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Title VII: When Is a Pretext Not a Pretext? An Analysis of *Westinghouse Electric Corp. v. Vaughn*

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Title VII: When is a Pretext Not a Pretext?

by Barbara J. Fick

Westinghouse Electric Corporation

v.

Christine Vaughn

(Docket No. 82-2042)

Argued March 19, 1984

ISSUE

In a series of cases decided over the past ten years, the Supreme Court has defined and refined the legal framework for presenting a claim of disparate treatment under Title VII. The *Westinghouse* case presents a further opportunity for the Court to clarify the evidentiary requirements and burdens of the plaintiff and defendant in litigating a case.

FACTS

On July 13, 1970, Westinghouse hired Christine Vaughn, a black female, as sealex machine operator in its Little Rock, Arkansas, light bulb manufacturing plant. She worked on the second shift until January, 1971, when she was transferred to the third shift due to a reduction in force. While working on the third shift, she was disqualified as a sealex operator and demoted to the job of bulb loader.

Vaughn filed a charge with the EEOC and subsequently initiated this lawsuit in federal district court, alleging that her disqualification and demotion was because of her race. Westinghouse contended that she was disqualified due to poor work quality and inadequate productivity.

After a trial on the merits, the district court held that Vaughn had established a *prima facie* case that she had been disqualified because of her race and that Westinghouse had failed to articulate a legitimate, nondiscriminatory reason for the disqualification sufficient to rebut Vaughn's *prima facie* case. On appeal, the federal court of appeals upheld the district court's decision. Subsequently, the Supreme Court vacated the judgment of the court of appeals and remanded the case for reconsideration in light of its decision in *Texas Department of Community Affairs v. Burdine* (450 U.S. 248 (1981)), wherein the Court held that a defendant need only

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produce admissible evidence of a facially legitimate reason for its employment decision to rebut the plaintiff's *prima facie* case.

On remand, the district court acknowledged that it had imposed an improper burden on Westinghouse to justify its decision and, in reviewing the evidence, found that Westinghouse had introduced evidence that it disqualified Vaughn because of poor work quality. The court held, however, that in reviewing the entire record, including the evidence relating to Westinghouse's employment policies as they impacted on black employees in general, Vaughn had persuaded the court that race had played a part in Westinghouse's decision to disqualify her in violation of Title VII. On appeal, the court of appeals upheld the district court's decision in Vaughn's favor. Once again the case is before the Supreme Court — this time on the issue of the evidentiary burden placed on a plaintiff to overcome the defendant's proffered legitimate reasons and expose them as pretextual.

BACKGROUND AND SIGNIFICANCE

A disparate treatment claim under Title VII alleges that a plaintiff-employee received less favorable treatment than other employees because of her race. To establish a *prima facie* case, a plaintiff must show that: 1) she belongs to a racial minority; 2) she was qualified for the position in which she was currently employed; 3) she was subsequently disqualified from her job, and 4) the position was thereafter filled by another employee. (*McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)). Upon establishing her *prima facie* case, the plaintiff has created a presumption that the defendant-employer was motivated by racially discriminatory reasons.

The burden of production then shifts to the defendant-employer to rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for the challenged employment decision. (*Furnco Construction Corp. v. Waters*, 438 U.S. 576 (1978)) This does not mean that a defendant must prove there has been no discriminatory motive. (*Board of Trustees v. Sweeney*, 439 U.S. 24 (1978)). Rather, the defendant need only produce admissible evidence that the plaintiff-employee was rejected for legitimate, nondiscriminatory reasons. If the defendant meets its burden of production, the presumption of discrimination raised by the plaintiff's *prima facie* case is rebutted and drops from the case. (*Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981))

The plaintiff-employee retains the burden of persuading the court that he or she has been victimized by intentional racial discrimination. Therefore, there is the opportunity at this point to prove that the defendant-employer's proffered reasons for its action are pretextual by persuading the court that discrimination more likely motivated the employer or that the reasons offered are not worthy of belief. In attempting to establish pretext, the plaintiff-employee may offer either direct or circumstantial evidence and the court should consider the entire record to decide the ultimate issue of intentional discrimination. (*United States Postal Service Board of Governors v. Aikens*, 103 S.Ct. 1478 (1983))

It is the nature of the evidence presented by plaintiff and considered by the court in deciding the issue of pretext which has created the controversy in the *Westinghouse* case. Vaughn proved she was a black employee who had satisfactorily performed as a sealex operator but was disqualified and replaced by a white employee. Westinghouse produced evidence showing that Vaughn's poor job performance was the reason she was disqualified and demoted. Although Vaughn produced no direct evidence of discrimination, the court considered Westinghouse's general employment actions as circumstantial evidence shedding light on its proffered explanation.

The circumstantial evidence considered by the court was as follows: almost all of Westinghouse's supervisors are white; most of the sealex operators are white and the bulb loaders are black; proportionately more whites than blacks are hired; proportionately more black employees than whites are discharged; prior to her transfer to the third shift, Vaughn performed satisfactorily as a sealex machine operator and received pay increases. Based on the record as a whole, the court held that race was "more likely than not one of the factors that contributed substantially" to the disqualification decision.

Westinghouse contends that it is inappropriate to consider such circumstantial and generalized employment evidence in deciding if the employer's justification is pretextual. Such evidence is relevant and probative to the pretext issue only where a causal connection is shown between the evidence and the specific employment decision under challenge.

Vaughn, however, contends that this circumstantial evidence shows the context in which the employer makes its employment decisions. She further contends this is relevant to establishing the employer's state of mind, which is probative of the ultimate issue of intentional discrimination.

The resolution of this issue is of particular significance to attorneys litigating Title VII cases. It will clarify

the type of evidence which must be presented to prove pretext as well as the extent to which a defendant employer must justify its employment decisions to escape liability under Title VII.

ARGUMENTS

For Westinghouse Electric Corporation

1. The plaintiff's use of unrelated general workforce statistics by plaintiff is insufficient to prove that a defendant's legitimate, nondiscriminatory reason is pretextual. In proving pretext, a plaintiff must establish a causal connection between generalized statistics and the specific discriminatory conduct under challenge. The evidence relied upon by the court in this case was not probative of the allegedly discriminatory disqualification.
2. Even if a court concludes that racial discrimination was a factor in the employment decision, the defendant has not violated Title VII where it is shown that the decision would have occurred even in the absence of discrimination. The court in this case considered Westinghouse's general employment policies in deciding that race played a factor in the decision to disqualify Vaughn; Westinghouse rebutted that finding by specifically showing that Vaughn's poor work performance prompted her disqualification regardless of her race.
3. The factual findings of the district court that Westinghouse's decision was based in part on racial discrimination are clearly erroneous and should be reversed.

For Christine Vaughn

1. A defendant's policy and practices concerning minority employment are relevant to placing the defendant's specific decision within the context of its general decisionmaking process and therefore probative in determining motivation for its decision.
2. So long as a racially discriminatory intent plays a part in an employment decision, there is a violation of Title VII. Even if other factors would have resulted in the same employment decision, this affects the appropriateness of the remedy, not the fact of a substantive violation.
3. The factual finding of discriminatory intent by the district court was not clearly erroneous.

AMICUS BRIEF

An amicus brief in support of Westinghouse Electric Corp. was filed by the Equal/Employment Advisory Council.

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