

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 02-2838

CALVIN K. R. MCCOY,
Appellant

v.

HESS OIL OF THE VIRGIN ISLANDS CORPORATION; UNITED STEELWORKERS
OF AMERICA, AFL-CIO-CLC, DISTRICT 35

On Appeal From the United States District Court for the Virgin Islands
(Civil No. 95-cv-00132)

District Court Judge: Hon. Thomas K. Moore

Argued:

April 29, 2003

Before: Roth, McKee, Circuit Judges, and Cowen, Senior Circuit Judge

(Opinion filed June 20, 2003)

Ronald E. Russell (**Argued**)

116 Queen Cross Street

Frederiksted, St. Croix

USVI 00851

Counsel for Appellant

Linda J. Blair (**Argued**)

C. Beth Moss

Bryant, Barnes & Moss

1134 King Street, 2nd Floor

Christiansted, St. Croix

USVI 00820

Counsel for Appellee Hess Oil of the Virgin Islands Corporation

Glenn M. Connor (**Argued**)
Whatley Drake
P.O. Box 10647
Birmingham, AL 35202

Daniel M. Kovalik
David I. Goldman
Suite 807
United Steelworkers of America
5 Gateway Center
Pittsburgh, PA 15222

Counsel for Appellee United Steelworkers of America

OPINION OF THE COURT

McKee, Circuit Judge.

Calvin McCoy appeals the district court's order granting summary judgment in favor of Hess Oil of the Virgin Islands Corporation ("HOVIC") and the United Steelworkers of America, District 35 ("Union"). McCoy asserts that HOVIC improperly terminated his employment in violation of a collective bargaining agreement. He also alleges that the Union breached its duty of fair representation during the arbitration process.

McCoy's claims rely upon the framework enunciated by *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983). Under that framework, a plaintiff/employee can not recover on a hybrid §301/fair representation claim unless he/she can first prove both that the employer breached the collective bargaining

agreement and that the union breached its duty to fairly represent the employee.¹

DelCostello, 462 U.S. at 164-65. We review the district court's grant of summary judgment *de novo*. *Huang v BP Amoco Corp*, 271 F3d 560, 564 (3d Cir. 2001). For the reasons that follow, we will affirm the decision of the district court.

I.

Inasmuch as the district court has already set forth the factual and procedural history of this case, we find it unnecessary to repeat that history here. *See McCoy v. Hess Oil of the Virgin Islands Corp.*, 206 F.Supp.2d 726 (D. V.I. 2002). Based upon our review of this record, and arguments of counsel, we conclude that the district court correctly applied the principles of Fed. R. Civ. P. 56 and the teachings of *DelCostello* in granting summary judgment against McCoy and in favor of HOVIC and the Union. Moreover, the district court, in its Memorandum Opinion and Order, has carefully and completely explained its reasons for granting summary judgment to the defendants, and we can add little to that court's thoughtful analysis. Therefore we will affirm the decision of the district court substantially for the reasons set forth in the district court's Memorandum Opinion without further elaboration.

¹ Section 301 refers to §301 of the Labor Management Relations Act, 29 U.S.C. §185. The suit against the employer rests on §301, because the employee is alleging a breach of the collective bargaining agreement. *DelCostello*, 462 U.S. at 164. The suit against the union is for breach of the union's duty of fair representation, which is implicit in the National Labor Relations Act. *Id.*

TO THE CLERK OF THE COURT:

Please file the foregoing Opinion

/s/ Theodore A. McKee
Circuit Judge

