Walker v. IRS

United States District Court, N.D. Georgia, 1989.
713 F. Supp. 403.

Moye, Senior District Judge.

... The plaintiff, Ms. Walker, was a permanent clerk typist in the Internal Revenue Service's Atlanta office. Ms. Walker is a light-skinned black person. Her supervisor was Ruby Lewis. Ms. Lewis is a dark-skinned black person. The employees in the office in which Ms. Walker and Ms. Lewis worked were predominantly black. In fact, following her termination, Ms. Walker was replaced by a black person. According to the record the working relationship between Ms. Walker and Ms. Lewis was strained from the very beginning—that is, since approximately November of 1985. Ms. Walker contends that Ms. Lewis singled her out for close scrutiny and reprimanded her for many things that were false or insubstantial. Ms. Walker's relationship with her former supervisor, Virginia Fite, was a cordial one. In fact, Ms. Walker received a favorable recommendation from Ms. Fite.

Ms. Walker met with Sidney Douglas, the EEO program manager for the Internal Revenue Service's Atlanta district about the problems she was having with Ms. Lewis. Two weeks later, pursuant to Ms. Lewis's recommendation, Ms. Walker was terminated. The reasons given for her termination were: 1) tardiness to work; 2) laziness; 3) incompetence; and 4) attitude problems. It is Ms. Walker's belief that the reasons were fabricated and were the result of Ms. Lewis's personal hostility towards Ms. Walker because of Ms. Walker's light skin.... Following her termination Ms. Walker filed this lawsuit pro se pursuant to Title VII of the Civil Rights Act of 1964....[1]

The principal issue in this case is a somewhat novel one: does a light-skinned black person have a cause of action pursuant to Title VII against a dark-skinned black person for an alleged discriminatory termination of employment? The defendant offers two reasons that there should be no such cause of action. First, the defendant contends that "although Title VII includes 'color' as one of the bases for prohibited discrimination, that term has generally been interpreted to mean the same thing as race." Second, the defendant contends that there simply is no

[1] *Ed. note* - Title VII provides that "[i]t shall be an unlawful employment practice for an employer ... to to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...."

cause of action pursuant to Title VII available to a light-skinned black person against a dark-skinned black person.

1) Discrimination on the basis of color

Title VII is the exclusive remedy for federal employment discrimination lawsuits. The historical predecessor to Title VII is the Civil Rights Act of 1866 and therefore 42 U.S.C. § 1981. In fact, in a suit such as this one, the legal elements and facts necessary to support a claim for relief under Title VII are identical to the facts which support a claim under § 1981.

The stated purpose of § 1981 is the "protection of citizens of the United States in their enjoyment of certain rights without discrimination on account of race, *color,* or previous condition of servitude." *United States v. Cruikshank* (1875) (emphasis added)..... In what is perhaps the most relevant case to this law suit, *Saint Francis College v. Al–Khazraji* (1987), the Supreme Court stated in no uncertain terms that § 1981 "at a minimum reaches discrimination against an individual because he or she is genetically part of an ethnically and *physiognomically* distinctive sub-grouping of homosapiens." (emphasis added). In fact, the Supreme Court even goes further by stating that *it is not even essential to be physiognomically distinctive. Id.* Webster's Seventh New Collegiate Dictionary defines physiognomic as relating to physiognomy or "*external aspect.*"

Title VII was amended in 1972 to provide generally that "all personnel actions affecting employees ... shall be made free from any discrimination based on race, *color,* religion, sex or national origin." (emphasis added).... Yet the defendant in the instant case contends in its brief that in Title VII cases the word "color" has "generally been interpreted to mean the same thing as race." But the statutes and case law repeatedly and distinctly refer to *race and color*. This court is left with no choice but to conclude, when Congress and the Supreme Court refer to race and color in the same phrase, that "race" is to mean "race," and "color" is to mean "color." To hold otherwise would mean that Congress and the Supreme Court have either mistakenly or purposefully overlooked an obvious redundancy.

The *Saint Francis* case has definitively spoken on the subject:

> we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their *ancestry or ethnic characteristics*. Such discrimination is racial discrimination that Congress intended ... to forbid, *whether or not it would be classified as racial in terms of modern scientific theory*. The Court of Appeals was thus quite right in holding that § 1981 "at a minimum," reaches discrimination against an individual "because he

> or she is genetically part of an ethnically and physiognomically distinctive sub-grouping of homo sapiens." It is clear from our holding, however, that a distinctive physiognomy *is not essential* to qualify for § 1981 protection."

Saint Francis College v. Al–Khazraji (1987) (emphasis added). A person's color is closely tied to his ancestry and could result in his being perceived as a "physiognomically distinctive sub-grouping of homo sapiens", which in turn could be the subject of discrimination. Notwithstanding that proposition, it is not even required that a victim of discrimination be of a distinctive physiognomical sub-grouping, a particularly relevant fact to the case at hand.

The one case that defendant cites as authority for the proposition that the term "color" in Title VII generally means "race" is *Felix v. Marquez* (D.D.C.1980). But that case lends itself to the opposite conclusion. As the court in *Felix* states:

> color may be a rare claim, because color is usually mixed with or subordinated to claims of race discrimination, but considering the *mixture of races* and ancestral national origins in Puerto Rico, *color may be the most practical claim to present.*

Discrimination against an individual because such individual comes from a racially mixed heritage possibly is of particular relevance to the instant case.

Another case that states specifically that discrimination as to color as opposed to race can be the gravamen of a civil rights law suit is *Vigil v. City & County of Denver* (D. Col. 1977). As the court states in *Virgil:*

> The key factor in determining whether § 1981 should apply is whether a motivation for the discrimination was the victim's color. Plaintiff is a Mexican-American. Although skin color may vary significantly among those individuals who are considered Mexican-Americans, skin color may be a basis for discrimination against them. We note that skin color may vary significantly among individuals who are considered "blacks" or "whites"; both these groups are protected by § 1981, and *§ 1981 is properly asserted when discrimination on the basis of color is alleged* ... A particular act of discrimination against a Mexican-American may be motivated exclusively on the basis of the victim's national origin, rather than the victim's color. It may also be true that in certain areas of the United States, Mexican-Americans are subject to discrimination on the basis of national origin, and not on the basis of color. However, we find that, at least in this area, Mexican-Americans are subject to color-based discrimination, and are within the coverage of § 1981.

Vigil v. City & County of Denver (D. Col. 1977) (emphasis added).... The few cases

that might support the defendant's proposition are now obsolete in light of *Saint Francis College v. Al–Khazraji*....

2) A suit by a light-colored black person against a dark-colored black person

The defendant also contends that it is simply not feasible or within the confines of § 1981 or Title VII to allow a law suit by a light-colored black person against a dark-colored black person. The court has already set out in detail above that in some situations the most practicable way to bring one's Title VII or § 1981 suit may be on the basis of color discrimination as opposed to race discrimination. To further illustrate why the instant action is appropriate under Title VII, it is once again necessary to refer to the *Saint Francis* case.

In *Saint Francis,* a United States citizen born in Iraq filed suit in Federal District Court against his former employer alleging that the employer had discriminated against him on the basis of his Arabian ancestry. The district court granted summary judgment for the defendant on the ground that Arabs are Caucasians and that a suit could not be brought under § 1981 by a caucasian against a caucasian. The case eventually found its way to the Supreme Court. In its analysis, the Supreme Court carefully considered the legislative history of § 1981. The court noted that Congress intended § 1981 to apply to all forms of discrimination including acts of discrimination against groups including Finns, gypsies, Basques, Hebrews, Swedes, Norwegians, Germans, Greeks, Finns, Italians, Spanish, Mongolians, Russians, Hungarians, Chinese, Irish and French. It would take an ethnocentric and naive world view to suggest that we can divide caucasians into many sub-groups but some how all blacks are part of the same sub-group. There are sharp and distinctive contrasts amongst native black African peoples (sub-Saharan) both in color and in physical characteristics.

As mentioned above, the Supreme Court has said that "a distinctive physiognomy is not essential to qualify for § 1981 protection." *Saint Francis College, et al. v. Al–Khazraji*. It therefore is not controlling that in the instant case a black person is suing a black person. In *Sere v. Board of Trustees, University of Illinois* (N. D. Ill. 1986) the court noted that courts should not be placed in the "unsavory business of measuring skin color and determining whether the skin pigmentation of the parties is sufficiently different to form the basis of a lawsuit." This court recognizes full well that such difficulties are genuine and substantial. Nevertheless, the court must find that the issue is a question of fact that must be determined by the fact finder. This court holds, therefore, that the plaintiff in the instant case has stated a claim for relief that cannot be reached by summary judgment.

Thus the court sets aside that portion of the magistrate's recommendation that grants defendant's motion for summary judgment as to plaintiff's Title VII discrimination claim....
