



## **Bonner v. Union Pacific**

132 Fed.Appx. 110 (2005) | Cited 0 times | Ninth Circuit | February 14, 2005

NOT FOR PUBLICATION

MEMORANDUM<sup>2</sup>

Submitted February 7, 2005<sup>3</sup>

Gary Lynn Bonner appeals pro se the district court's summary judgment in this action for disability benefits, vacation pay, and statutory penalties under the Employee Retirement Income Security Act of 1974 ("ERISA"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's choice and application of the standard of review in the ERISA context, *Tremain v. Bell Inds.*, 196 F.3d 970, 975 (9th Cir. 1999), and grant of summary judgment, *id.* We review for abuse of discretion the denial of a motion to amend the complaint. *Zivkovoc v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002). We affirm.

The district court properly determined it should review for abuse of discretion the denial of benefits under the Union Pacific Flexible Benefits Program ("The Plan"). See *Sandy v. Reliance Std. Life Ins. Co.*, 222 F.3d 1202, 1207 (9th Cir. 2000). In determining the appropriate standard of review, the district court also properly applied the "less deference" analysis to determine that Bonner failed to produce evidence, beyond the fact of an apparent conflict, that shows the Plan administrator breached her fiduciary obligations towards him. See *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1107-08 (9th Cir. 2000).

Applying the abuse of discretion standard, the district court properly concluded that the Plan administrator reasonably interpreted the Plan to terminate Bonner's disability benefits after the last day of his employment, and to deny payment for the vacation time he had accrued for 2001. See *Barnett v. Kaiser Found. Health Plan, Inc.*, 32 F.3d 413, 416 (9th Cir. 1994).

The district court also properly dismissed Bonner's claims that he was entitled to statutory penalties under ERISA, because Union Pacific is not an administrator within the meaning of the statute, and because Bonner failed to provide evidence that he made the requisite requests for information. See 29 U.S.C. § 1132(c); *Moran v. Aetna Life Ins. Co.*, 872 F.2d 296, 300 (9th Cir. 1989).

In light of the foregoing conclusions, the district court did not abuse its discretion in denying leave to amend to add the Plan administrator as a defendant. See *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).



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We have considered Bonner's remaining contentions, and find them unpersuasive.

**AFFIRMED.**

1. The parties consented in writing to proceed before a magistrate judge.
2. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.
3. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

