

EEOC Update.

A three Judge panel of the U.S. Court of Appeals for the District of Columbia Circuit has turned down our request for appeal of Judge Roberts decision on our Application for Preliminary Injunction halting the RIF and contracting out of FSS jobs to Lockheed.

Our attorneys have given us an update and recommendation for further strategies in our attempts to assess the best course of action to pursuit. The jest of the update is that the three judge panel didn't feel Judge Roberts erred in his decision concerning the Preliminary injunction.

*“We had particularly hoped that the Court of Appeals would review our arguments that we were likely to succeed on the merits of this case. A favorable analysis of this issue would have been helpful when the case returned to the District Court. With this panel, it is disappointing, but not surprising, that the Court limited itself to finding that the requirements for a preliminary injunction had not been met, and that therefore Judge Roberts did not make a mistake when he denied our Application for a Preliminary Injunction.”*

Obviously we would have preferred to have a different decision from the panel. The question is now what do we do from here? Remember, that the case has not been heard yet, and all we have done to date is file the suit, and request an injunction. In response, the Government has filed a “Motion for Summary Judgment” and this is next thing that needs to be answered.

The Case is now brought back to Judge Roberts and he will be responsible to decide on the motion for Summary Judgment. This can also be looked at as a request for dismissal. The Government is saying that we have not met the burden of evidence to bring forth the case to Court.

*Judge Roberts can treat the Defendants' Motion as either a Motion to Dismiss or as a Motion for Summary Judgment. If the Judge considers the Motion as a Motion to Dismiss, then he will simply decide whether we have a viable case for future proceedings based on the law. If he treats the Motion as a Motion for Summary Judgment, then he will decide whether we have a case based on both the law and the facts. In order to persuade Judge Roberts to deny summary judgment, we would need to show that there are disputes about material facts in the case, and that the law does not require that the Defendants prevail. In order to accomplish this, we think it would make sense to ask the Judge to allow some discovery before he decides the Motion so that, for example, we could take depositions from senior FAA officials to strengthen our direct evidence claims or so that we could obtain better information on what has happened to the 2,000 employees since the RIF.*

The NAATS Board will be deciding next what course of action we will take in EEOC where we will go in this matter. I want to highlight a few thoughts as we go forth in this process. One of the advantages of going forward with this case is that it will keep the issue in Federal Court. Ultimately if we are ever to achieve any type of fair compensation, it will happen in Federal Court. This is the best place that we will find an authority that will be able to order the Government to pay. Additionally, we have a history here now, and it is the better course to continue on than to try to bring it back later. If we do not answer the Summary judgment and the Judge dismisses the case, we are through at this level. Lastly, the judge has not considered much of our evidence when he decided on the preliminary injunction. This piece is probably the most important. The judge was allowed to overlook our evidence when he decided on the Injunction, but not so on the merits of the case. We will need to address those issues in Court. My opinion is that we need to answer the Government's and Judges remarks on the Case for preliminary injunction, or like in the case of the Appeal to original FAA contract award to Lockheed ,this will be the official final word on the matter.

Mike