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Lexis 66383 (N.D. Ill., June 22, 2011)**

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**YONAN V. UNITED STATES SOCCER FED’N, INC.,
2011 U.S. DIST. LEXIS 66383 (N.D. ILL., JUNE 22, 2011)**

On June 22, 2011 the United States District Court for the Northern District of Illinois, Eastern Division, handed down the Yonan decision. Marcel Yonan was, prior to 2007, a national referee registered with the United States Soccer Federation (“Federation”). The Federation is the governing body for soccer in the United States. In 2007, the Federation chose not to use Yonan’s services as a referee for future national and international events. Yonan had been a nationally ranked and experienced referee with the Federation since 1992. When the Federation informed Yonan of their decision, Yonan claimed that he was the victim of age discrimination, protected by the Age Discrimination in Employment Act (ADEA). Yonan was 50 years old at the time of his release.

After Yonan filed his suit for violation of the ADEA act, the Federation filed for summary judgment on the basis that the ADEA act did not apply to Yonan. The Federation claimed Yonan was an independent contractor and not an employee. The only issue before the District Court was whether Yonan fell under the ADEA act. To get this answer, the Court had to examine whether Yonan was in fact an employee of the Federation.

The ADEA prohibits an employer from failing or refusing to hire or to discharge any individual because of such individual’s age. 29 U.S.C. §623(a)(1). The ADEA specifically applies only to employees and not to independent contractors. The Court in this case applied a five factor “economic realities” test, inspired by agency law, to determine Yonan’s relationship to the Federation. The five factors examined were: (1) the extent of the employer’s control and the supervision over the worker, (2) the kind of occupation and nature of skill required, (3) responsibility for the cost of operation, such as equipment, supplies, fees, and licenses, (4) method and form of payment and benefits, and (5) length of job commitment. The employer’s right to control is the most important factor in determining whether an individual is an employee or an independent contractor.

After examining the first element the Court found that Yonan had full discretion and authority to referee soccer games, and that the Federation had absolutely no control over this aspect of Yonan’s work. Further, subjecting a referee to qualifications and standards does not confer an employee/employer relationship. The Court analogized this

to a limo driver/dispatcher relationship, where the 7th Circuit previously had found that an independent contractor relationship existed.

The second factor was also found lacking by the Court. Highly skilled labor requiring independent judgment is often the mark of an independent contractor, while unskilled labor is generally the mark of an employee. The Court saw Yonan's work as highly skilled and requiring independent thought.

The third factor, the responsibility of costs, was found to go against Yonan. Here the Court examined who paid for Yonan's equipment. The Court found that Yonan paid for his own cleats, socks, cards, uniforms, registration fees, etc. The Federation paid for none of that equipment.

The Court also found the fourth factor to cut against Yonan. Yonan was not paid directly by the Federation except in rare situations. In most circumstances Yonan was paid by the leagues and teams he refereed for. Since this occurred in the majority of situations, the Federation was found to not have paid for his salary or benefits.

The last factor also favored of independent contractor status. Yonan worked for the Federation for 25 years. However, the Court found that this was more akin to 25 one-year contracts than to a 25 year employer relationship because Yonan was forced to register and reapply with the Federation every year.

For all of these reasons the Court found Yonan was an independent contractor and not an employee of the United States Soccer Federation. Therefore, the Federation's decision to prohibit Yonan from refereeing national and international soccer games based on his age was irrelevant. Yonan was not protected under the ADEA as he was an independent contractor and not an employee.

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