

Second Circuit Finds Possible Pretext in Vague Justification for Non-Transfer

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On July 14th, the **U.S. Court of Appeals for the Second Circuit** vacated an award of summary judgment for the defendants in ***Abrams v. Department of Public Safety, State of Connecticut, et al.***, Case No. 13-111, holding that statements concerning an employee’s “fit” for a position could give rise to an inference of discrimination.

In that case, Abrams, a black Connecticut Department of Public Safety detective, sued the Department and various Department employees in the U.S. District Court for the District of Connecticut, alleging that he was denied a transfer to the Department’s homicide unit on account of his race in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1983. Abrams also alleged that he complained about the Department’s alleged discrimination and, thereafter, was further denied a position in the homicide unit and transferred to the Department’s casino unit in retaliation for his complaint. The district court granted summary judgment on Abrams’s discrimination claims, holding that the Department had offered a legitimate, nondiscriminatory reason for refusing Abrams’s requests for a transfer, which Abrams failed to rebut as pretext for discrimination. The court did allow one of Abrams’s retaliation claims to proceed to trial, where a jury entered a verdict in favor of the defendants.

On appeal, the Second Circuit reversed the district court’s dismissal of Abrams’s

discrimination claims. Importantly, the Second Circuit noted that, in response to Abrams's repeated applications for a transfer to the homicide unit, the unit supervisor and another member of the unit made comments that Abrams "did not fit in" and that another applicant was a "better fit." Viewing those comments in the light most favorable to Abrams—and noting that even Abrams's supervisor was suspicious of the comments—the court held that a reasonable jury could conclude that the comments were in reference to Abrams's race. Even in isolation, the court noted, "the 'fit in' statements raise a genuine dispute as to whether the proffered reasons for Abrams's non-assignment to the [homicide unit] were pretextual." Accordingly, the Second Circuit vacated the district court's grant of summary judgment and reinstated Abrams's discrimination claims.

As the Second Circuit's decision makes clear, effectively rebutting allegations of pretext in discrimination and retaliation cases is critical. Employers should be reminded to train supervisors to base all employment decisions on legitimate, nondiscriminatory factors, to clearly articulate the reasons for their decisions, and to avoid vague and ambiguous comments like those about an employee's "fit" for a position.

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