

Diaz v. American Telephone & Telegraph, 752 F.2d 1356 (9th Cir. 1985)

Pl: Paul Diaz

Def: AT&T

Procedural History:

Lower court: Granted summary judgment for AT&T. Diaz appealed

Facts:

- Paul Diaz employed since 1969 as Communications Technician.
- Various times filled in as an Operations Supervisor.
- March 1980 a perm. opening for an Operations Supervisor available.
- Diaz filled-in for this position for 3-1/2 months
- AT&T does not disseminate employment opps directly to workers
- Operations Mg. Notified the western region personnel office of the opening
- Personnel office sent list of openings to managers
- Mgrs sent names of qualified; 5 names were sent in for this position, among them, Rebecca Gonzales
- Operation Manager did not consider Diaz
- Diaz was considered promotable
- Diaz filed charge with Arizona Civil Rights Division on April 15, 1980
- Gonzales was promoted to position in late April/early May
- Gonzales replaced a year later by a white male

Issue:

Whether the court erred in granting summary judgment to AT&T and improperly did not rule on Diaz's motion to discover statistical data to support his prima facie claim, and that AT&T's articulated reason for hiring Gonzales was pretextual.

Rule:

- Plaintiff must first establish a prima facie case of discrimination.
- To establish a prima facie case, plaintiff must offer evidence that "gives rise to an inference of unlawful discrimination."
- One common way to do that is to demonstrate the four requirements of the *McDonnell Douglas* test are met:
 - (1) that the plaintiff belongs to a class protected by Title VII;
 - (2) that the plaintiff applied and was qualified for a job for which the employer was seeking applicants;
 - (3) that, despite being qualified, the plaintiff was rejected; and

- (4) that, after the plaintiff's rejection, the position remained open and the employer continued to seek applicants from persons of comparable qualifications.
- The burden of production then shifts to the defendant to articulate a legitimate nondiscriminatory reason for the adverse employment decision.
- If the defendant carries this burden (in other words, if defendant is successful), the plaintiff is then afforded an opportunity to demonstrate that the "assigned reason" was "a pretext or discriminatory in its application."
 - Statistical evidence is helpful in establishing a PFC even though it may not be directly probative of the four elements of the McDonnell Douglas test.
 - used to est. a general discriminatory pattern
 - probative of motive and creates an inference of discrimination
 - A plaintiff is entitled to use statistical evidence to show that a defendant's articulated nondiscriminatory reason is pretextual.

Holding:

Summary judgment ruling was based on an erroneous legal premise that the plaintiff was precluded from establishing a prima facie case of discrimination. And plaintiff was denied opportunity to discover material that would bolster his claim to defeat summary judgment for AT&T.

-- Since AT&T refused to provide the stats, this court does not have all the information before it to affirm, therefore it can't make a decision.

Summary of Arguments:

Prima Facie Case

AT&T argues that even if the McDonnell Douglas test is read as the Supreme Court apparently meant it to be, and even if Diaz met that test, it is not sufficient in all instances simply to satisfy the McDonnell Douglas standard. AT&T contends that whenever the person who is selected for the position is a member of the same protected class, the plaintiff is precluded from establishing a prima facie case.

Statistical Evidence

AT&T argues even if stats are relevant in Title VII cases, info about its hiring practices outside Tucson region is irrelevant because: 1. the decisions in other parts of the company were not made by the operations manager that made the challenged decision about the position, and 2. Diaz had told his supervisors he was unwilling to leave Tucson to take another position.

Reasoning: Prima Facie Case

- This court made clear in another case that “a plaintiff is not precluded from bringing suit merely because a person of the same protected class in selected for the challenged position. (from an age discrimination case)
- Other circuit courts have interpreted the fourth element in the same manner, in ADEA case and Title VII cases.
- We see no reason to read McDonnell Douglas differently in Title VII context than we do when suit is brought under ADEA.
- Prima facie case can be established in another way. Plaintiff may demonstrate inference of discrimination in whatever manner appropriate in particular circumstances.
- Plaintiff can establish PFC by providing evidence that suggests the decision was based on discriminatory criterion that is illegal under the Act. In this case, Diaz did.
 - Frequently filled in as the Supervision,
 - Never offered the job
 - Is as qualified as others considered
 - May be more qualified than selected person
 - Fact that person of same class promoted after he filed claim does not remove presumption of discrim. Created by this other evidence.

Reasoning: Statistical Evidence

- AT&T’s argument ignores the underlying purpose of stats – to provide otherwise unavailable indications of an employer’s conscious or unconscious motive.
- The existence of a pattern of racial disparity would allow for an inference, and would bolster Diaz’s case and support his pretext argument. He is entitled to try to prove these.
- One way to make conclusions about motive is to determine whether explicit or implicit policies encourage or permit discriminatory employment decisions by supervisor personnel. Employer is responsible for those decisions.
- Whether he would leave or stay is irrelevant, because even if he can’t use the evidence to prove he was discriminated against, the pattern of racial disparity would be of probative value.
- Also, nothing in the record indicated he would refuse to leave Tucson if offered that job.

Judgment: reversed and remanded