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Supreme Court of Texas.  
Saleh W. Igal, Petitioner,  
v.  
Brightstar Information Technology Group, Inc. and BRBA, Inc.,  
Respondents.  
No. 04-0931.

January 25, 2006.

Appearances:  
Charles W. Sartain, Looper Reed & McGraw, Dallas, TX, for  
petitioner.  
Anne Marie Finch, Godwin Pappas Langley Ronquillo, LLP, Houston,  
TX, for respondent.

Before:

Chief Justice Wallace B. Jefferson, Justice Don R. Willett,  
Justice Harriet O'Neill, Justice David M. Medina, Justice Paul W.  
Green, Justice Dale Wainwright, Justice Phil Johnson and Justice Scott  
A. Brister

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JUSTICE #1: The Court is now ready to hear argument in 040931,  
Saleh W. Igal versus Brightstar Information Technology Group.

JUSTICE #2: May it please the Court, Mr. Charles W. Sartain will  
preside argue for petitioner. The petitioner has reserve five minutes  
for rebuttal.

ORAL ARGUMENT OF CHARLES W. SARTAIN ON BEHALF OF THE PETITIONER

MR. SARTAIN: May it please the Court. The Court of Appeal opinion  
in this case should be reversed for two reasons. The first is because  
the Court was in error when it said that the Workforce Commission was  
wrong in finding that it had no jurisdiction over this Payday Law  
claim. Secondly, even if Commission was wrong, claimants in, in the  
position of Mr. Igal should be given a, a right-- should be entitled to  
be able to take the Commission's ruling of no jurisdiction on its phase  
and proceed to have-- to another tribunal, to which he has the right to  
go to have his rights-- his substantive right vindicated. Those are the  
two reasons we believe this, this should be, should be reversed. The  
Court of Appeal below referred to an administrative rule on the  
Workforce Commission to say that, that, to, to establish jurisdiction

in this case. That rule is contrary to or inconsistent with the statutory basis for jurisdiction which is Texas labor Code 61.051. That is the only statutory basis that, that a Court can look at to establish jurisdiction.

JUSTICE #1: The Labor Code says it's jurisdictional?

MR. SARTAIN: It does not say jurisdictional.

JUSTICE #1: So in other context from the defenses like statute limitations. A lot jurisdiction there waiveable that's why should we not interpret Labor Code the same way?

MR. SARTAIN: Well, for several reasons, your Honor. First, is to wait the, the agency in charge of administering its rules, interpreted the statute. In other words this Court has said that, "The Courts have to give deference, have to take-- gives series consideration to the way that a administrative agency interprets the statutes that it did administrates and unless its contrary."

JUSTICE #1: Not all, not all jurisdiction.

MR. SARTAIN: I'm sorry.

JUSTICE #1: We don't, we don't let agencies decide for the role of jurisdiction.

MR. SARTAIN: Exactly, that you don't. Does exactly right if I said that a mistake, you don't. You, you let agencies-- well, well in any given context, an agency has the right to determine whether the conflict before it fits in with his jurisdiction.

JUSTICE #1: Yes, but you are suggesting we defer to their rule about what their jurisdiction is. We don't know about it.

MR. SARTAIN: No sir, as a matter fact you don't. And the matter of fact you see opposite. You, you, you can-- the statute tells just what the jurisdiction is. But in terms of how that jurisdiction is administered and, and, and how statutes that the agency is charged with the administering or interpreted, you give deference to the acts itself. So your Honor in, in continue response to your question, Courts of Appeal post Dubai have looked at, at time related statutory prerequisites as jurisdiction.

JUSTICE #1: Well, on UTMB versus Berret cases like them. We try to not look at those things as jurisdictional statement. Dubai says, "Statutory provisions or statutory provisions if you don't need them, you lose." But we-- as Dubai lessons says, "We try not to say if you don't need them, the judgment was at without jurisdiction and even though money is change," hence for 20 years downs row we're going to undo it because it was jurisdiction. Right?

MR. SARTAIN: Yes, Sir. But it could point Dubai was to create stability and finality of a final judgment. Dubai in this case is being used to-- it in argument for the reverse effect. In this case, we use it-- a party is trying to use Dubai to go behind the second guess the agency. Take what was the final judgment. Turn it upside down and say, "It really was."

JUSTICE #1: If this is not, if we don't think this jurisdictional. Can you still win?

MR. SARTAIN: Yes, Sir. I win for several reasons. The Payday Act is a cumulative remedy. The Payday Act is, is for the purpose of allowing typically small wage earners often without Counsel with small amounts of money at stake. Who can't afford litigation to have their substantive rights adjudicated. What we have here is a unique situation in the sense that we have a, a litigant who's-- has the resources to fight the battle, that were procedural battle. But in, in, in the vast majority of cases we don't have that. So, so if a purpose is to have the un-- substantive rights adjudicated, we should accept the

Commission's ruling in phase value. Go on to the District Court if you chooses and have his rights. As a matter of fairness and equity but it's also a matter of, of, of the ways of judicial and, and agency and limited resources, if we have to fight the procedural battle for three and a half years before we decide whether or not this substantive rights of should be denied.

JUSTICE #1: What kind of hearing took actually, took placed? We actually had a hearing in Payday Commission.

MR. SARTAIN: They have the preliminary hearing, Mr. Igal appealed there was a hearing and an opinion writ by the administrative law judge.

JUSTICE #1: So if, what if you have a full pledge to merits hearing at the agency. Agency said, "Yeah but looks like he file one day like were in here all and bring in all the witnesses. Do all the stuff." They make finding of fact on everything but the first finding of fact is claiming and loses because he file on the 181 day. Do we-- can, can you that all over again at State Court?

MR. SARTAIN: Yes because if there was no jurisdiction-- well, what, what would the ALJ said in this case was, "He loses because there is no jurisdiction." Now, the administrative procedures act requires in to make findings ...

JUSTICE #2: Safe to say they said, "They loses because he filed on the 181 day." Nothing about what jurisdiction one word the other.

MR. SARTAIN: Well, I would argue that it, it, it remains jurisdiction.

JUSTICE #2: In other words what I'm try-- I'm asking, does a question whether we do it all over again in State Court? It doesn't turn on jurisdiction. Does it turn on whether there was what the substance of the hearing was or what the reason given by the Commission for denying the claim was.

MR. SARTAIN: If I, if I understand the Court's question if, if, if the ALJ didn't characterized the dismiss list one of, one of jurisdiction then I still think that's a question that would have to be decided by the District Court in one way or, or the other. Because what, what the claimant has the right to do after ALJ ruling is appeal to the District Court-- to appeal the ruling itself under that substantial evidence statement. And I see no reason why the issue of jurisdiction couldn't come into play. In this cases this a little bit different because the agency said, "We have no jurisdiction." So we still win because of, of the, of the consideration that did at rights. It's fairness and it's equity, it's given the purpose of the, of the statute. We should give deference to the-- and take seriously how the agency itself interprets its jurisdiction. Because what we have here is we, we have a clear statement by the administrative law judge discussing jurisdiction, stating it only goes back 180 days. So that, so the agency itself is interpreting 61.051(c) to be a jurisdictional statement. And there is no other statutory basis that obligate to find. And that the Court of Appeal, their Court of Appeal didn't find it. The Court of Appeal went straight to the rule which is, separate from and inconsistent with their jurisdictional statement in-- if one accept that is jurisdictional and we submit the ideas of 61.051. The Court of Appeal says, "The rule is passing its jurisdiction" and that is, is absolutely an incorrect statement law. So where we go is within, what does established the jurisdiction 61.051. And even if it doesn't that equitable factors would require the Court to allow Mr. Igal to continue his claims. Essentially start all over because under cumulative nature of his rights, it is reminisce if you will. So -

JUSTICE #2: Explain.

MR. SARTAIN: - it seem to me not-- yes.

JUSTICE #2: Tell me just a little about this Workforce Commission hearings. It seem this is labor and I have been in the law school conversed domesticated person. They file claims saying that, "I haven't been paid" and that's about all it said.

MR. SARTAIN: Yes, your Honor.

JUSTICE #2: Today who puts on their case, half settle?

MR. SARTAIN: What, what he-- and was-- I did not participate in this but I have participated in others. And it, it's to the great extend in formal. They submit papers. He submits his claim and Court's submits it-- his defenses. That's preliminary ruling. And then if either type testify the ruling there is an appeal in which there's a, an, at, a hearing-- an actual hearing with live witnesses before the administrative law judge ordinarily it's telephonic. And in my experience as many participate without lawyers on both sides as they deal with. I mean, I give an advice to the clients that, they say, "Well, it's only a \$120,050 just tell me what to say and do" and he goes but nothing to sell. And that's the both of it and maybe not 1200 but certainly not the several hundred thousand they wouldn't appear. Once they ruling is issued on the appeal, the writ in ruling as we have in the record of this case. Then assuming that it is with jurisdiction. Then to exhaust the administrative remedies, he has to appeal to the District Court within a certain period of time on the, on the substantial evidence sustained.

JUSTICE #3: Is, is your position of-- a bit anomalies. You filed with the understand you weren't involve but you as in your client filed with the Workforce Commission. He loses there and says, "Oh but now I can try the Courts because the Commission's determination is not the one I want it. And I should win, I believe in my facts, just so happens the Commission's determination may happens such that it may cut off some of those rights." So it's, it's kind of a, a picked one course that didn't worked out. Now, I want try another one. I guess your response to that is, well the remedies are cumulative. Where the, the Commission approach is not exclusive and I guess, that's your response.

MR. SARTAIN: Well, that's one of my response as, your Honor. But the other response is, we have to look at the-- as they said, the purpose of the act which is to allow this claimants to have their substantive rights adjudicated. By that-- by in large most of them do not have the resources to second guess the Commission who in fact ought to know what is doing. This Court has said, "That give, that term will be giving deference." He should be able to say, "Okay. They tell me that they do not have jurisdiction. I want to get my substantive right adjudicated. I need to go to the Court house." It cuts out as we can see here, three and a half years of wrangling over whether or not there's jurisdiction or not. With-- with three and a half year into this case and still hasn't pay. We haven't had one witness talked about whether he's substant-- whether he should win or lose on the merits with the Case. So ...

JUSTICE #3: While the Commissions termination does suggest a merits to termination, doesn't it? If it says, "When you provide some, some indication of what the Commission is about being ..."

JUSTICE #3: Since he was not terminated without cause.

MR. SARTAIN: Yes correct.

JUSTICE #3: Now isn't this, I mean is it some would like to, you know, Trial Court tell the time. They have jury trials and there be motion for judgment, you know, directive burden. And the Judge will

say, "I think there's no evidence who support this claim don't let it go to the jury and we'll see what happens." And then that way on appeal, if he's wrong on the first you reached the merits. Is, is this some-- in any ways some or the Commission says, "We, we think we don't have jurisdiction but we're going to hear the merits and make findings of fact and conclusion of law on the merits and inevitable wrong." Why wouldn't that have some sort of ratio to have that thing?

MR. SARTAIN: Well, for several reasons, your Honor. The administrative procedures acts requires the ALJ to have findings and conclusions.

JUSTICE #3: Why can't there just be one finding and one conclusion, file late no jurisdiction?

MR. SARTAIN: Well, I, I would-- I believe it's because that agency has interpreted his duties under the, under the statute to include full finding the conclusions. But nevertheless, many if not most virtually all of the factual findings in this case have to do with, when the wages became do and therefore, when the period of 180 begin during when she had to file by the end of which he had to file his claims. So, so in any District Court proceeding-- any proceeding, the Court has to find some facts in order to establish whether or not it had jurisdiction. This is a law that differ in the District Court in that. It basically all has to be done if it's as, as a practice all done in one hear in the District Court, I can object to the jurisdiction. The Court can have jurisdiction it hearing. And the terms in that jurisdiction before we get into the merits of the case. This shorten and more informal proceedings to turn of it as the Workforce Commission, treat everything it wants because we're trying to be efficient, we're trying to look one here.

JUSTICE #1: Thanks Counsel. Any further questions?

MR. SARTAIN: [inaudible].

JUSTICE #1: The Court is ready to here argument from the respondent.

COURT ATTENDANT: May it please the Court. Miss Anne Marie Finch, will set argue for the respondent.

ORAL ARGUMENT OF ANNE MARIE FINCH ON BEHALF OF THE RESPONDENT

MS. FINCH: May it please the Court. First of all I would like to thank my colleague for being very cordial throughout all of this proceedings. It's nice to be able to litigate against an attorney who is very smart and cordial. And that of course, it doesn't happen all the time but I commend on one last plaintiff. One thing that he did say that I do believe was in the statement was that this being going on for three and a half years. It's been going on for longer, four and a half years. Mr. Igal was terminated in January of 2000. He filed his wage claims with the Wage Commission, July 2001. In September of 2001, the Wage Commission dismissed it. He appeal under the administrative procedures set forth in the act on October 5, then there was a series of commission hearings. November 27-- December 27, 2001 and February 14, 2002. There were telephonic hearings with live witnesses presented, all three times before the Texas Wage Commission. Then February 19 of 2002, the Payday Commission came out. In the Payday Commission, the parties were notified that if they want to defile a motion for rehearing they could do so within 14 days. Or they could seek judicial

review in the District Court in Texas if they file within 30 days. Mr. Igal did neither of those things.

JUSTICE #4: If he have, he would lost because he's undisputed. He file on the 181 day.

MS. FINCH: It's hard to say there were some of his claims that's actually were after the 180 days.

JUSTICE #4: There's lot, there's a lot of things in the law bitter gray but the difference between 180 and 181 is not one of-- we like it or not toss people out on 31 day when, you know, I mean that's, that's not something that's going to change on appeal, is it how could it?

MS. FINCH: I, I believe that some of his claims were filed within the 180th day, 180th day.

JUSTICE #4: Which one is for-- separate those effort?

MS. FINCH: And rather than raise how I may could provides supplemental briefing but I remember going through this at one point. In addition, if he could have appeal to the District Court and the District Court could have determine that there actually was jurisdiction. I think that the, the statement made by the Wage Commission that there was no jurisdiction was something I contradict at. Basically, the Wage Commission was saying, "He didn't follow the procedural mechanism set forth in the statute. He didn't follow within the 180 day."

JUSTICE WAINWRIGHT: Why would the Commission go ahead and, and make determination on the merits after deciding it had no jurisdiction, usually that ends the discussion?

MS. FINCH: Actually the statement that it ...

JUSTICE WAINWRIGHT: They have no authority that act, if you don't have jurisdiction.

MS. FINCH: Justice Wainwright I believe that the Court said the statement about jurisdiction as an assigned. It was not preliminary statement. It was towards the end of the decision and it didn't-- it wasn't a preliminary in term-- determination. I think that Court, the Court-- the Commission misunderstood that because a statutory requirement is mandatory that it is jurisdictional. This is pre Dubai manifestation they didn't have that type of language. They didn't understand that the fact that statute requirement is mandatory. Doesn't automatically make a jurisdiction.

JUSTICE WAINWRIGHT: But it didn't say in the end of their order it's-- they was following they said that start, correct?

MS. FINCH: The decision actually, the decision actually went through the facts in finding the facts before determining and said that it didn't had no jurisdiction.

JUSTICE WAINWRIGHT: What, what a-- is that a finding the factor conclusion of law?

MS. FINCH: I believe it was a finding of fact.

JUSTICE WAINWRIGHT: I mean, what claim was the-- well I just-- if the Commission decides that claimant loses because he file on 181 day. Why should that preclude substantive lawsuit in Court. In file at your law contract action in Court, a 183 days or 583 days?

MS. FINCH: Because the Wage Commission Act is one of those statute where you choose. You choose to file either under the Payday Act with the administrative agency if you want to save money or for whatever reason. Or you choose to file in the District Court. A person always has that choice. In fact, there are some cases where person initially filed under the administrative agency decided they didn't want to pursue it, dismiss that claim. And then went forward in District Court. As long as you don't have a final decision before the Wage Commission

you're free to go before the District Court and vice versa. You just can't do both. It's to abide to the act and our system just doesn't allow that.

JUSTICE WAINWRIGHT: But you agreed that, it dancing thickening paragraph in that is a matter of fact, filing with Commission was late. The Commission goes ahead later in ruling. It's, it's a hardly a choice as you can make. It, it fall in outside of the time so that you, you shouldn't have an opportunity to sue District Court?

MS. FINCH: Not with specific findings of facts to conclusion of law have been made. And I would also submit that, once you choose and you end up with a final determination and you fail to ask for a motion for rehearing or appeal to a District Court of your bound.

JUSTICE WAINWRIGHT: So as the matter of mistake, the mistake for example, okay I got 210 days. It's three [inaudible] has substantially file for this, this seem by agreed that your way outside of the time period. You can take advantage of your way to act, still you lose?

MS. FINCH: Yes, your Honor. When ultimately if the failure to exhaust administrative remedies and the failure to time of file. But this Court has repeatedly stated that, "The time in his filing isn't jurisdictional of the procedural requirement."

JUSTICE WAINWRIGHT: If I involve the consideration of a, a Courts - the District Court general jurisdiction. Here we have an agency that already has admittedly limited jurisdiction. Why should Dubai apply directly to say this is not jurisdictional? Of different situation, a different circumstances perhaps different interest, goals.

MS. FINCH: It is somewhat different situation. However, Dubai should apply because it gives guidance as to when a situation is jurisdictional versus mandatory or procedural. And the agency itself can't create its own jurisdiction.

JUSTICE WAINWRIGHT: And Dubai, in Dubai we spent a lot time talking about the constitutional grant of general jurisdiction to District Courts. And that was very important perhaps, fundamental to the outcome there. Maybe you take a different view but, but, but that general jurisdiction base. Does, does that distinguished Dubai from an administrative agency consideration where it has limited jurisdiction from the beginning?

MS. FINCH: Not necessarily in this Case because it has concurrent jurisdiction. A claimant can choose to file initially with the District Court. It's not required to initially file with the Wage Commission and it could pass you with administrative remedies. He has two options. If he chooses one, he follows that through or he chooses the other.

JUSTICE #4: Well, let's say same case except, the Commission says Mr. is it, Igal -

MS. FINCH: Igal.

JUSTICE #4: - Mr. Igal, do you win on this claim? And on this claim. And on this claim? And on this claim? And you were 181 days but we're going to wait of when they file. So your client loses everything. Your client appeals. The District Judge tosses it all out because he was one day late and that's whether it's jurisdictional or not he was too late and therefore he's can't get. Because he made his choice, even though he won everything he tossed that because he's stay late. He's still have lacking file and sued again can't file in the Court.

MS. FINCH: Right.

JUSTICE #4: So in fact, this is a statute that was meant to help wage earners is a potential trap.

MS. FINCH: It's a potential trap but it encourages wage earners to

file quickly so that things don't keep going on. Allows evidence to be fresh. Typically when someone is terminated and they believe their old wages, they move quickly. Specially in a situation where you have a high level executive representative of Counsel.

JUSTICE #4: We're not kind of radiate incorporate to call up somebody to phone they file pleadings for you. You got to do some paper works for this thing.

MS. FINCH: Very little. I mean it's, it's a piece of paper where you say, "I was owed \$200 and they failed to pay it" or "They took \$200 out of my pay check because I failed to return the cellphone." It's not a huge requirement and it doesn't necessarily require lawyers.

JUSTICE #4: I just wondered why, you know if, if a lawyer picks the wrong court, file in the Court, you know what, wrong video, wrong jurisdiction, whenever where you transfer the case or extend the time to file somewhere else. Is whether why lawyers can two bites at the apple, unrepresented laborers don't.

MS. FINCH: That's it.

JUSTICE #4: Even if they have a good claim. Even if they have been told by the agency, "you got a great claim" So are you, you are they' like, he made her choice for analize.

MS. FINCH: I find this again to another claim under EEOC. He fail to report it to the Texas Employment Commission or to the EEOC to bar. To the same type of reasons, the administrative of agency set for three.

JUSTICE #4: But the EEOC says, "Your claims no good." They don't say, "And now you can't sue because you made your choice to file on the EEOC." They say, "Just the opposite" They said, "You were right to sue later."

MS. FINCH: Actually, you have to file within a certain number of days.

JUSTICE #4: That's right, but it is ...

MS. FINCH: And if you don't, you can't file. In just ...

JUSTICE #4: But it then-- but it's not, you know, it's not a choice that owe you-- choose your administrative remedy if they, if they can got a great, you know, on no good claimers that wouldn't.

MS. FINCH: Then I don't disapproves what you're saying. Okay.

JUSTICE #4: How many days are, how many days are or it is been while that popular know, if I know, I've never heard about it would have known to-- should not pick-- picked off the Court, would have known to go to this folks.

MS. FINCH: Claims under the Payday Act? I, I personally don't know any personages. I do know that there is attorney here in the audience from the Texas Wage Commission who might be able to answer your question about. And that's something you like supplemental brief, your Honor. I'll be happy to hear that.

JUSTICE #4: I let you know that.

MS. FINCH: I'll go, go. And I, I do want to reiterate that the Wage Commission didn't make that findings of fact. It made a number of findings of fact. It founds that the claimant was not entitled to the unpaid wages. It found that his employment agreement was not being renewed. That his division was being dissolved. That he was notified of that and then he was paid through the end of his contract period. Base on the determination, I just find at this of January 14, the claimant to now try to seek a different ruling from the different Court when he have the opportunity to seek with you of this particular agency ruling and he fail to do so. Is anyone have any other question of?

JUSTICE #4: Thank you Counsel.

MS. FINCH: Thank you.

REBUTTAL ARGUMENT OF CHARLES W. SARTAIN ON BEHALF OF PETITIONER

MR. SARTAIN: A couple of points, your Honors. The effect of the lower Court's ruling is that, this Pay Day Law claimant has have his right to have his, his, his substantive rights adjudicated taken away from him forever. That is the wrong that, that this Court should correct. And it, it's-- I believe is easy for this Court to correct it by looking at the Labor Code 61.051. Looking in what the Court Of Appeals have said about whether or not a time related procedural prerequisite is a, is jurisdictional. And what some of the Courts have done also now is used the first example, if, if the statute defines in largest of restricts the class of causes the Court may decide it's jurisdiction. That is the way that the Workforce Commission in this ruling post Dubai as, as categorized 61.051. They have said, it is not, it is a matter of jurisdiction. This Court should give deference in serious consideration because it is not-- it unreasonable conclusion. And it is not inconsistent with the statute.

JUSTICE #4: What if, if he filed that one day late, what they have all this hearings and issue all this fact findings?

MR. SARTAIN: Because that, that process is not have a, a mechanism to hear things to preliminary and nobody brought to their attention. That I know a lot. Now the lawyers, I didn't hear the-- I don't think the record reflects that the defendants, the respondents in the ALJ proceeding were saying ...

JUSTICE #4: By the way, it's 181 day.

MR. SARTAIN: I'm sorry.

JUSTICE #4: By the way, it's a hundred-- it's late. It's a 181 day.

MR. SARTAIN: Yeah. I don't think they-- I don't have said, they raised the issue. So as the ALJ's Judge, ALJ's duty to be manifold of the procedural requirements and its agency's jurisdiction. Now I suppose they could have, they could have afford it now. They could have said on the merits, "You lose."

JUSTICE #4: But why is it if nobody raises a statute limitations in Trial Court way in assuming, assuming again it's not jurisdictional? Jurisdiction can always be raise center section. And affirmative could be statute limitation is not great way so they go ahead and adjudicate your guides. And he's got no claim. He loses.

MR. SARTAIN: But regardless of who would win or who would lose at that level, someone either side regards of the outcome can lose your or could always say to, to the District Court there was no jurisdiction. That was again it vanish to either side. In by, in understanding the jurisdiction is never way, it can always be, you can always brought up. I know it's argue that, that Commission may have misunderstood its statutory party. But this Court should listen to what the, the agency itself has to say about what he believe that the jurisdiction is. Thank you, your Honor.

JUSTICE #4: Thank you very much Counsel. The cause has submitted and the Court will now recess.

COURT ATTENDANT: All right.

2006 WL 6005725 (Tex.)

