

Douglas v. Rochester City School District 2013 WL 2257831 (2nd Circuit Court of Appeals – New York)

May 22, 2013

Summary

Non-tenured teacher denied tenure and ultimately terminated sought recovery for harassment and hostile work environment based on race, gender and retaliation for filing charges with the EEOC. The trial court denied the recovery in summary proceedings. The Appellate Court affirmed finding plaintiff failed to produce any evidence that her workplace was so permeated with discrimination to render it hostile and failed to establish a connection between her supervisor's rude behavior and her race or gender. Moreover, the adverse employment actions took place prior to the filing of charges, thus no retaliation could be established.

Background

Plaintiff, who was employed by the District as an Athletic Director, alleged claims of workplace discrimination, harassment, and retaliation based on race and gender. Plaintiff claimed that her principal and supervisor communicated with her in a disrespectful tone, reacted with short-tempered anger toward plaintiff and angrily admonished plaintiff in front of others by instructing her to “get [your] butt out there and fill up the water buckets” during a game.

Plaintiff also claimed that after a four-year extended probationary period, the principal gave her negative mid-year and end-of-the-year performance evaluations, and recommended that she be denied tenure and that her employment be terminated accordingly. These actions, however, took place before the Plaintiff filed her EEOC charges. After she filed her EEOC charges, the Board of Education offered to transfer her to a teaching position which would have been a demotion from the athletic director position. Plaintiff declined or did not respond to that offer, and sometime thereafter the District allegedly offered to extend her probationary period once more, in exchange for a general release of claims against the District. After she refused or failed to respond, plaintiff's employment was formally terminated.

Holding

To prevail on a hostile work environment claim under Title VII, the Appellate Court first found that the plaintiff must establish that the workplace was permeated with such severe or pervasive discriminatory intimidation, ridicule, and insults that the conditions of the victim's employment are so altered to create an abusive working environment. However, Title VII is not a civility code and random, isolated incidents of boorish or offensive use of language does not establish a

hostile work environment. Moreover, if there is no evidence that the conduct alleged had occurred because of the plaintiff's race or gender, then there can be no liability under Title VII. Given the plaintiff's failure to put forth any evidence that her principal engaged in continuous threatening, offensive or abusive conduct because of her race or gender, the Appellate Court affirmed that there was not actionable hostile work environment or harassment under Title VII.

The Appellate Court next turned to the plaintiff's claim that her termination was in retaliation for requesting a change in supervisor and filing her EEOC charges against the school. The Court first dismissed her charge that her request for a supervisor change resulted in retaliation. The letter did not contain any allegations that the mistreatment was motivated by race or gender. Consequently, the school cannot be considered to have "retaliated" by terminating her in response to a charge of racial or gender harassment (because they was nothing in the letter that put the school on notice that such harassment existed).

Moreover, the Appellate Court found no evidence of adverse employment action following the EEOC charge, a charge that plaintiff filed *after* she was given a bad review and recommended for termination (thus, the bad review and termination recommendation could not have resulted from the charge). Instead, the Appellate Court noted that the school offered to extend the probationary period, transfer her to another school and be put up for tenure consideration the following year (despite it being an apparent demotion) after the filing the EEOC charge if she would drop the EEOC charge. The Appellate Court did not consider this offer a retaliatory or adverse employment action because the offer did not put her in a worse position and the school board was under no obligation to extend the offer. Thus, plaintiff's retaliation claim was not well supported either.

Learning Point:

This case is a good basic primer on hostile work environment and charges of retaliatory conduct. As noted above, a hostile work environment is not created by isolated incidents nor does it result from boorish or uncivil manners. Instead, the conduct at issue must be sufficiently severe and pervasive to alter the conditions of the work place to create an abusive work environment that is created out of racial or gender harassment. In addition, an "adverse employment action" to support a retaliation charge must be caused the plaintiff's exercising protected conduct (such as filing an EEOC charge) and the action must actually be adverse to the plaintiff. Those two elements were missing from plaintiff's case and, therefore, summary judgment was appropriately given to the school.