

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

DORIAN HAIRSTON : CIVIL ACTION
 :
 v. :
 :
 MARVIN RUNYON, Postmaster General :
 of the United States : No. 96-CV-8707

MEMORANDUM

Shapiro, Norma L., J.

December 10, 1997

Plaintiff, Dorian Hairston ("Hairston"), is an African-American male employee of the United States Postal Service ("USPS"). Hairston alleges that defendant Marvin Runyon, through employees of the USPS, discriminated against him on the basis of his gender, and created a sexually hostile work environment. Before the court is Defendant's Motion for Summary Judgment. Hairston has failed to establish a prima facie case of discrimination on the basis of his sex, so the motion for summary judgment will be granted.

FACTS

Hairston is an African American male employed by the USPS. Hairston had been a flexible mail handler when he received a temporary assignment to the position of acting supervisor. Assignment to this position, referred to as a "204B supervisor" by the USPS, could be terminated at any time by management, on its own discretion or on request of Hairston.

Prior to June 13, 1995, Hairston was involved in a verbal altercation with Doreen Antrom-Brown ("Brown") on the work room floor. Brown informed Elias Figueroa ("Figueroa"), one of the Managers of Distribution Operations, and Figueroa investigated the incident. Figueroa met with both Brown and Hairston, and informed them that such a verbal altercation was professionally inappropriate, violated USPS policy, and subjected both of them to the possibility of disciplinary action.

Hairston alleges that Deborah Ryan ("Ryan"), another 204B supervisor, confided to him that she and Brown had previously been involved in a verbal confrontation for which neither Ryan nor Brown were disciplined.¹

On June 13, 1995, Hairston and Brown had another heated verbal exchange, with emotional, animated and personally insulting statements by both of them. In the next several days, Figueroa learned of the incident and investigated it. Figueroa then sent a letter to both Hairston and Brown. He informed them he was terminating them from their 204B supervisory positions and returning them to their previous responsibilities.²

¹ In her deposition, Ryan denied that she was involved in any such verbal confrontation with Brown. The alleged exchange is not corroborated. Because a motion for summary judgment requires that the court accept as true all factual allegations and all logical inferences therefrom, the court will accept that Ryan confided that such an argument took place, and not ignore the allegation as inadmissible hearsay evidence subject to exclusion under Fed R. Civ. P. 56(e).

² In his memorandum in opposition to the Motion for Summary Judgment, Hairston cites several facts involving another
(continued...)

DISCUSSION

I. Standard for Summary Judgment

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). The burden is upon the moving party to identify those portions of the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits that it believes demonstrate the absence of a genuine issue of material fact. See Celotex Corp., 477 U.S. at 323. All ambiguities must be resolved, and all inferences drawn, in favor of the non-moving party. Once the moving party has carried its burden, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts. . . . [T]he non-moving party must come forward with

²(...continued)

personnel action. Hairston argues that he was discriminated against and removed from his supervisory role because he failed to file a complete permanent promotion application, allegedly required of all temporary supervisors. Because that personnel action does not appear in the complaint, it is not before the court, and will not be considered. Even if it were considered, as is clear from this opinion as well as from plaintiff's own complaint, plaintiff was not removed for failure to submit a complete application. Hairston was removed from his temporary supervisory role because of several heated verbal exchanges with Doreen Antrom-Brown, in violation of USPS policy and explicit warnings from superiors. He remained in his position as a 204B supervisor even after his failure to submit a complete application. (Def. Reply to Pl. Answer to Def Motion for Summary Judgment, p. 3). This application issue is not relevant to the determination of this motion for summary judgment.

specific facts showing that there is a genuine issue for trial.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-587 (1986)(citations omitted). The judge’s role in reviewing a motion for summary judgment is not “to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

II. Title VII Liability

Claims for employment discrimination are governed by the burden-shifting framework set forth in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and clarified in St. Mary’s Honor Center v. Hicks, 509 U.S. 502 (1993): (1) plaintiff must establish a prima facie case; (2) defendant must then offer a legitimate nondiscriminatory reason for the employment decision in question; and (3) plaintiff may then demonstrate that the stated reason is merely pretext for illegal discrimination.

A. Hairston’s Prima Facie Case

To establish a prima facie case of employment discrimination, plaintiff must show that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) similarly situated employees, not of the protected class, received more favorable treatment. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 & n. 6 (1981), McDonnell Douglas Corporation v.

Green, 411 U.S. 792, 802 (1973). This showing creates a presumption of discrimination. Brewer v. Quaker State Oil Refining Corp., 72 F.3d 326, 330 (3d Cir. 1995).

Both parties agree that plaintiff has established the first and third elements. Hairston, as a male, is a member of a protected class. He has suffered an adverse employment action, because he was removed from his temporary assignment as a supervisor.

The parties dispute whether Hairston has satisfied the second factor. McDonnell Douglas states that plaintiff must show "that he . . . was qualified for [the] job." McDonnell Douglas, 411 U.S. at 801. The Court of Appeals has stated that objective job performance can be considered in evaluating whether the plaintiff has met the second element of a prima facie case. See Sempier v. Johnson & Higgins, 45 F.3d 724, 729 (3d Cir. 1995); Weldon v. Kraft, Inc., 896 F.2d 793 (3d Cir. 1990); Jalil v. Avdel Corp., 873 F.2d 701, 707 (3d Cir. 1989)).

Hairston, arguing that he was qualified for the position and that he performed it well, cites the deposition of another Manager of Distribution Operations that Hairston "did a good job." (Pl's Memorandum of Law in Opposition to Def's Motion for Summary Judgment, Ex. E, pg 20). The USPS, citing McDonnell Douglas, argues that this element not only requires the plaintiff to show he was qualified, but also that he performed in a manner meeting or exceeding his employer's legitimate work-related expectations. Because Hairston violated the policy that

employees refrain from verbal altercations on the work room floor, the USPS argues that plaintiff has not met the required standard.

The determination of whether Hairston has met this element does not involve the type of subjective performance judgment which the Court of Appeals has said is "more susceptible of abuse and more likely to mask pretext." Fowle v. C & C Cola, 868 F.2d 59, 64-65 (3d Cir. 1989). By violating a legitimate USPS policy (to refrain from heated verbal exchanges), Hairston has failed to show he was qualified for the 204B supervisory position, and failed to satisfy the second requirement of his prima facie case.

Hairston is also unable to show that a similarly situated employee, not of his protected class, was treated differently. The most similarly situated employee was Brown, who is a woman, not of Hairston's protected class. Following Figueroa's investigation, she was also removed from her role as a 204B temporary supervisor.

Hairston argues that Ryan, a 204B supervisor, had a verbal altercation with Brown, but neither Ryan nor Brown were terminated. Hairston admitted: he did not observe the altercation, and he knows of no other USPS employee who witnessed or was even aware of the confrontation. Hairston cites only his own affidavit that Ryan confided to him such an argument took place. His evidence of this alleged confidence would be inadmissible at trial as hearsay. See Fed. R. Evid. 802.

Affidavits used to support or oppose a summary judgment motion must "be made on personal knowledge, [and must] set forth such facts as would be admissible in evidence." Fed. R. Civ. P. 56(e). Unless Ryan were to testify at trial, contrary to her deposition, provided in Defendant's Motion for Summary judgment, the alleged confidence would be inadmissible at trial and should be excluded from consideration.

Hairston admits that he never informed Figueroa of the alleged confrontation between Ryan and Brown. He acknowledges it was never discussed on the work room floor. Figueroa investigated the Hairston-Brown altercation only after being informed of it several days later. The USPS cannot be expected to discipline an employee for actions of which it was unaware. See Friedel v. City of Madison, 832 F.2d 965 (7th Cir. 1987).

Hairston has failed to show that a similarly situated employee received more favorable treatment. Brown, the most similarly situated employee, was disciplined in precisely the same manner: she was relieved from her position as a 204B supervisor. Hairston has failed to satisfy the fourth requirement of his prima facie case. Because "the record taken as a whole could not lead a rational trier of fact to find for [Hairston], there is no genuine issue for trial." Matsushita, 475 U.S. at 587.

B. The USPS's Legitimate Nondiscriminatory Reason

The USPS can rebut the presumption of discrimination created by Hairston's prima facie case "by stating a legitimate

nondiscriminatory reason for the adverse employment decision.” Brewer, 72 F.3d at 330. Even if Hairston were able to establish a prima facie case, the USPS had a legitimate nondiscriminatory reason for his removal from the temporary supervisory role.

The USPS had an interest in having its employees refrain from heated verbal exchanges and altercations on the work room floor. Plaintiff does not deny that he had argued with Brown, had been warned of the possible ramifications of future confrontations, and nevertheless engaged in another argument. The USPS met its burden of asserting a legitimate nondiscriminatory reason for Hairston’s removal from his 204B supervisory role.

C. Evidence that the Decision was Pretextual

Once the USPS advances a legitimate nondiscriminatory reason for the decision, the plaintiff must point to some evidence that the stated reason was merely a pretext for discrimination. Brewer, 72 F.3d at 330.

To defeat a summary judgment motion based on a defendant’s proffer of nondiscriminatory reasons, a plaintiff who has made a prima facie showing of discrimination need point to some evidence, direct or circumstantial, from which a factfinder could reasonably either: (1) disbelieve the employer’s articulated legitimate reason; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer’s action. Id. at 330-331.

Hairston has failed to present evidence that USPS’s reason was merely pretext for an underlying discriminatory animus

motivating the decision. Fuentes v. Perskie, 32 F.3d 759, 765 (3d Cir. 1994).

Hairston had engaged in several verbal exchanges on the work room floor with Brown, had received verbal warnings that he should refrain from such exchanges or possible disciplinary action might follow. Both Brown and Hairston were disciplined following the incident on June 13, 1995, in the same manner: their temporary assignments as supervisors were terminated. Brown, an individual not of plaintiff's protected class, received the same punishment for the same behavior. Brown's punishment is circumstantial evidence that the decision was not motivated by a discriminatory motive. Plaintiff's argument, based on inadmissible hearsay that Ryan received preferential treatment because she was not disciplined for an argument she reported to Hairston but not the USPS, is insufficient to permit a fact-finder to find that the USPS motive was discriminatory. Hairston is unable to prove that the reason for the removal was pretextual.

CONCLUSION

Hairston has not pointed to admissible evidence from which a rational jury could find he has established a prima facie case. Hairston is not qualified for the position because he has not met his employer's legitimate work-related expectations that he refrain from arguing on the work room floor. There is insufficient evidence that an individual, not of his protected class, was treated differently. Even if he had established a

prima facie case, a rational fact-finder could not conclude that the decision to remove Hairston from his 204B supervisory position was motivated by illegal discriminatory animus. The motion for summary judgment will be granted.

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ORDER

AND NOW, this 10th day of December, 1997, upon consideration of defendant's Motion for Summary Judgment, plaintiff's response in opposition thereto, and defendant's reply thereto, it is **ORDERED** that defendant's Motion for Summary Judgment is **GRANTED**. This action is dismissed with prejudice.

J.