

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

FANNIE L. ROBINSON : CIVIL ACTION
 :
 :
 v. :
 :
 WILLIAM J. HENDERSON, : No. 00-1372
 Postmaster General, U.S. Postal Service :

Decision Under Fed. R. Civ. P. 52(a)

Ludwig, J.

May 14, 2001

This is an employment discrimination action in which plaintiff Fannie L. Robinson sued defendant William J. Henderson, Postmaster General, U.S. Postal Service, for violations of Title VII, 42 U.S.C. § 2000e, et seq., and the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. On December 6 and 7, 2000, the gender discrimination claim was submitted to a jury, which returned a defendant's verdict. No appeal followed. The age discrimination claim proceeded non-jury.¹ Fed. R. Civ. P. 52(a). Jurisdiction is federal question. 28 U.S.C. § 1331.

A bench trial decision will now be entered for defendant on the age claim.

I. Findings of Fact

A. The following undisputed facts are taken from the parties' pre-trial stipulation:

¹ As a federal employee, plaintiff was not entitled to a jury trial on her ADEA claim. Lehman v. Nakshian, 453 U.S. 156, 168-69, 101 S. Ct. 2698, 2706, 69 L. Ed. 2d 548 (1981) ("The conclusion is inescapable that Congress did not depart from its normal practice of not providing a right to trial by jury when it waived the sovereign immunity of the United States."); see also Tomasello v. Rubin, 167 F.3d 612, 619 (D.C. Cir. 1999) (a federal employee is not entitled to a jury trial under the ADEA).

1. Plaintiff is a 64-year-old black female who, in 1998, was employed as a PS-5 distribution clerk in the U.S. Postal Service (USPS), where she had been continuously employed for the past 29 years.

2. On April 16, 1998, the USPS posted vacancy announcement no. 98-00-42 for a human resources specialist position at the EAS-15 level with a job closing date of May 1, 1998.

3. Plaintiff and three other younger employees: Joseph Tarczewski, Elizabeth McGovern and William Nichols, applied for the posted specialist position.

4. Plaintiff had served in the specialist position, or its predecessor position on a detail (temporary basis) in the past.

5. Plaintiff was not selected for the specialist position and Joseph Tarczewski, a white male, significantly younger than plaintiff, was chosen.

6. The supervisor who made the selection was Joseph DiDio, the head of the injury compensation unit.

7. Plaintiff had worked for the USPS more years than any other applicant for the position.

8. Based upon her age, plaintiff's life expectancy is until the year 2020, at which time she will be 83.5 years old.

9. As of May 23, 1998, plaintiff's salary was \$38,604. If she had been granted the position in May, 1998, she would have received additional compensation the present value of which is as follows:

Promotion to trail date: \$6,591 to \$7,223
Trial to retirement date: \$11,068 to \$12,957
Retirement to death: \$12,636 to \$14,749

B. The following fact findings are based on evidence received at trial:

10. Between December 14, 1970 and January 6, 1987, plaintiff processed mail at the USPS. 12/6/00 tr. at 36-38.² On January 7, 1987, an injury forced her to stop working. Id. at 38. On November 22, 1987, she returned in a limited duty capacity, and was assigned to the injury compensation unit, then called the “safety and health compensation unit.” Id. at 38-39. Her duties consisted of making-up folders and files, and answering the telephone. In early 1991, her responsibilities increased; she aided employees injured on the job by handling and processing their claims. Id. at 39-42. Although the USPS reorganized in 1992, she continued to work in injury compensation until December, 1993, when she moved to the customer service department.³ Id. at 44.

² At the time of trial, plaintiff worked in the USPS marketing retail department. 12/6/00 tr. at 35.

³ DiDio and plaintiff first worked together in 1993. 12/6/00 tr. at 50-51; 12/7/00 tr. at 29.

In 1994, plaintiff applied, and was not selected, for a full-time position in the injury compensation unit. An interview was conducted by the hiring manager, Sarah Skerrum. 12/6/00 tr. at 74, 80. Plaintiff filed, and subsequently withdrew, an EEO discrimination complaint regarding the decision. Id. at 75.

11. Between 1971 and 1993, plaintiff received five written commendations of performance, and four certificates of achievement and training.⁴ 12/6/00 tr. at 61-67; ex. 10.

12. In 1996, Joseph DiDio, acting manager of the injury compensation unit, selected plaintiff for a detail position in the department, where she worked as a “human resource specialist” for a four-month period.⁵ 12/6/00 tr. at 46, 51; see finding 4, supra. In that capacity, she was responsible for claims management; her duties were similar, if not identical, to those she had between 1990 and 1993. 12/6/00 tr. at 45-46; see finding 10, supra.

13. After completing the detail, she returned to the customer service department. In April, 1998, she noticed the human resources specialist position vacancy announcement posted at the USPS. 12/6/00 tr. at 47-48; 12/7/00 tr. at 50; see finding 2, supra.

⁴ She received: a letter concerning exemplary performance in 1971; a Certificate of Training for Grievance Handling and Human Relations in 1978; a Certificate of Training for Introduction to Postal Management in 1978; a Letter of Acknowledgment for ADAPT Test in 1982; a Certificate of Appreciation for performance in the Injury Compensation Unit in 1987; a Certificate of Training for Compensation Specialist in Federal Employee’s Compensation Act in 1989; a Special Achievement Award for performance as a Injury Compensation Control Officer in 1991; and a Certificate of Appreciation for duties on the Injury Compensation team in 1992-93. Ex. 10.

⁵ DiDio described the hiring process in 1996 as “competitive.” 12/7/00 tr. at 31-32. However, he did not remember the candidates. Id. at 37. Before 1998, DiDio had made one hiring decision for a full-time position. 12/6/00 tr. at 104-5; 12/7/00 tr. at 37.

14. The announcement contained a list of 10 requirements for the position.⁶

Ex. 2. Plaintiff felt that she possessed the necessary attributes and experience, and submitted to human resources a “991 form” – i.e., a resume and application used by the USPS.⁷ 12/6/00 tr. at 48-49, 52-56, 97; ex. 6. The form listed 10 requirements for the specialist position, and, for each category, directed the candidate to describe his or her experience and provide a reference. 12/06/00 tr. at 111.

15. On May 5, 1998, DiDio, then acting “senior injury compensation specialist,” received a package of four applicants, along with a letter from Harvey White, district manager of human resources, who advised DiDio to make the selection for the specialist position by “using application review interviewing participants manual EAS selection methods.”⁸ 12/6/00 tr. at 95-96; 12/7/00 at 41-42; ex. 5-9. The three applicants

⁶ The requirements included: (1) knowledge of policies, procedures and regulations related to processing personnel actions; (2) knowledge of employee benefit programs on health insurance, life insurance and retirement; (3) knowledge of federal and postal regulations, policies related to processing, administration of injury and unemployment compensation claims; . . . (8) ability to communicate in writing to prepare reports, claims documents, and training materials; and (9) ability to communicate orally to conduct training, make referrals, and provide guidance on personnel program policies and procedures. Ex. 2.

⁷ She sought the position, in part, because of an increase in salary and retirement benefits. 12/6/00 tr. at 57-58.

⁸ At trial, DiDio was questioned about the following provisions in the manual:

Common Selection Problems

There are a variety of problem areas common to most selection processes, as well as several specific issues affecting the Postal Service. Some of these selection problems include:

1. Important information is missed. The quality of information gathered

other than plaintiff, were Joseph Tarczewski, age 36;⁹ Elizabeth McGovern, age 40; and

during the selection process is very important. Specific critical information that relates directly to successful performance on the job can be collected if the focus is on the knowledge, skills and abilities (KSAs) required to do the job.

2. Applicant data are misinterpreted. . . .

3. Bias and stereo types affect judgments. There are both positive and negative biases. Allowing biases to affect decisions can cause you to overlook a perfectly good applicant or choose an applicant who looks like the right choice on the surface, but lacks real qualifications.

4. One consideration overly influences judgments. One particularly strong or weak characteristic can affect your judgment of the individual as a whole. For instance, a particularly good speaker (oral communication ability) is often credited with having a number of other abilities, which he or she may not actually possess.

5. Decisions are made too quickly. . . .

6. Selection discussions are not systematic. Discussions about an applicant, with others involved in the hiring decision, often consist of only generalizations or impressions. Focusing on job-related data when making selection decisions will avoid this problem.

* * *

Past behavior predicts future performance

Using past behavior to predict future performance has several advantages:

- It eliminates misunderstandings about applicants' information. Specific information about what the application actually did in the past provides a fairly accurate prediction of future on-the-job-performance.

- It prevents personal impressions from affecting the evaluation. If you don't have specific behavioral information about the applicant, you are more likely to base your opinions/evaluations on biases, personal impressions feelings attitudes, or hunches.

- It provides solid data for the selection decision. Specifically, it focuses on examples of what the applicant did in the past which is more likely to provide a fact-based data pool to draw from in making the selection decision.

Ex. 22; see 12/6/00 tr. at 123-28; 12/7/00 tr. at 3-4. DiDio testified that although he received the manual during a course in 1996 or 1997, he did not keep it. 12/6/00 tr. at 125. Nevertheless, White agreed that the manual contained, among other things, procedures that DiDio was required to follow. 12/7/00 tr. at 40-42.

William Nichols, age 42. 12/6/00 tr. at 98-99; see finding 3, supra.

16. Tarczewski's 991 application form listed DiDio as a reference for nine of the 10 requirements.¹⁰ 12/6/00 tr. at 111-12; ex. 7.

17. DiDio reviewed the 991 applications and used them to prepare a "matrix," a numerical summary of the applicants' "knowledge, skills and abilities" for each of the 10 requirements.¹¹ 12/7/00 tr. at 5-16; ex. 13. Plaintiff and Tarczewski were given the same scores for writing skill (strong) and oral ability (minimally acceptable). 12/7/00 tr. at 11-14. DiDio's "sole purpose" for using the matrix was to determine who to interview for the position, and he decided to interview all four candidates.¹² Id. at 14-15.

18. DiDio's interview of plaintiff took place in his office and lasted about 15 minutes. 12/6/00 tr. at 59. They discussed her ability to "get along with people in the office," work between 2:00 p.m. and 10:00 p.m., and travel. He also asked whether she had an understanding of "FECA." Id. at 59-60. Her communication skills were not discussed. Id. at 61. At the time, DiDio was aware that plaintiff had worked at USPS longer than any

⁹ In the early 1990s, plaintiff trained Tarczewski in claim management. 12/6/00 tr. at 73, 81.

¹⁰ Although the form also instructed an applicant to first list all full-time positions before temporary positions, Tarczewski did not comply with the requirement. 12/06/00 tr. at 122.

¹¹ DiDio prepared two matrices prior to the interviews, and, although he intended to disregard the first one he created, they both were submitted to human resources. Ex. 13; 12/7/00 at 7-9. At first, DiDio gave plaintiff a rating of "1" for ability to communicate in writing – denoting "minimally acceptable." In the second matrix, it was upgraded to "2" – for "strong." Ex. 13; 12/7/00 at 11-12.

¹² White explained that the interview is mandatory and "is a pretty important part [of the selection process] because that's a chance to – to probe the applicant, to find specifically what you're looking for, if you're looking for analytical skills, human behavior skills. It depends on what kind of job it is." 12/07/00 tr. at 54.

other candidate, and had received training as a compensation specialist. Id. at 106, 119-20; see findings 7, 11, supra.

19. According to DiDio, his decision was based primarily, if not entirely, on the interviews.¹³ 12/6/00 tr. at 101; 12/7/00 tr. at 36. Although not obligated to do so, DiDio did not contact any reference listed on plaintiff's application.¹⁴ 12/6/00 tr. at 112-14; 12/7/00 tr. at 53. Nor did he take notes or otherwise record the information he obtained during the interviews. 12/6/00 tr. at 102.

20. In May, 1998, DiDio hired Tarczewski for the position; he subsequently explained that Tarczewski expressed himself more clearly in the interview than plaintiff.¹⁵ Id. at 114-17, 121; 12/7/00 tr. at 35. Precision in communication, DiDio reasoned, was a critical qualification since the position involved describing administrative processes to injured claimants. 12/7/00 tr. at 34-35.

21. On May 18, 1998, Harvey White, as director of human resources, approved DiDio's decision. 12/7/00 tr. at 56, 67; ex. 11. White did not have any indication that age influenced the selection process.¹⁶ Id. at 58-59.

¹³ During her interview, McGovern informed DiDio that she was not interested in the position because of the hours. 12/6/00 tr. at 100, 102.

¹⁴ Some, if not many, of the references no longer worked at USPS. 12/6/00 tr. at 112.

¹⁵ DiDio claimed to have observed plaintiff's poor communication skills in the interview and while working in close proximity to her during her detail in 1996. However, he did not document, or speak with her about what he had seen until after the decision was made. 12/6/00 tr. at 61, 114-17. As DiDio's boss, White stated that he would expect a manager to approach an employee about a problem with his or her communication abilities. 12/7/00 tr. at 43.

¹⁶ Tarczewski testified that he had never heard DiDio comment on employee's age. 12/7/00 tr. at 76.

22. By letter dated May 18, 1998, DiDio informed plaintiff that she was not hired.¹⁷ 12/6/00 tr. at 68; 12/7/00 tr. at 17-18; ex. 15. Subsequently, upon her request, the two met in his office to discuss the interview and decisionmaking process. 12/6/00 tr. at 69-70,117. When she asked him to provide an example of her inadequate communication skills, he became angry and left the office. Id. at 70-71.

II. Discussion

At issue is whether plaintiff was denied promotion because of her age. Based on a theory of pretext, her claim will be analyzed using the tripartite burden-shifting formula set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04, 93 S. Ct. 1817, 1824-25, 36 L. Ed. 2d 668 (1973). First, plaintiff must establish a prima facie case of discrimination. If successful, the burden of production shifts to defendant to articulate a legitimate, nondiscriminatory reason for the employment decision. Once that occurs, plaintiff has “an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.” Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410 (3d Cir. 1999) (citing Texas Dep’t of Community Affairs v. Burdine, 450 U.S. 248, 252-53, 101 S. Ct. 1089, 1093, 67 L. Ed. 2d 207 (1981)).

¹⁷ DiDio agreed that the letter contained three grammatical errors. 12/7/00 tr. at 19-20. Moreover, in his affidavit explaining why plaintiff was not selected for the position, DiDio made a typographical and spelling errors; and, instead of answering individual questions, as instructed, he wrote it in narrative form. Id. at 20-25; ex. 16.

Here, defendant does not dispute that plaintiff has made out a prima facie case.¹⁸ Def. mem. at 10. Plaintiff, in turn, concedes that, if proven true, defendant's proffered reason – her poor communication skills – “could be a legitimate, non-discriminatory reason for the decision not to promote.” Pltf. proposed conclusion of law ¶ 2; see findings 20, 22, supra. The issue, therefore, is whether DiDio's explanation was pretextual and, ultimately, whether intentional discrimination has satisfactorily been proven.

Arguably, plaintiff succeeded in discrediting the reason given for the employment decision. The evidence was that, although the 991 forms and matrix were available as objective guideposts, DiDio based his selection exclusively on the interviews. As a result, plaintiff's references were not contacted, and her experience and qualifications may not have been considered.¹⁹ Importantly, while DiDio said that Tarczewski expressed himself clearly and plaintiff had poor communication skills, his assessment was not corroborated by other evidence. See note 17, supra. Therefore, the decision may have been based on factors other than the proffered reason. Whether the selection was motivated by age, however, is a separate matter.

“At trial, the plaintiff must convince the factfinder ‘both that the reason was false, and that discrimination was the real reason.’” Fuentes v. Perskie, 32 F.3d 759, 763

¹⁸ A prima facie case consists of four elements: 1) plaintiff is a member of a protected class; 2) was qualified for the position; 3) was affected by an employment decision; and 4) under such circumstances that there is an inference of unlawful discrimination, as where a similarly-situated person, not of the protected class, is treated differently. See Sempier v. Johnson & Higgins, 45 F.3d 724, 728 (3d Cir. 1995).

¹⁹ DiDio may also have violated USPS policies set forth in the training manual to ensure fairness by overemphasizing one hiring criterion. See note 8, supra.

(3d Cir. 1994) (quoting St. Mary's Honor Center v. Hicks, 509 U.S. 502, 519, 113 S. Ct. 2742, 2752, 125 L. Ed. 2d 407 (1993) (“It is not enough . . . to disbelieve the employer; the factfinder must believe the plaintiff’s explanation of intentional discrimination.”)). Therefore, the “factfinder’s rejection of the employer’s proffered, legitimate reason permits, but does not compel, a verdict for the plaintiff.” Id. “The test is whether the plaintiff ultimately persuades the factfinder that the employment decision was caused by bias, and for that purpose both the plaintiff’s prima facie case and the factfinder’s rejection of the employer’s proffered evidence are circumstantial evidence of unlawful discrimination.” Id.; see Hazen Paper Co. v. Biggins, 507 U.S. 604, 610, 113 S. Ct. 1701, 1706, 123 L. Ed. 2d 338 (1993) (“Whatever the employer’s decisionmaking process, a disparate treatment claim cannot succeed unless the employee’s protected trait actually played a role in that process and had a determinative influence on the outcome.”); Watson v. SEPTA, 207 F.3d 207, 215 (3d Cir. 2000) (plaintiff must show that an illegitimate factor was “determinative” in defendant’s employment action).

Here, the record is devoid of any evidence of discriminatory intent. Without more, the significant age difference between Tarczewski and plaintiff cannot satisfy her burden. See, e.g., Simpson v. Kay Jewelers, 142 F.3d 639, 646 (3d Cir. 1998) (proof of differential treatment of “a single member of the non-protected class is insufficient to give rise to an inference of discrimination”). Moreover, the credible testimony was that age played no role in the decisionmaking process.²⁰ See finding 21 & note 16, supra. While

²⁰ DiDio’s testimony:

Q. And Mr. Tarczewski, back in 1998 was approximately 36 years old.
(continued...)

DiDio's decision may not have been "wise, shrewd, prudent or competent," and perhaps unfair, age was not shown to be a determinative factor. Fuentes, 32 F.3d at 764.

Accordingly, a decision must be entered in favor of defendant.

²⁰(...continued)

Does that seem right?

A. I really didn't have a direct knowledge of his age at that time.

Q. Okay. Did you at some point obtain a direct knowledge of his age?

A. I believe I heard him just say the other day he's turning 38. I'm not sure.

Q. All right.

A. I didn't really make any reference to the ages.

* * *

Q. Now, by the way, in terms of the time you were selecting this position in the spring of 1998, I take it you understood that Ms. Robinson was significantly older than Mr. Tarczewski.

A. The age issue was not an issue with me. I – I – if you say aware, it did not enter into the process.

Q. That's not what I'm asking.

A. I'm sorry.

Q. My only question, let me just be clear, is I'm just asking you, you were aware that Ms. Robinson was significantly older than Mr. Tarczewski; were you aware of that fact?

A. Oh, yes.

* * *

Q. All right. Would you tell the members of the jury your age, sir?

A. My age?

Q. Yes, sir.

A. I am 58.

Q. When are you going to be 59?

A. February 2nd.

Q. Okay. So you're closer to 59 than you are to 58, aren't you?

A. Very much so.

Q. All right. Would you tell the members of the jury what part of Miss Robinson's age played in your decision not to select her in 1998?

A. Age doesn't enter into my selection.

12/6/00 tr. at 98, 105; 12/7/00 tr. at 35.

III. Conclusions of Law

The following conclusions are entered:

1. This court has jurisdiction over the parties and the subject matter of this action.

2. Defendant William J. Henderson, Postmaster General, U. S. Postal Service, is not liable to plaintiff Fannie L. Robinson in that she did not meet her burden of showing a violation of the Age Discrimination in Employment Act.

3. A decision will be entered in favor of defendant William J. Henderson, Postmaster General, U. S. Postal Service, and against plaintiff Fannie L. Robinson.

Edmund V. Ludwig, J.