

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

U
Sarah Wilson

Richmond Division

JOSEPH J. MILES,

Plaintiff,

v.

STONE CONTAINER CORPORATION,

Defendant.

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FINDINGS OF FACT AND CONCLUS

This case came before the Court for a bench trial of the plaintiff's claim of employment discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000(e). Pursuant to Rule 52 of the Federal Rules of Civil Procedure, and on the basis of all the evidence admitted at trial or contained in the parties' exhibits, the Court makes the following findings of fact and conclusions of law. The parties' stipulations are incorporated by reference.

Findings of Fact

A. PARTIES

1. The plaintiff, Joseph J. Miles, is a black adult male citizen of the United States. He was employed by Continental Can, now Stone Container Corporation, in August, 1959.

2. The defendant, Stone Container Corporation, is a corporation in the business of manufacturing corrugated containers and displays. The Corporation is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C., Section 2000 et seq.

3. Stone Container Corporation acquired Continental Can in 1983.

4. From 1959 to 1984, the plaintiff held a variety of hourly positions in Stone Container Corporation's Richmond-South plant. He eventually progressed to the position of Operator on the 30B Flexo machine in the Printing Department. (Defendant's Exhibit 1; Plaintiff's Exhibit 2)

B. THE DEMOTION DECISION

5. In January, 1985, the plaintiff was promoted to the position of Printing Department Supervisor by Burlong Epps, the Plant Superintendent, and Jerry Longo, the Plant Manager.

6. In 1986 and 1987, several changes in management personnel and priorities were implemented at the Richmond-South plant. In September 1986, the position of General Manager, vacated by Burford LaTouche's retirement in August 1986, was filled by Michael Gaffney, formerly a General Manager of the company in Milwaukee, Wisconsin. In early March 1987, Gaffney hired Terry Paulson, the Plant Manager of the company's Milwaukee, Wisconsin plant, to be the Richmond-South Plant Manager. (Trial Testimony of Berford LaTouche, Terry Paulson)

7. Gaffney and Paulson implemented a campaign to change the management style of supervisors in order to improve the plant's

poor employee relations. Toward this end, Gaffney restructured Customer Service and Production Planning management and arranged for Burlong Epps, the Plant Superintendent, to accompany him to a meeting in Milwaukee in September 1986 at which the Milwaukee plant managers discussed the employee involvement culture they had fostered at the plant. Epps chose to bring Miles to the meeting because he believed that Miles, of the department supervisors, had the weakest employee relations skills. Paulson communicated to the supervisors the importance of employee involvement in problem-solving and establishing effective communication with crew members. Paulson also placed increased emphasis on the supervisors' role in ensuring product quality and good housekeeping. (Trial Testimony of Terry Paulson, Burlong Epps)

8. Paulson observed early on that Miles seemed to lack the respect of his crew members. Moreover, he found Miles seriously deficient in his work planning and organization. Miles regularly came to daily production meetings unprepared and unable to provide adequate information concerning his planned runs. (Plaintiff's Exhibit 8; Trial Testimony of Terry Paulson)

9. Paulson discussed his concerns about deficiencies in Miles' performance with Burlong Epps. In May 1987, Paulson attended one of Miles' crew meetings and was extremely concerned about the lack of leadership and communication skills demonstrated by Miles. After the meeting, Paulson counselled Miles about the need to gain his crew's respect and effectively manage their meetings. Paulson offered to send Miles to a Dale Carnegie training program to develop these skills but Miles rejected his offer.

(Plaintiff's Exhibit 31; Defendant's Exhibit 16; Trial Testimony of Burlong Epps and Terry Paulson)

10. By June 1987, neither Epps nor Paulson had observed any improvement in Miles' performance. They scheduled a formal meeting with him to alert him to the seriousness of their concerns about his job performance and to notify him that his job was in jeopardy if his performance did not improve. Paulson also explained to Miles that he would receive a reduced supervisory incentive bonus for that quarter. Miles received a \$250.00 bonus, one-half of the full supervisory incentive bonus. (Plaintiff's Exhibit 31; Defendant's Exhibits 17 and 19; Trial Testimony of Burlong Epps and Terry Paulson)

11. After this meeting with Miles, Paulson and Epps still did not observe any improvement in Miles' performance or any commitment on his part to improve. Therefore, Epps met again with Miles in June 1987 and told him that management was considering removing Miles from his supervisory position and returning him to the bargaining unit. Epps made it clear to Miles that if he did not demonstrate immediate improvement he would be removed from his job. (Plaintiff's Exhibit 31; Trial Testimony of Burlong Epps and Terry Paulson)

12. During the summer of 1987, both Epps and Paulson had informal conversations with members of the Union Committee about the possibility of returning Miles to the bargaining unit. The Union Committee indicated that it would be willing to take Miles back, but that his seniority rights would be limited. (Trial Testimony of Burlong Epps, Terry Paulson, and Ben Brandon)

13. By September 1987, Paulson and Epps concluded that they could no longer tolerate Miles' inadequate performance as a supervisor. They further concluded that Miles should be demoted rather than discharged, because he had been a competent hourly employee and had served the Company for a long period of time. (Trial Testimony of Burlong Epps and Terry Paulson)

14. In mid-September 1987, Epps met with Miles and informed him that he was being demoted because he had not fulfilled the management's expectations of supervisors. Epps explained that the Union had indicated a willingness to accept Miles back into the bargaining unit and asked Miles if he had any job preferences. (Plaintiff's Exhibit 31; Defendant's Exhibit 25)

15. On October 5, 1987, at a Labor-Management meeting, the Union Committee informed Epps and Paulson that it had decided to allow Miles to retain his prior seniority date for purposes of vacation, pension, and benefit eligibility, but that under the labor contract he would not be able to retain his prior seniority for job bidding purposes. The Union Committee informed management that it had consulted the Union's International Representative, who concurred with the local union's decision. (Trial Testimony of Terry Paulson)

16. Paulson and Epps again met with Miles to inform him that his demotion was effective October 15, 1987, and to convey the Union's position regarding his seniority. Paulson offered Miles the option of transferring to the Richmond-North plant, where he might have the opportunity to progress more quickly. (Trial Testimony of Terry Paulson; Defendant's Exhibit 27)

17. Miles met with Ben Brandon, the President of the Union Committee, along with Epps. Brandon explained the Union's decision regarding Miles' seniority. (Trial Testimony of Terry Paulson and Ben Brandon)

C. RACE DISCRIMINATION ALLEGATIONS

18. The plaintiff alleges that his demotion occurred because the Company wanted to replace him with Ken Nelson, a white male manufacturing consultant who began work at the Richmond-South plant on May 28, 1987 on special assignment. Miles bases his allegation on a company Replacement Report indicating that management had made a decision to replace Joe Miles as a supervisor as of May 15, 1987 (Plaintiff's Exhibit 20). Terry Paulson testified under oath at the trial that he thought he had to create an opening for Ken Nelson on the payroll. After thinking that he needed to free a position for Nelson, he and Epps started monitoring Miles' performance. Paulson's decision explains the existence of several undated memos regarding meetings with Miles about his poor performance and the Court accepts Paulson's and Epps' explanation. (For the future, counsel should be alerted to the marginal probative value of undated evidence).

19. In February, 1988, Miles filed a race discrimination charge against the company with the Equal Employment Opportunity Commission. The charge claimed that Miles was demoted because he was black. (Defendant's Exhibits 31, 32, and 33)

20. After conducting a full investigation, the EEOC determined that Miles' charge lacked merit and issued a no-cause

determination. (Defendant's Exhibit 38)

21. In fact, from 1985 to 1990, the percentage of minorities in supervisory positions at the Company has substantially exceeded the percentage of minorities employed in supervisory positions in the Richmond metropolitan area. (Defendant's Exhibit 11)

CONCLUSIONS OF LAW

1. The Court has jurisdiction over this complaint under 28 U.S.C., Sections 1331 and 1343, and 42 U.S.C., Section 2000e-5.
2. Where the Court has heard all of the evidence, it need not determine whether the plaintiff has made out a prima facie case. Rather, the Court can examine the case on its merits and make a decision. U.S. Postal Service Bd. of Governors v. Aikens, 460 U.S. 711, 715 (1983), cited in Jerry Bell v. Secretary of Transportation, No. 89-1783, slip op. at 715, note 2 (4th Cir. Sept. 19, 1990).
3. The plaintiff has not offered any evidence of race discrimination. His demotion was the result of a reasonable business decision based on his poor performance as a supervisor.
4. Statistical evidence of a disparity between the proportion of blacks in the employer's hourly workforce and the proportion of blacks in its supervisory workforce is not probative of race discrimination because it does not compare the employer's supervisory workforce with the qualified population in the relevant labor pool. See Mallory v. Booth Refrigeration Supply Co., 882 F.2d 908, 912 (4th Cir. 1989), citing Wards Cove Packing Co. v.

Atonio, 109 S.Ct. 2115, 2121 (1989).

Based on these findings of fact and conclusions of law, judgment is entered for the defendant and the plaintiff's case is dismissed with prejudice.

It is so ORDERED.

Let the Clerk send a copy of these Findings of Fact and Conclusions of Law to all counsel of record.

DATE

UNITED STATES DISTRICT JUDGE