

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

L. KEVIN ARNOLD, et al.

Plaintiffs

No.: 19-59-PEC

v.

Judge Patricia E. Campbell-Smith

THE UNITED STATES

Defendant.

PLAINTIFFS' RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF

Plaintiffs, by and through their undersigned counsel, and pursuant to the Court's April 27, 2020 Order, hereby timely respond to the Defendant's Supplemental Brief (ECF 47). In its Supplement Brief, Defendant attempts to explain how the District Court's decisions in *NTEU v. United States*, No. 19-CV-50, and *Hardy v. Trump*, 19-cv-51, 2020 U.S. Dist. LEXIS 45353 (D.D.C.) (March 16, 2020) ("*NTEU*") have bearing on the instant matter. Plaintiffs do not believe that the holdings in *NTEU* have any bearing or impact on this case.

As discussed throughout Plaintiffs' prior filings, the instant matter concerns the government's failure to comply with the Fair Labor Standards Act ("FLSA") during the 2018-2019 government shutdown (the "Shutdown"). *NTEU* on the other hand alleged constitutional and Administrative Procedures Act violations and the District Court's decisions dismissing them were based entirely on a procedural question of mootness which the government has not raised here. *NTEU*, therefore, has no bearing on this litigation or the government's pending Motion to Dismiss. The amended pleadings in those cases did not raise the FLSA and the court's decisions do not address, or otherwise analyze a claim for liability or damages under FLSA, the Anti-Deficiency Act, or under any other authority. Rather, the decision discusses the framework and

analysis of a claim for mootness. Indeed, the Defendant cedes as such when it notes that “the claims brought and the relief sought by plaintiffs in this case in the district court cases vary.” ECF 47, p. 4. Rather, Defendant reasons that *NTEU* is relevant and instructive because it “concerns the same facts” and “many of the same plaintiffs” as this case. ECF 47, p. 4. Defendant offers no legal authority or other explanation as to why the overlap of background facts or parties makes the legal analysis of these cases relevant to each other.

As such, *NTEU* is irrelevant to the issue raised in the Defendant’s Motion to Dismiss in this matter, namely, whether the Anti-Deficiency Act excused the government’s violation of the FLSA during the Shutdown. There is no new or other authority supporting the Defendant’s Motion to Dismiss and it should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2020, a copy of the foregoing was filed via the CM/ECF filing system.

/s/ JACOB Y. STATMAN

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