for Conditional Certification of the Collective Action on information and belief that tens of thousands of current and former personnel would join the action. (...) **Because we now dismiss this matter pursuant to RCFC 12(b)(6), we render moot Plaintiffs' Motion to Conditionally Certify the Collective Action.**

Pertinent to this litigation is Section 111(d), which states: Notwithstanding any other provision of law, the Under Secretary of Transportation for Security may employ, appoint, discipline, terminate, and fix the compensation, terms and conditions of employment of Federal service . . . [as] necessary to carry out the screening functions of the Under Secretary under Section 44901 of Title 49, United States Code. (...)

Case Law Applying Section 111(d): Case law interpreting Section 111(d) applies the plain meaning of "notwithstanding" to conclude this statute overrides other provisions of law that conflict with the powers of the Under Secretary. Plaintiffs argue these cases should be construed to hold that Section 111(d) overrides federal personnel laws applying to federal civil service employees but does not override general federal employment laws applicable to both federal and non-federal employees. This argument is unsubstantiated. With one exception, which we discuss later, the cases holding that the provision is unambiguous and thus overrides federal personnel laws (i.e. Title 5 U.S.C.) do not suggest that general federal employment statutes would be treated any differently.

On the contrary, the U.S. Court of Appeals for the Federal Circuit has found that Section 111(d) preempts general federal employment statutes. In *Conyers*, the Court held that the Merit Systems Protection Board properly dismissed challenges to Plaintiff's rejected TSA screener application under various Title 5 provisions.