

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

JEFFREY A. HILL	:	CIVIL ACTION
	:	
v.	:	
	:	
MARVIN T. RUNYON,	:	
Postmaster General,	:	
U.S. Postal Service	:	No. 97-2770

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Yohn, J. September , 1998

This is an employment discrimination action filed by the plaintiff, Jeffrey Hill ("Hill"), a former letter carrier for the United States Postal Service ("Postal Service"). In April, 1995, Hill almost struck a pedestrian with a postal vehicle. After the customer complained, the Postal Service began investigating the incident and temporarily suspended Hill. While on suspension Hill entered postal premises without authorization. When confronted, Hill and postal security officers had a physical altercation. Hill was terminated based on both of these incidents. After pursuing administrative appeals, Hill filed this action, alleging that his termination violated 42 U.S.C. §§ 2000(e) et seq. (1994) ("Title VII"). On March 23, 24, 26, and 31, 1998 the court conducted a bench trial. The court makes the following findings and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure.

I. Findings of Fact

A. Background

1. In April, 1995, the Postal Service employed Hill as a letter carrier. (See Def.'s Exh. 5, at 1.) At the time, Hill had been an employee of the Postal Service

for 13 years. (See Test. of J. Hill, 3/23/98.)

2. While employed as a letter carrier, Hill's duties included performing relays and mail collections for the Schuylkill Station located at 905 South Street. (See id.)

3. Proceeding pro se, Hill filed the instant action on April 28, 1997, claiming that the Postal Service discriminated and retaliated against him for exercising his rights under Title VII when it terminated him from his position as a letter carrier. (See Compl., 4/28/97)¹

B. The First Incident

4. Around 1 p.m., on April 1, 1995, Hill was retrieving mail from a mail box located at the southwest corner of 15th and Dickinson Streets in Philadelphia, Pa. (See Def.'s Exh. 3, at 9.)

5. As Hill walked back across the street to his postal vehicle, (see id.), Edward Roache ("Roache"), a pedestrian, approached Hill while carrying a piece of mail for delivery. (See id.)

6. Roache stated to Hill that he had a piece of "mail that [he] would like

¹ In order to be timely, a federal employee alleging discrimination must file a district court complaint within ninety days of exhausting his or her administrative remedies. See 42 U.S.C. § 2000e-16(c); see also Waiters v. Parsons, 729 F.2d 233, 237 (3d Cir. 1984). An employee exhausts his administrative remedies upon receipt of a final agency decision. See Waiters, 729 F.2d at 237. The defendants do not raise the exhaustion issue and have not submitted evidence of the plaintiff's receipt of the final agency decision as to the actions at issue in this complaint. As such, the court cannot reach any conclusions on this issue.

posted at once.” (Id.) Hill ignored him. (See id.) When Roache asked a second time, Hill again ignored him and climbed into the postal vehicle. (See id.)

7. Roache then leaned into the postal vehicle while extending the letter to Hill, who snatched the letter from Roache and sped off from the corner. (See id. at 9-10.) Hill accelerated away from Roache while Roache’s body was almost pressed against the truck and his foot was underneath the vehicle. (See id. at 13-14.) Fortunately, Roache was able to move quickly enough to avoid injury.

8. That same day, Roache phoned the Schuylkill Station to report Hill and lodged a written complaint about the incident. (See id. at 14.) Soon thereafter, the Postal Service began an investigation into Roache’s complaint. (See Def.’s Exh. 9.)

9. Two supervisors, James Logan (“Logan”), a black male, and Anthony David Johnson, a black male, testified that a safety issue such as the April 1, 1995 incident amounts to a serious offense. (See Test. of J. Logan, 3/24/98; Test. of A. Johnson, 3/24/98.)

10. Pursuant to Postal Service policy, Hill’s supervisor, Patrick Canning, (“Canning”) placed Hill on “emergency placement” while the Postal Service investigated the April 1st incident. (See Test. of J. Harrison, Postal Service manager, Main Office, 3/31/98; see Def.’s Exh. 9.)

11. Canning is a white male. (See Test. of P. Canning, 3/26/98.)

12. While on “emergency placement,” the Postal Service confiscated Hill’s postal identification and did not permit him to enter postal employee premises - general

restrictions applied to all employees placed on emergency placement. (See Def.'s Exh. 2; see Test. of J. Harrison, 3/31/98.)

13. Harrison, a manager of the main office, sent Hill a written notice, dated April 3, 1995, via certified mail, regarding his "emergency placement" status. (See Test. of J. Harrison, 3/31/98; see Def.'s Exh. 14.)

14. Citing the April 1, 1995 incident and Hill's disciplinary record, which included: (a) a "Letter of Warning" dated July 13, 1993 for failure to follow instructions and misappropriation of postal funds; (b) a 14-day suspension dated January 24, 1995 for willful delay of the mails; and (c) a 7-day suspension dated March, 1995, for delay of mail, Canning issued a "Notice of Proposed Removal," dated May 15, 1995, recommending Hill's removal. (See Def.'s Exh. 5.) Hill did not respond to the "Notice of Proposed Removal." (See Def.'s Exh. 9.)

15. The Postal Service's investigation, which included interviews of both Hill and Roache, concluded that Hill's actions on April 1, 1995 amounted to a serious incident which endangered Hill and others and placed the Postal Service at serious risk of civil liability. (See Def.'s Exh. 9.)

C. The Second Incident

16. Even before the issuance of Canning's "Notice of Proposed Removal" and the completion of the Postal Service's investigation, Hill violated postal regulations again. On June 3, 1995, while awaiting adjudication of the prior proposed removal, Hill entered postal property without authorization. (See Def.'s Exh. 7.)

17. Hill claims that on this date he went to 30th Street Station to collect his pay check and his personal mail. (See Def.'s Exh. 1.) At that time, Canning observed Hill on the "M.O.D. workflow," an employee-only section where Hill was not permitted due to his "emergency placement" status. (See Def.'s Exh. 2.)

18. Canning notified security of Hill's unauthorized presence on the floor. (See id.; see Test. of P. Canning, 3/26/98.) When Sergeant Gioia, a postal security officer, escorted Hill to the security office for questioning, a physical altercation developed. (See Test. of P. Canning, 3/26/98.) Hill first pushed Canning and Gioia and then ran to the door. Sergeant Gioia and several other officers physically restrained Hill, forced him to the ground, and then handcuffed him. (See id.)

19. After this brawl, Inspector Torrance, a black male, decided to arrest Hill and press charges against him for criminal trespass and simple assault. (See Test. of Sgt. Gioia, 3/26/98.)

20. In light of this incident and Hill's prior disciplinary record, Canning issued Hill another "Notice of Proposed Removal" on June 26, 1995. (See Def.'s Exh. 7.)

21. Canning did not know of any of Hill's EEOC activity at this time. (See Test. of P. Canning, 3/26/98.) In fact, Canning was not aware of any complaints until March 1, 1996, when he supplied an affidavit in connection with the EEOC's investigation of Hill's complaints. (See id.)²

² Gaeton Marino, a postal employee and union steward, testified that he represented Hill in six different grievance procedures when the plaintiff was disciplined

D. The Decision to Terminate

22. John Harrison issued a "Letter of Decision," dated June 26, 1995, that terminated Hill's employment. (See Def.'s Exh. 6.)³ He based his decision to terminate Hill on (a) Canning's first "Notice of Proposed Removal" which recommended termination; (b) Hill's prior disciplinary record; and (c) the April 1st incident in which Hill almost ran over a postal customer. (See id.)

23. Harrison is a white male. (See Test. of J. Harrison, 3/31/98.)

24. Harrison terminated Hill for a second time. (See Def.'s Exh. 8.) This "Letter of Decision," dated October 4, 1995, explicitly fired Hill based on the June 3, 1995, brawl with security officers and his unauthorized entrance onto postal employees premises. (See id.)⁴

25. As late as October 4, 1995, Harrison remained unaware that Hill had filed any complaints with the EEOC. (See Test. of J. Harrison, 3/31/98.)

for either abusing sick leave or arriving late. (See Test. of G. Marino, 3/24/98.) Marino testified that Hill filed an EEOC complaint sometime in 1990 but could not supply any other details regarding the complaint that would be helpful to this case. (See id.) None of Hill's supervisors were aware of this 1990 complaint.

³ According to this "Letter of Decision," Hill's reckless driving violated sections of the Employee and Labor relations Manual, including Section 811.5, "reckless Driving;" Section 814.2, "Responsibility;" and Sections 661.3 and 666.2 which address proper modes of conduct for postal employees.

⁴ According to this "Letter of Decision," Hill's struggle with postal officers and his unauthorized entry onto postal premises violated several sections of the Employees and Labor Relations Manual, including Section 661.53, "Unacceptable Conduct;" Section 666.2 "Behavior and Personal Habits;" and Section 666.3 "Loyalty." (See Def.'s Exh. 8.) The parties agreed at trial that the Postal Service did not pursue this second termination because the Postal Service already terminated Hill for the April 1, 1995 incident.

E. Hill's Evidence of Discrimination

26. Hill introduced a series of unrelated infractions committed by other postal employees.

27. For example, in December, 1995, Mr. Kelly ("Kelly"), a letter carrier for the Postal Service, was involved in a verbal altercation with a customer. (See Test. of Harrison, 3/31/98.)

28. Kelly is a white male. (See id.)

29. Unlike Hill, however, Kelly did not place a customer's physical well-being in jeopardy and did not have any citable prior disciplinary action. (See id.)

30. The Postal Service placed Kelly on emergency placement and lodged a "Notice of Proposed Removal" against him for this incident. (See id.) Harrison ultimately decided to issue Kelly a four month suspension because the customer and an independent witness did not want to testify on this matter. (See id.)

31. Another postal employee, by the name of Patriarca (sic), verbally, but not physically, assaulted a customer. (See Test. of J. Harrison, 3/31/98.)

32. Patriarca received a four month suspension without pay and a "Notice of Proposed Removal." (See id.)

33. Patriarca is a white male. (See id.)

34. Samuel Knight ("Knight"), a letter carrier and union steward, testified that the Postal Service proposed Knight for suspension, but neither suspended nor removed him, after Knight's supervisors allegedly observed him drinking alcoholic

beverages in a bar. (See Test. of S. Knight, 3/24/98.) He was not drinking an alcoholic beverage at the time. (See id.)

35. In early 1997, Ms. White, a black supervisor for the Postal Service, put Mr. Vann ("Vann"), a white postal employee, "up for removal" because he left a postal vehicle running while unattended. (See id.) Vann retired prior to the adjudication of this recommendation. (See id.)

36. About three years ago, Canning conducted a street check of postal vehicles. (See Test. of K. Jett-Al, 3/24/98.) As a part of the street check, Canning broke the window of a vehicle being driven by Kenneth Jett-All, a black letter carrier for the Postal Service. (See id.) Jett-Al confirmed that Canning did not know that Jett-Al was driving the vehicle and Jett-Al did not believe Canning directed this action toward him due to race. (See id.)

37. Logan, a black male, was the supervisor of customer relations at the Schuylkill Station on April 1, 1995 and one of Hill's superiors for several months. (See Test. of J. Logan, 3/24/98.) Logan testified that Hill and other employees had "problems" with one of the supervisors, Robert Grasso ("Grasso"). (See id.) Grasso had nothing to do with any of the incidents here at issue.

38. Logan testified that Hill had a history of "performance", "lateness" and "confrontational problems" with supervisors. (Id.)

II. CONCLUSIONS OF LAW

A. Discrimination on the basis of race

1. This is an action for race discrimination under 42 U.S.C. § 2000e et seq. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

2. The remedy for allegations of discrimination in federal employment is Title VII. Brown v. General Services Admin., 425 U.S. 821 (1976).

3. Title VII makes it an "unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privilege of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1).

4. Employment discrimination claims can be established in either, or both, of two ways: (a) by presentation of direct evidence that the defendant harbored discriminatory animus under Price Waterhouse v. Hopkins, 490 U.S. 228 (1989), or (b) from evidence which creates an inference of discrimination under the burden-shifting framework of the McDonnell Douglas/Burdine/Hicks trilogy. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993); Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Hill's case implicates only the McDonnell Douglas burden-shifting analysis.

5. The plaintiff bears the burden of proving purposeful discrimination, Weldon v. Kraft, Inc., 896 F.2d 793, 796 (3d Cir. 1990), and retaliation. See Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997).

6. Absent direct evidence of discrimination, the plaintiff must first establish a prima facie case of disparate treatment. See Texas Dep't of Community

Affairs v. Burdine, 450 U.S. 248, 252 (1981). A prima facie case requires proof that the plaintiff belong to a protected group, that he suffered an adverse employment action, and that members outside the protected group received more favorable treatment. See Weldon, 896 F.2d at 797.

7. If the plaintiff succeeds in making out a prima facie case, the burden shifts to the defendant to produce "some legitimate, nondiscriminatory reason" for the unfavorable treatment. McDonnell Douglas, 411 U.S. at 802.

8. If the defendant provides a legitimate reason, the burden then shifts back to the plaintiff to show that the defendant's reasons are pretexts. Id. A plaintiff has shown that a reason is a pretext for discrimination when he has produced direct or circumstantial evidence from which the fact-finder either: "(1) disbelieves the employer's articulated legitimate reason; or (2) believes that an invidious discriminatory reason was more likely than not the motivating or determinative cause of the employer's action." Sheridan v. E.I. DuPont & Co., 100 F.3d 1061, 1067 (3d Cir. 1996) (quoting Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994)).

9. To successfully challenge a defendant's legitimate reason, this rebuttal evidence must cast such doubt upon the employer's proffered explanations for the employment actions at issue that the fact-finder rationally finds them "unworthy of credence[.]" Fuentes 32 F.3d at 765 (quoting Ezold v. Wolf, Block, Schorr and Solis-Cohen, 983 F.2d 509, 531 (1993)).

10. An employee can demonstrate that his or her employer's reason was

a pretext by showing that "similarly situated employees were not treated equally." Burdine, 450 U.S. at 258 (citing McDonnell Douglas, 411 U.S. at 804).

11. "Similarly situated" individuals must "have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Dill v. Runyon, 1997 WL 164275, *3 (E.D. Pa. April 3, 1997) (quoting Mitchell v. Toledo Hosp., 964 F.2d 577, 583 (6th Cir.1992)); see also Anderson v. Haverford College, 868 F. Supp. 741, 745 (E.D. Pa. 1994).

12. The court finds that the defendant has introduced several legitimate, nondiscriminatory reasons for the plaintiff's discharge. These incidents include (1) the incident on April 1, 1995, in which Hill, while on duty almost ran over Roache, a pedestrian, with a postal vehicle; (2) the incident on June 3, 1995, in which Hill entered a restricted area of a postal facility and engaged in a physical altercation with postal security officers; and (3) Hill's prior disciplinary record.

13. The court finds that Hill has failed to meet his burden of showing that these reasons are pretextual.

14. Although Hill introduces evidence of the alleged misbehavior of other employees and the discipline received for it, he has not shown that these employees are similarly situated to him.

15. Unlike Hill, none of the employees engaged in conduct that endangered the safety of a postal customer.

16. Furthermore, none of the employees had a disciplinary record as extensive as Hill's record.

17. Thus, I find that Hill has not shown that the Postal Service's proffered reasons for his termination were a pretext for discrimination. I also find that Hill has not proven that an invidious discriminatory reason was more likely than not the motivating or determinative cause of defendant's action in firing him.

B. Retaliation

18. Title VII prohibits an employer from discriminating against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in an investigation . . . under this subchapter." 42 U.S.C. § 2000e-3(a).

19. Like a race discrimination charge, in order to establish a prima facie case of retaliation, the plaintiff must show that:

(a) that he engaged in protected activity;

(b) that he was subjected to adverse employment action subsequent to or contemporaneously with such activity and;

(c) that there is a causal link between the protected activity and the adverse action.

Woodson, 109 F.3d at 920; Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir. 1991).

20. Plaintiff has not met his burden of making out a prima facie case of retaliation.

21. The court finds that neither of Hill's supervisors, Canning or Harrison,

the two individuals responsible for his termination, had any knowledge of any of the plaintiff's protected activity prior to the plaintiff's termination. (See Test. of P. Canning, 3/26/98; Test. of J. Harrison, 3/31/98). Hill has not introduced any other evidence that his protected activity caused his termination.

22. Thus, I find that Hill has failed to show a causal link between the protected activity and the adverse action. See e.g., Azzaro v. City of Allegheny, 110 F.3d 968, 974 (3d Cir. 1997) (while the relevant decision makers' knowledge of protected activity is not required to show causation, it is one method of establishing this element); Woodson at 923 n.6 (same).⁵

⁵ Once the plaintiff makes out a prima facie case, a retaliation claim employs the same framework as a claim for discrimination. Thus, after the plaintiff establishes her prima facie case, the burden of production shifts to the defendant to "articulate some legitimate, nondiscriminatory reason" for its actions. McDonnell Douglas, 411 U.S. at 802. To counter the defendant's legitimate reason, the plaintiff must convince the factfinder "both that the reason was false, and that discrimination was the real reason." Woodson, 109 F.3d at 920 n.2 (quoting Hicks, 509 U.S. at 512). For the reasons cited supra pp. 10-11, I find that Hill has failed to demonstrate that any of the employer's stated reasons for terminating him are a pretext for discrimination or that race was the real reason.

