

## **Vance V. Ball State University 133 S.Ct. 2434 (U.S. Supreme Court, 2013)**

**June 24, 2013**

### **Summary**

Maetta Vance alleged racial harassment and discrimination against her employer, Ball State University, based on the interactions Vance had with her co-worker, Sandra Davis. Vance sought to hold Ball State vicariously liable for Davis' alleged harassment. The trial and appellate court held that Ball State could not be held vicariously liable because Davis was not Vance's supervisor and because Ball State responded reasonably to the incident. The U.S. Supreme Court affirmed by defining what constitutes a "supervisor" to hold an employer liable for the acts of a co-worker and outlining an employer's defenses to vicarious liability.

### **Background**

Maetta Vance, an African-American, began working for Ball State University in 1989 as a substitute server and eventually was selected as a full-time catering assistant. Over the course of her employment, she lodged numerous complaints of racial discrimination and retaliation. The allegations at the basis of this case arose from her interactions with fellow employee Sandra Davis. Vance alleges that Davis, a white woman, "gave her a hard time," intimidated her, slammed pots and pans around her and generally gave her weird looks.

Despite Ball State's attempts to address the strife, Vance filed suit claiming that she had been subjected to a racially hostile work environment in violation of Title VII, Davis was her supervisor and Ball State was liable for Davis' creation of a racially hostile work environment. However, Vance and Ball State agreed that Davis did not have the power to hire, fire, demote, promote, transfer or discipline Vance. The trial court and the immediate appellate court found that Davis was not the supervisor of Vance and, therefore, Ball State could not be held liable for Davis' hostility towards Vance.

### **Holding**

An employer is directly liable for an employee's unlawful harassment if the employer was negligent with respect to the offensive behavior. However, this rule changes when the harassing employee is the claimant's "supervisor": even though an employer does not act negligently, an employer will be vicariously liable for a supervisor's Title VII violation in two situations. First, an employer will be vicariously liable when the supervisor "takes tangible employment action" against the harassed employee. A "tangible employment action" is a "significant change in the employment status such as hiring, firing, failing to promote, reassignment with significant

different responsibilities or a decision causing a significant change in benefits.” The second situation arises when, in the absence of such “tangible employment action, the employer fails to establish (1) it exercised reasonable care to prevent and promptly correct any harassing behavior and (2) the plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

In this case, the Court set forth the criteria to determine which employees are “supervisors” under Title VII such that the employer can be held vicariously liable for that employee’s harassment. Simply put, an employee will be considered a “supervisor” of another if that employee is empowered by the employer to take “tangible employment actions”, *i.e.*, to effect a “significant change in the employment status such as hiring, firing, failing to promote, reassignment with significant different responsibilities or a decision causing a significant change in benefits.”

The Supreme Court ultimately found that Davis was not the supervisor of Vance because Davis did not have the power to take tangible employment actions against Vance. Moreover, Ball State did not delegate its power or otherwise empower Davis to take any employment action against Vance. Consequently, Ball State could not be held vicariously liable for Davis’ behavior even if it amounted to harassment in violation of Title VII. Finally, Ball State could not be found negligent in light of the Davis’ behavior because it responded reasonably to the incidents of which it was aware.

**Learning Point:**

This case clearly defines what is meant by the term “supervisor” in the employer/employee relationship under Title VII and how the employer can become vicariously liable for the acts of its employees (*cf.* an employer’s liability for a non-supervisor’s harassment, *i.e.* the employer is liable if it negligently fails to address the harassment).

However, this ruling cannot be read as allowing the employer, such a school district, to insulate itself from vicarious liability by concentrating the power to effectuate a “tangible employment action” in the hands of a limited number of people. Even though an employee may not “officially” have the power to “hire, fire, reassign, *etc.*”, courts may find the employer effectively, albeit unofficially, delegated that power to the employee if the employer relies on that employee’s recommendations to make such decisions. Consequently, the employer may be liable should that employee engage in harassing behavior. School districts must look at the substantive relationships between employees, rather than simply rely on official duties, to determine who is, and who is not, a “supervisor.”