

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR H. JONES : CIVIL ACTION  
: :  
v. : :  
: :  
JOHN H. DALTON, SECRETARY, : :  
DEPARTMENT OF THE NAVY : NO. 95-0289

**Shapiro, J.**

**July 17, 1997**

Plaintiff, Arthur H. Jones, brings this action pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. Jones alleges that the Department of the Navy discriminated against him on the basis of his race (black) and gender (male) as a Philadelphia Naval Shipyard employee when: (1) Daniel Chominski selected Rosemary St. John for the position of Staffing Specialist, GS-12, by merit promotion; (2) Chominski promoted Mary Lou David by accretion of duties to the position of Employee Relations Specialist, GS-12, responsible for administering all benefit programs; and (3) Emily Hudson rated Jones "Exceeds Fully Successful" instead of "Outstanding" for the rating period April 1, 1991 through December 31, 1991.

A bench trial was held on plaintiff's claims. In accordance with Federal Rule of Civil Procedure 52(a), the court enters the following findings of fact and conclusions of law:

**I. FINDINGS OF FACT**

A. Selection of Staffing Specialist, GS-12

1. Jones was employed in the Human Resources Office of the Philadelphia Naval Shipyard from 1978 to 1994. Prior to

1978, Jones had worked at the Philadelphia Naval Shipyard as well as at the Naval Ship Engineering Center (NAVSEA) at the shipyard as a wage grade employee with collateral duties as an EEO counselor and Federal Women Program Manager.

2. Jones was promoted in October, 1981, to the position of Personal Staffing/Classification Specialist, GS-11. While in that position, he gained experience in employee relations, positions classifications and personnel staffing. (Tr. 2/24/97 at 21-22; Pl. Ex. 19.)

3. From December, 1990, to April, 1991, Jones was temporarily promoted to a Supervisory Staffing Specialist, GS-12. (Tr. 2/24/97 at 30-31.)

4. As of June 10, 1992, Jones had 97 semester hours toward a bachelor's degree in Public Administration, and had taken 26 training courses. (Tr. 2/24/97 at 25; Pl. Ex. 6.)

5. On February 11, 1992, Daniel Chominski, then head of the Personnel Operations Division, drafted a Position Description for the position of Staffing Specialist, GS-12; it stated in its first paragraph: "The incumbent of the position is assigned special projects of a complex nature and/or team leader for employment teams established to meet critical shipyard needs." (Pl. Ex. 3.)

6. The Position Description also stated:

"[e]ither individually or as a team leader [the incumbent would] provide[] [a] full range of staffing administrative services, of the most complex type, requiring intense research and analysis, such as: regulatory services, (e.g., . . . conducts RIF where

a large number of different positions in a complex organizational structures are factors, etc.) . . . .

(Tr. 2/28/97 at 134; Pl. Ex. 3.)

7. The Position Description, listing "recruiting" as a potential duty, stated that the incumbent would also perform the following functions:

Plan[], initiate[] and execute[] large scale recruiting campaigns, involving numerous public contacts at all levels with a variety of recruiting sources over a wide geographic area[], utilizing special recruitment authorities . . . and other recruitment techniques to locate and identify job applicants who are well qualified for skill shortage and/or other highly specialized hard-to-fill positions.

(Pl. Ex. 3; Tr. 2/28/97 at 134.)

8. The purpose of the Position Description is to identify basic duties and responsibilities required of the employee in that position; it serves as the basis for developing the actual title, series and grade. (Tr. 2/28/97 at 118.)

9. Virginia Calabrese, then a Supervisory Personnel Staffing Specialist, GM-13, and Chominski's assistant, used the Position Description to prepare a Vacancy Announcement for the Staffing Specialist position, except for the "Duties" section, which was drafted by Chominski. (Tr. 2/28/97 at 135.)

10. The purpose of a Vacancy Announcement is to notify applicants of the open job position, alert applicants to the anticipated duties so that they can prepare their applications, and provide the criteria for the Basis for Rating

and the Highly Qualified Screen. (Tr. 2/28/97 at 121-122; Tr. 2/26/97 at 160.)

11. The Duties section of the Vacancy Announcement for the Staffing Specialist, GS-12, position alerted applicants to the various duties that Chominski anticipated would be performed by team leaders related to downsizing and final activities of the Philadelphia Naval Shipyard before it closed. (Pl. Ex. 5.)

12. In particular, the Duties section stated that:

Incumbents will be assigned special projects of industrial nature and/or team leader duties for teams established to meet critical Shipyard needs. Either individually or as a team leader selectee will perform the following duties: Selectees will be responsible for providing recruitment services to assigned organizations within the Philadelphia Naval Shipyard. Selectee will be responsible for providing advice and assistance to management concerning external hiring requirements, merit promotion; reorganizations; and complex individual cases involving in-depth analysis and research. Selectee also will or may provide analysis and recommendations dealing with resolution of merit promotion complaints, pay setting, Reduction-in-Force, etc. Selectee will be involved in developing, researching and providing recommendations in the areas of Reduction-in-Force, Mandatory Placement Programs, Outplacement Programs, and other unique programs dealing with downsizing issues.

(Pl. Ex. 5).

13. The Duties section of the Vacancy Announcement typically specifies the duties of any given job with greater particularity than the Position Description. (2/28/97 Tr. 122-23.)

14. The Vacancy Announcement also included sections titled "Basis of Rating" and "Highly Qualified Screen." The basis of rating are the qualifications and knowledge that come out of the position description (Tr. 2/24/97 at 37); the highly qualified screen represents the needs of management and is developed in conjunction with the selecting official. (Tr. 2/25/97 at 39.)

15. The Vacancy Announcement was posted and available to all potential applicants. (Tr. 2/28/97 at 122.)

16. Applications were accepted between March 6, 1992 and March 27, 1992. (Pl. Ex. 5.)

17. On May 19, 1992, Chominski, the selecting official for the Staffing Specialist position, prepared a Management Needs Statement explaining his expectations of the selectee. (Pl. Ex. 11.)

18. The Management Needs Statement first set forth Chominski's "Organizational Needs":

"The core of the workload will involve Reduction-in-Force capability. At the present time, the Shipyard is facing base closure in 1996, however, prior to 1996 there is a workload gap which may require downsizing as early as 1993. Beyond 1993 continuance downsizing efforts will be in place. Concurrently, I anticipate a need for concentrated hiring efforts in the trade occupations. The Shipyard workload demands peak hiring efforts in selected trades due to skills mix requirements and scheduled workload through September 1995. I anticipate that even while we are downsizing in some areas, we will need a concentrated effort to hire in other areas. For both work efforts I need to establish AD HOC Teams, working outside the normal organizational structure. These teams will be tasked to accomplish assigned projects and then be returned to their respective

branches upon completion of their tasks. The incumbent of this position must be able to administrate this effort."

(Pl. Ex. 11)

19. The Management Needs Statement then explained the specific skill needed for the position:

**"Management Needs:** Selectee should have demonstrated experience in conducting Reduction-in-Force from identifying employees for displacements, issuance of RIF Notices and/or counseling in Outplacement Programs. He/she should have demonstrated experience in working as a Project Leader or as a Team Member on special projects such as external recruitment initiatives, requiring of hiring large groups of employees on an emergent need basis. He/she should have experience working on smaller projects of a non-recurring nature requiring the employee to have worked independent of daily supervision, required to produce a final complete work product which would have normally been accepted as complete in his original submission. Selectee must have demonstrated ability to accept responsibility, be dependable, be able to communicate and be well versed in the various rules and regulations of the Staffing Employment Profession."

(Pl. Ex. 11.)

20. The management needs statement was prepared after the closing date of the applications. (Tr. 2/25/97 at 176.)

21. Rosemary St. John ("St. John"),<sup>1</sup> Jones and five other candidates submitted applications for the Staffing Specialist position. (Pl. Ex. 13.)

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<sup>1</sup> Since her promotion, St. John married and is now known as Rosemary St. John Gorgone. She was single during the periods relevant to this action, so her maiden name will be used.

22. In his application, Jones listed his relevant employment history, his specialized experience, and the experience that he viewed as qualifying him with respect to the highly qualified screen contained in the announcement. (Tr. 2/24/97 at 58-60.)

23. Jones reviewed the duties statement in Position Description for the Staffing Specialist position and informed Calabrese that there were duties indicated in the duties section of the Vacancy Announcement not described in the Position Description. Jones testified that Calabrese informed him that she would "take it up" with Chominski. (Tr. 2/24/97 at 54.)

24. Despite his concerns that the Vacancy Announcement went beyond the Position Description in the duties statement, Jones followed the instructions of the Vacancy Announcement in completing his application. (Tr. 2/24/97 at 56.)

25. Jones was aware that the Philadelphia Naval Shipyard had been designated for closure. He also knew that decision was being challenged and he knew other shipyards had been designated previously and not closed. He did not believe that downsizing and reduction in force ("RIF") would be a major duty of the announced position. (Tr. 2/25/97 at 18.)

26. As of June 10, 1992, Jones, an African American male, had worked in the Human Resources Office of the

Philadelphia Naval Shipyard fourteen years. (Pl. Ex. 19; Tr. 2/24/97 at 19.)

27. Jones' experience included employee relations, position classifications, and personnel staffing. (Pl. Ex. 19; Tr. 2/24/97 at 21-22.)

28. Jones had RIF and related experience relevant to the Staffing Specialist position. (Tr. 2/24/97 at 59-67.)

29. Calabrese determined that Jones met the specialized experience requirement and that he was highly qualified for the announced position. (Pl. Ex. 7, 9.)

30. Jones' application stated, "Conducted REDUCTION-IN-FORCE, and processed various types of personnel actions." (Pl. Ex. 6 at 2; emphasis in original.)

31. St. John's application included her RIF experience and stated, "In June 1991 I was tasked with conducting a mock-rif affecting 400 employees. With little knowledge of RIF regulations I researched and applied these regulations with minimally [sic] errors." (Pl. Ex. 24 at 3.)

32. St. John mentioned in her application her training on RIF-related software. (Pl. Ex. 24 at 3.)

33. The RIF-Runner software required only two days of training. (Tr. 2/26/97 at 46-47.)

34. Both Jones and St. John submitted Supervisory Appraisal Forms with their applications. (Pl. Ex. 6, 24.)

35. Jones' Supervisory Appraisal Form had been prepared by his supervisor, Emily Hudson ("Hudson"), and

approved by Calabrese; Hudson rated him as "Outstanding" in the six elements listed, and contained a written narrative supportive of these ratings. (Pl. Ex. 6.)

36. St. John's Supervisory Appraisal Form was prepared by Calabrese and rated her as "Outstanding" in three elements and "Exceeds Fully Successful" in the remaining three. (Pl. Ex. 24.)

37. On June 10, 1992, Chominski selected St. John to fill the position.

38. Chominski drafted a selection memorandum stating he had considered all candidates and explaining his reasons for choosing Rosemary St. John, including her "Outstanding" rating for 1991. (Pl. Ex. 17.)

39. Chominski testified he gave supervisory appraisals a "very small amount of consideration" in making his selection. (Tr. 2/28/97 at 157.)

40. Chominski did not ask about Jones' RIF experience until after St. John was selected for the position. (Tr. 2/28/97 at 156.)

41. Chominski's personal knowledge of Jones was a factor in his selection of St. John over Jones. (Tr. 2/28/97 at 155.)

42. Chominski testified that among the reasons for his selection of St. John was that Jones was a "leave abuser," (meaning Jones used up his sick leave and vacation time) and

that Jones had "performance problems." (Tr. 2/28/97 at 158-61.)

43. Chominski's opinion of Jones as a leave abuser and poor performer dated back to the period 1985 to 1989, when Chominski was Jones' direct supervisor. (Tr. 2/28/97 at 161.)

44. When Hudson evaluated Jones' performance in 1991 and 1992, she did not cite any problems with Jones' use of leave.

45. Chominski prepared a witness statement in response to Jones' initial EEO complaint about not being selected for the Staffing Specialist position; that statement contained no mention of Jones' leave abuse or work performance from 1985 to 1989. (Pl. Ex. 38.)

46. St. John was responsible for a series of RIFs during the period September, 1991 to March, 1992; problems with St. John's performance of the RIFs were brought to Ms. Calabrese's attention in February, 1992. (Tr. 2/26/97 at 24, 44-45.)

47. Chominski did not ask Calabrese about any problems that might have occurred in St. John's performance of RIF duties.

B. Jones' 1991 Rating

48. In 1991, Emily Hudson, an African American, served as the Personnel Operations Division Branch Head responsible for personnel matters concerning the Production Department. (Tr. 2/28/97 at 60.)

49. Hudson supervised Jones from April 1, 1991 though October, 1993 while Jones was a Personnel Staffing Specialist GS-11. (Tr. 2/28/97 at 60.)

50. Hudson evaluated Jones' performance for the rating period April 1, 1991 though December 31, 1991 and assigned him an "Exceeds Fully Successful" on each critical element. (Tr. 2/28/97 at 60.)

51. To obtain a rating of "Outstanding" an employee must "make significant contributions to the organization's mission or goal." (Def. Ex. 28; Tr. 2/28/97 at 62.)

52. Hudson believed that Jones' performance did not warrant an outstanding rating because "he was performing the full extent of the duties involved in being a personnel staffing specialist and no more." (Tr. 2/28/97 at 63.)

53. Hudson proposed the rating of "Exceeds Fully Successful" to Calabrese, who approved the rating without comment. (Tr. 2/28/97 at 61.)

54. Hudson gave no other Personnel Staffing Specialist a rating of "Outstanding" for this period. (Tr. 2/28/97 at 63.)

55. Hudson rated Jones "Outstanding" for the following rating period, January 1, 1992 though December 31, 1993. (Tr. 2/28/97 at 63-4.)

## **II. DISCUSSION<sup>2</sup>**

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<sup>2</sup> To the extent the "Discussion" portion of this decision contains findings of fact and/or conclusions of law in addition

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., prohibits discrimination in federal employment. To prove a prima facie case of race discrimination in promotion, the plaintiff must show: 1) he belonged to a protected class; 2) he was qualified for a job which was vacant and for which applicants were being sought; 3) despite his qualifications, he was rejected; and 4) after his rejection applications were still being sought with the same qualifications. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973). If a prima facie case has been established, the burden shifts to the defendant to articulate a "legitimate nondiscriminatory reason" for choosing a candidate other than the plaintiff. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254 (1981). In order for defendant's evidence to raise a genuine issue of fact as to whether it discriminated against the plaintiff, the defendant must clearly set forth, through the introduction of admissible evidence, the reason for the plaintiff's rejection. Id. at 255.

The factfinder may make an inference of discrimination without direct evidence:

The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons, will permit the trier of fact to infer the ultimate fact

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to those set forth in those sections, these determinations are deemed to be part of those sections even if not expressly stated.

of intentional discrimination...."no additional proof of discrimination is required"...

St. Mary's Honor Center v. Hicks, 509 U.S. 502, 511 (1993)

(emphasis in original) (citation and footnote omitted). The illegitimate or discriminatory reason for passing over the plaintiff need not be the sole reason, but has to be "a determinative factor in the adverse employment decision . . . ." Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994).

The court does not accept the defendant's explanation for the reasons Jones was not selected. Defendant claims Jones was not selected because he lacked the necessary RIF experience. The importance of RIF experience was not emphasized in the Position Description and Vacancy Announcement; it was emphasized in the Management Needs Assessment prepared only after applications had been received. Jones' lack of RIF experience was a pretext. At trial, Chominski admitted he did not know the extent of Jones' RIF experience at the time he selected St. John. Chominski assumed Jones' RIF experience was insufficient for the Staffing Specialist position without investigating further; he also assumed St. John's RIF experience was sufficient for the Staffing Specialist position without checking with her supervisor, Calabrese, to see if there had been any problems with St. John's performance of her RIF duties.

Chominski purported to give great weight to the fact that St. John had been rated "Outstanding" for 1991, but Jones'

Supervisory Appraisal was "Outstanding" for all six elements, and St. John's was "Outstanding" for only three elements.

The selection process is supposed to ensure candidates are considered solely on the basis of their relative qualifications for the position; personal feelings should not drive the selection process. Chominski's testimony was not credible that his personal knowledge of Jones' use of leave and work performance was a significant factor in the selection of St. John since that factor was not mentioned in Chominski's witness statement. Chominski demonstrated animus toward Jones; the court concludes such animus was the result of discrimination against Jones because he is an African American man. The court acknowledges that African American women achieved GS-12 positions in the shipyard's Human Resources Office; that does not affect our conclusion that defendant's treatment of Jones is the result of racial animus.

### **III. CONCLUSIONS OF LAW**

1. The court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, and personal jurisdiction over the parties.

2. Venue is appropriate pursuant to 28 U.S.C. § 1391(b), (e).

3. Jones met his prima facie burden by showing he was an African American male qualified for the position of Staffing Specialist, was not selected, and the position went to a white female.

4. The court rejects as pretextual defendant's proffered reasons for the selection of St. John over Jones. Jones' race and gender were determinative factors in the decision to promote St. John.

5. Judgment will be entered for Jones on the claim of discrimination in the promotion of Rosemary St. John to the position of Staffing Specialist, GS-12, and damages awarded to Jones in the amount of \$6,524.68, the difference between Jones' GS-11 and the GS-12 salary from June 10, 1992, the date of his non-selection, to November 11, 1994, the date of his termination.<sup>3</sup>

6. By agreement of the parties, a finding of liability on the claim of discrimination for failure to promote to a Staffing Specialist, GS-12, moots the claim of discrimination in the accretion of Mary Lou David to the position of Employee Relations Specialist, GS-12, since there is no difference in pay between the Staffing Specialist and Employee Relations Specialist positions. The second claim in Jones' action will be dismissed as moot.

7. There was no discrimination in Jones' rating of "Exceeds Fully Successful" instead of "Outstanding" for 1991. His supervisor, Emily Hudson, did not rate anyone "Outstanding" for 1991 and she articulated non-discriminatory reasons for Jones' "Exceeds Fully Successful" rating for that year. She

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<sup>3</sup> This amount was stipulated by the parties as the correct measure of damages for this claim.

rated him "Outstanding" for 1992. The court accepts defendant's reasons for Jones' rating for 1991. Judgment will be entered for defendant on the discrimination claim related to Jones' 1991 rating.

An appropriate order follows.

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DEPARTMENT OF THE NAVY : NO. 95-0289

**ORDER**

AND NOW, this 17th day of July, 1997, following a non-jury trial conducted February 24-March 3, 1997, and for the reasons provided in the accompanying Findings of Fact and Conclusions of Law, it is **ORDERED** that:

1. Judgment is entered for the plaintiff, Arthur H. Jones, and against the defendant, John H. Dalton, on plaintiff's claim alleging discrimination in defendant's failure to promote to the position of Staffing Specialist, GS-12;

2. Plaintiff, Arthur H. Jones, is awarded damages in the amount of \$6,524.68;

3. Plaintiff's claim, alleging discrimination in defendant's promotion of Mary Lou David through accretion of duties, is **DISMISSED AS MOOT**;

4. Judgment is entered for the defendant, John H. Dalton, and against the plaintiff, Arthur H. Jones, on plaintiff's claim alleging discrimination in plaintiff's rating for 1991.

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J.