

Chicago Daily Law Bulletin®

Volume 160, No. 144

Years after class-action deal, electrician wins OK to pursue his own bias claim

The 7th U.S. Circuit Court of Appeals recently reversed a ruling that evidence presented at trial by a plaintiff who was not hired for an in-house electrician job was insufficient to prove racial discrimination.

Matthew Whitfield filed claims under Section 1981 and Title VII of the Civil Rights Act against Navistar, alleging that Navistar failed to hire him for an electrician position at its Indianapolis manufacturing plant on the basis of his race. *Whitfield v. International Truck and Engine Corp.*, No. 13-1876 (7th Cir. June 6, 2014).

The plaintiff, who is black, initially applied for an electrician position with Navistar in 1996. Navistar hired 16 electricians while the plaintiff's application was pending and 11 electricians during the applicable statute of limitations period. The job required applicants to have either eight years of experience as an electrician or a journeyman card, which Navistar considered as presumptive proof of the experience requirement.

In 1996, the plaintiff had more than nine years of experience as an electrician, including four years in the Navy. The general foreman at Navistar's plant interviewed the plaintiff and told him he would hire him, provided that the union that represented Navistar's electricians at the plant verified the requisite years of experience.

Navistar did not hire the plaintiff, however, because the union allegedly was unable to verify his nine-plus years of experience. The union did not consider the four years with the Navy, which it should have considered. While Navistar did not hire the plaintiff, it did not reject his application, either.

In 1998, the plaintiff obtained his journeyman card and

submitted proof of the card to Navistar. Because having the card was presumptive proof that the plaintiff was qualified for the position, the union cleared the plaintiff for hire and forwarded his file to Navistar. Upon viewing the file, Navistar's electrical foreman noticed that the word "black" was written on the application cover sheet.

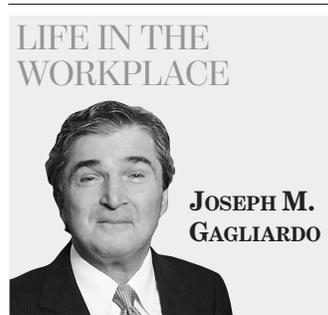
In 1999, the plaintiff supplemented his application file with an updated copy of his journeyman card and a revised application. Navistar hired at least five white electricians while the plaintiff's revised application was pending. While Navistar never formally rejected the plaintiff, the electrical foreman told the plaintiff in December 1999 that he wanted to hire him, but Navistar would not allow it.

In 2001, Whitfield, along with 26 other individuals, sued Navistar in federal court, alleging Navistar discriminated in its hiring practices on the basis of race and maintained a racially hostile work environment at the Indianapolis plant.

The hostile work environment class-action claim was settled at the conclusion of trial. Before the settlement, the plaintiffs produced extensive amounts of evidence and testimony showing extreme racial hostility at the plant, including nooses, photos of racially hostile graffiti and racially offensive slogans written around the plant.

Additionally, the evidence showed Navistar refused to discipline white employees for engaging in racially offensive behavior and systematically excluded black applicants from its skilled trades positions.

In June 2012, the plaintiff's claims finally proceeded to a bench trial. The district court ruled in favor of Navistar. On appeal, the 7th Circuit affirmed in part, reversed in part and



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remanded, but it reversed the district court's ruling on the merits.

The court first addressed the plaintiff's Title VII and Section 1981 claims under the direct method of proof. Plaintiffs can satisfy the direct method by using circumstantial evidence that allows the fact finder to infer intentional discrimination by the decision-maker. The circumstantial evidence must "directly point to a discriminatory reason for the employer's action and be directly related to the employment decision."

The court held that the district court erred by discrediting evidence of the plaintiff's application file having the word "black" on it. The district court concluded that the file could have contained the word "black" for affirmative-action purposes, but Navistar presented no evidence to support this finding. In fact, Navistar's human resources manager admitted that he was not aware of any reason why "black" was written on the file.

Moreover, the court found that the evidence was probative, given that the class-action plain-

tiffs presented extensive evidence of a racially hostile environment at the plant. Thus, the court held, the district court's treatment of this evidence was not plausible in light of the entire record.

Additionally, the court held that the district court committed an additional, "more egregious" error by "giving enormous weight" to the fact that Navistar hired Donna Jackson, another black electrician, while the plaintiff's application was pending. Navistar hired 11 white electricians during the two years after Jackson initially submitted her application; Jackson had 13 years of experience, and she was the first black electrician hired by Navistar in decades.

Further, after she was hired, Jackson was subjected to a "severely hostile environment" at the plant based on her race. Therefore, the district court erred by relying on her hiring to negate an inference of discrimination against plaintiff. Indeed, the court stated, the evidence relating to Jackson actually bolstered the plaintiff's direct discrimination evidence.

By committing these "clear errors," the court held, the district court distorted the plaintiff's mosaic of circumstantial evidence.

Next, the appeals court turned to the indirect, burden-shifting method of proof. With regard to the second element — whether the plaintiff was qualified for the position for which he applied — the district court's ruling that the plaintiff failed to establish this element was "clearly erroneous."

The court stated that evidence showing that the plaintiff obtained his journeyman card, which made him presumptively qualified for the position, should have been sufficient to establish the second element. However,

the district court determined that the plaintiff was not qualified due to errors on his application and his lack of experience with programmable logic controllers.

The court held that it was impossible for the district court to conclude that the resume errors and lack of PLC experience served as legitimate reasons for Navistar to not hire the plaintiff because Navistar never identified the individual who made the final decision to not hire him. While these

reasons may have led to the decision to not hire the plaintiff, without any known decision-maker, “it is mere speculation to say these were the actual reasons.”

Notably, the record showed that the plaintiff in fact had more PLC experience than many of the white electricians who were hired, and several of these new hires had no PLC experience whatsoever.

With regard to the fourth element, the court held that the district court committed “clear

error” in determining that the plaintiff failed to present any evidence that the white electricians who were hired had similar or lesser qualifications. In actuality, the plaintiff presented a chart showing that he was more qualified than most of the white electricians who were hired during the limitations period.

Lastly, the court held that it was within the district court’s discretion to exclude evidence (initially presented during the class-action trial) showing the

existence of a racially hostile work environment at the plant because such evidence was not presented in a timely fashion.

Notwithstanding this ruling, the appeals court noted that the evidence was “quite relevant to this case,” and indeed, “very well could have changed the outcome of the case.” Thus, the court held, to the extent the district court relied on irrelevance in refusing to admit evidence showing that the plant constituted a racially hostile work environment, such a ruling was an abuse of discretion.