

1 UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT
3

FILED

APR 7 1977

4 RODNEY F. STICH)
5)
6 Plaintiff-Appellant,)
7)
8 v.)
9 UNITED STATES OF AMERICA, FEDERAL)
10 AVIATION ADMINISTRATION,)
11)
12 Defendants-Appellees.)

EMIL E. MELFI, JR.
CLERK, U.S. COURT OF APPEALS

No. 75-2300

MEMORANDUM

11 On Appeal from the United States District Court
12 for the Northern District of California

13 Before: CHOY and KENNEDY, Circuit Judges, and FERGUSON,*
14 District Judge.

15 We are inclined to agree with Stich that he has
16 exhausted his administrative remedies, that he has standing
17 to seek mandamus and that the action is not barred by the
18 applicable statute of limitations. But we need not decide
19 those points because we hold that the district court properly
20 dismissed Stich's petition for a writ of mandamus.
21

22 To the extent Stich's action seeks a judicially-
23 supervised investigation of the conduct of the FAA, he has
24 failed to present a "justiciable controversy," i.e., an
25 issue in a form "capable of resolution through the judicial
26 process." Flast v. Cohen, 392 U.S. 83, 95 (1968). The
27 federal courts are neither equipped nor empowered to under-
28 take congressional-style investigations into allegations
29 of agency misconduct.
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31 As to Stich's contention that the district court
32

1 erred in dismissing his claim to job reinstatement and back
2 pay from the FAA which discharged him after he refused to
3 work until alleged irregularities in FAA air carrier safety
4 check procedures were rectified: The claim should have been
5 made in the Court of Claims, not the district court.
6

7 In Mathis v. Laird, 483 F.2d 943 (9th Cir. 1973)
8 (per curiam), it was held that an action seeking reinstatement
9 and backpay from the Air Force was "essentially one for
10 a money judgment" although cast as an action in the nature of
11 mandamus and as a request for declaratory relief. Since the
12 amount claimed exceeded \$10,000, the panel noted that the
13 Court of Claims had exclusive jurisdiction under 28 U.S.C.
14 §§ 1346(a)(2), 1491. Stich seeks reinstatement with "full
15 backpay." Since he has been off the job from sometime in
16 1967, the amount he seeks clearly exceeds the Tucker Act
17 limit of \$10,000. 28 U.S.C. § 1346(a)(2). Therefore, Stich
18 should have filed his action in the Court of Claims.
19

20 Nor did the district court have jurisdiction, as
21 Stich argues, under 42 U.S.C. § 1985(3) and 28 U.S.C. § 1343(1).
22 The essential elements of a cause of action under the Civil
23 Rights Conspiracy statute include that "there must be some
24 racial, or perhaps otherwise class-based, invidiously dis-
25 criminatory animus behind the conspirators' action." Griffin
26 v. Breckenridge, 403 U.S. 88, 102 (1971). Stich has alleged
27 a conspiracy to deny him of rights under the First Amendment,
28 presumably the right to speak out about FAA derelictions
29 of duty, but he has not alleged the type of class-based
30 deprivation against which § 1985(3) protects.
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Because the district court lacked subject matter jurisdiction over Stich's action, it did not err in dismissing.

AFFIRMED.