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District Court Holds "New Face" Comment by Employer is Facially Neutral

The plaintiff in *Aulick v. Skybridge Ams., Inc.*, No. 14-4862 (ADM/HB), 2016 U.S. Dist. LEXIS 62101 (D. Minn. May 10, 2016), brought an age discrimination claim against his former employer pursuant to the Age Discrimination in Employment Act ("ADEA") and the Minnesota Human Rights Act ("MHRA"). The plaintiff argued direct evidence of discrimination supported his claim, citing alleged statements by the Chairman of Skybridge Americas, Inc. ("Skybridge") that the company was looking for "a new face" for his position. The district court disagreed that the "fresh face" statement was direct evidence of discrimination. Instead, the district court found the comment was "facially and contextually neutral" and that no reasonable factfinder could conclude that "new face" necessarily meant a younger employee.

The plaintiff further argued Skybridge's reasons for terminating his employment was pretext. Specifically, plaintiff argued he was qualified for the position, Skybridge had not provided a reason for his termination prior to litigation, and the record was contradictory regarding the identity of the decision-maker. The district court disagreed reasoning the evidence showed the candidate Skybridge hired to replace the plaintiff had substantial experience in an area the plaintiff did not, and that, as the Eighth Circuit has held on numerous occasions, federal courts do not sit as "super-personnel departments" with respect to business judgments of employers. The district court held plaintiff failed to present evidence of pretext sufficient to question the legitimate, nondiscriminatory basis upon which Skybridge terminated his employment.

Grant of Summary Judgment Based on Whether Reason for Termination was "True Reason"; Not Whether Reason Met All Requirements of Policy Violation

In *VanDyke v. City of Minneapolis*, No. 14-224 (SRN/SER), 2016 U.S. Dist. LEXIS 78866 (D. Minn. June 16, 2016), a terminated Minneapolis police officer brought a claim of age discrimination against the City of Minneapolis. ("City"). The City terminated the police officer after an internal investigation found he committed numerous policy and rule violations in response to a 911 call regarding the discovery of abandoned shot guns. On summary judgment, the Magistrate found the police officer had lied in his report, stored firearms in his home without an inventory, and even returned firearms to a civilian who expressed interest in them. The police officer objected to the Magistrate's recommendation for summary judgment arguing he failed to consider whether his actions were done "knowingly and willfully" pursuant to the Model Penal Code. The district court disagreed and held the *McDonnell Douglas* burden-shifting analysis does not require a court decide intent or knowledge but rather, "whether the employer's proffered reason for termination was the true reason for termination." The district court adopted the Magistrate's recommendation granting summary judgment to the City.

Court Confirms Employment Discrimination Claims Not Subject to Heightened Pleading Standard

In *Cardoso v. Bd. Of Regents of the Univ. of Minn.*, No. 16-88 (RHK/LIB), 2016 U.S. Dist. LEXIS 122247 (D. Minn. Sept. 8, 2016), a terminated University of Minnesota-Duluth employee brought suit against the University alleging age discrimination and other claims. The University brought a motion to dismiss based on *Twombly* and *Iqbal* standards. The district court found plaintiff's complaint sufficiently pled the first three elements of a *prima facie* case but alleged little to address the fourth element – whether a causal connection existed between his protected status and the termination of his employment.

In the complaint, the plaintiff alleged he had previously received favorable reviews, was not advised of any performance issues prior to his termination, and the University violated its own

policies when terminating his employment. While the district court found these allegations were "thin" in establishing a causal connection, it denied the University's motion, holding they were sufficient to suggest discrimination and state a plausible claim for relief under the ADEA.

Employer Had No Obligation to Find Alternative Employment, and Failure To Do So Was Not Discrimination

In *Haggenmiller v. ABM Parking Servs.*, 837 F.3d 879 (8th Cir. 2016), the Eighth Circuit Court of Appeals heard an appeal by the plaintiff below after the district court had granted summary judgment for the defendant. In the underlying case, the plaintiff claimed her termination was discriminatory as she was one of the oldest employees in the company and replaced by a manager more than 30 years her junior. The defendant had proffered a legitimate reason for her termination – The Metropolitan Airports Commission directed the defendant eliminate her position. The plaintiff did not challenge the employer's reason but rather, the action taken by the defendant based on the Metropolitan Airports Commission's recommendation because it had merely directed the defendant to "eliminate her position," not to "terminate her" employment. The plaintiff claimed the defendant's decision to terminate her was pretextual because the employer justified the termination decision on the fact it had no other open position available for her. The district court disagreed with the plaintiff's argument finding an employer was not obligated to find an alternative position for the plaintiff. Furthermore, the district court held the record did not support plaintiff's claim that lack of available positions was the "sole basis" for her termination. The district court held that a plaintiff "must present affirmative evidence," and not simply contend a jury might disbelieve the employer, to defeat summary judgment.

On appeal, the plaintiff also offered two age-related comments to bolster her claim that she claimed the district court had ignored. The first statement was an acknowledgement by a human resources manager that the company was terminating one of the oldest employees at the

Minneapolis-St. Paul Airport. The district court held, and the Court of Appeals affirmed, this comment was merely a "natural reaction" rather than indicative of age discrimination. The second statement plaintiff claimed showed age-based animus was an inquiry into her retirement which again, the Eighth Circuit found did not suggest an age-related bias. The Eighth Circuit Court of Appeals affirmed the grant of summary judgment in the employer's favor.

Plaintiff Fails to Use Appropriate Comparators

In *Blackwell v. Alliant Techsystems, Inc.*, 822 F.3d 431 (8th Cir. 2016), the plaintiff sued her former employer for age, gender and race discrimination and retaliation, after it terminated her for allegedly assaulting another employee. The Eighth Circuit Court of Appeals affirmed the district court's grant of summary judgment holding the plaintiff could not establish a *prima facie* case of discrimination as she failed to establish the employer treated any similarly-situated employees in a disparate manner. The comparators plaintiff presented were not proper comparators as they had never committed acts of physical violence in the workplace against a fellow employee. The plaintiff also argued that one of the employees who had made a statement against her about the assault recanted his testimony years later. The Eighth Circuit Court of Appeals affirmed the district court's decision finding the recanted statement did not change the analysis as there was no evidence that the employer had no reason to believe he was lying at the time. Again, the Court reiterated that the "critical inquiry" is not whether the employee actually engaged in the terminable conduct, "but whether the employer in good faith believed that the employee was guilty of the conduct justifying discharge."

Plaintiff Cannot Establish a *Prima Facie* Case without Evidence of an Inference of Discrimination

In *Tina Grant v. City of Blytheville*, 841 F.3d 767 (8th Cir. 2016), the employer claimed it terminated the plaintiff for allegedly refusing to work as a driver for the city's public works

division. Examining the plaintiff's claims in conjunction with the standard for summary judgment, the Court found the plaintiff satisfied the first three elements of his *prima facie* case, but questioned whether he had provided any facts raising an inference of discrimination based on his race or his age. First, the plaintiff could not identify any similarly situated employees outside his protected class who were treated more favorably. While the plaintiff identified other employees terminated, they were not comparators as they worked prior to the time the decision-maker worked for the city and were actually discharged for refusing to do their jobs thereby negating the argument the defendant had treated them more favorably. Second, the plaintiff could not establish anyone made age-related comments to him, that the city failed to follow its policies, or that the city changed its reason for terminating his employment. Ultimately, the Eight Circuit Court of Appeals affirmed the district court's grant of summary judgment.

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