

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

Jackson v. Harvard University

721 F. Supp. 1397 (D. Mass. 1989) · No. Civ. A. No. 84-4101-WD · Decided August 14, 1989

SUMMARY

The United States District Court for the District of Massachusetts entered judgment for Harvard University and John H. McArthur in Barbara Jackson's Title VII sex-discrimination challenge to the denial of tenure at Harvard Business School. The court concluded that the tenure decision was based on academic merit and that the evidence did not establish gender discrimination. The opinion also addressed missing evidence, discovery misconduct, and the asserted academic privilege concerning tenure evaluations.

CASE DETAILS

COURT	United States District Court for the District of Massachusetts
WRITING FOR THE COURT	Douglas P. Woodlock
JURISDICTION	Massachusetts
DECIDED	August 14, 1989
DOCKET	Civ. A. No. 84-4101-WD
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff brought an individual disparate-treatment sex-discrimination action under Title VII challenging Harvard Business School's denial of tenure. The case was tried to the court without a jury, and the evidence was reopened to receive documents produced belatedly by defendants.
STANDARD OF REVIEW	In this nonjury matter, the court determined the facts and applied the preponderance-of-the-evidence standard to the Title VII disparate-treatment claim. Under the McDonnell Douglas-Burdine framework, plaintiff retained the ultimate burden of proving intentional discrimination and pretext.
PRECEDENTIAL VALUE	published district court memorandum opinion
PARTIES	Barbara Jackson v. Harvard University, John H. McArthur

TOPICS

title vii

employment discrimination

evidence

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Harvard and Dean McArthur intentionally discriminated against Jackson on the basis of sex in denying her tenure in violation of Title VII.
2. Whether Jackson established pretext under the McDonnell Douglas-Burdine framework by showing that Harvard's stated concerns about her creativity and research were not the true reasons for the tenure denial.
3. Whether the court should draw an adverse inference from Harvard's destruction of tenure files.
4. Whether the court should impose preclusionary discovery sanctions based on defendants' delayed production and discovery defaults.
5. Whether a qualified academic privilege should shield the identities and evaluations of faculty reviewers in a Title VII tenure-discrimination action.

HOLDINGS

1. Jackson failed to prove by a preponderance of the evidence that gender played any part in Harvard's decision not to recommend her for tenure. The evidence supported Harvard's stated, nondiscriminatory explanation that Jackson had not obtained the substantial faculty support required because her work was viewed as insufficiently creative and conceptually developed.
2. Subjective academic standards and disagreement about the quality of a tenure candidate's work do not, by themselves, establish sex discrimination or pretext. A federal court may not act as a super tenure board when the university's judgment is supportable and evidence of discrimination is negligible.
3. The court had discretion to consider the destruction of relevant documents as evidence that their contents would have been unfavorable, but declined to draw an adverse inference because the destruction was negligent rather than intentional or in bad faith.
4. The court declined to preclude defendants from presenting evidence concerning the tenure votes because the discovery default resulted from negligence rather than willfulness or bad faith, and preclusion is a grave and nonautomatic sanction.
5. The court rejected recognition of a categorical academic privilege shielding tenure-review discussions, votes, reviewer identities, or evaluations from discovery in a discrimination action. The need for relevant evidence in enforcing federal antidiscrimination law outweighs the university's generalized confidentiality interests, subject to appropriate protective orders.

KEY QUOTATIONS

"Absent discrimination, a university must be given a free hand in making such tenure decisions. Where ... the university's judgment is supportable and the evidence of discrimination negligible, a federal court should not

substitute its judgment for that of the university.” (1403-04)

“The possibility that a qualified applicant will be rejected on other than academic grounds “is a much greater threat to our liberty and academic freedom than the compulsion of discovery.”” (1407)

“But the existence of differences in opinion regarding the quality of plaintiff’s work does not demonstrate gender discrimination.” (1428)

FACTUAL BACKGROUND

Barbara Jackson was a Harvard Business School faculty member who transferred from Managerial Economics to Marketing and was considered for tenure in 1981 and again in 1983. In 1981, her subcommittee supported tenure, but the full tenured faculty's support fell from a substantial majority on a preliminary vote to only a slight majority on the final vote. Harvard gave her an additional opportunity to demonstrate creative capacity through a monograph, but the 1983 subcommittee unanimously recommended against tenure and the full committee again failed to provide the substantial majority required by Dean McArthur. The court found that the tenure decision was based on perceived deficiencies in creative and conceptual work, not on Jackson's gender.

PROCEDURAL HISTORY

Jackson was denied tenure in the Marketing Area in 1983 after receiving insufficient support from the tenured faculty and after Dean McArthur declined to recommend her for tenure. She filed a timely Title VII action after receiving a right-to-sue letter from the Massachusetts Commission Against Discrimination and the EEOC. Following an eight-day bench trial and reopening of the evidence, the court found that the evidence did not establish gender discrimination and entered judgment for defendants.

DISPOSITION

other

CASES CITED

- Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-56 (1981)
- McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)
- Fields v. Clark University, 817 F.2d 931, 934-35 (1st Cir. 1987)
- Banerjee v. Board of Trustees, 648 F.2d 61, 62-63 (1st Cir. 1981)
- Menard v. First Security Services Corp., 848 F.2d 281, 285 (1st Cir. 1988)
- Oliver v. Digital Equipment Corp., 846 F.2d 103, 108 (1st Cir. 1988)
- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
- Kumar v. Board of Trustees, 774 F.2d 1, 10-12 (1st Cir. 1985)
- Sweeney v. Board of Trustees, 604 F.2d 106, 112-13 (1st Cir. 1979)
- Vargas-Figueroa v. Saldana, 826 F.2d 160, 162-63 (1st Cir. 1987)
- Board of Curators v. Horowitz, 435 U.S. 78, 87-91 (1978)
- Nation-Wide Check Corp. v. Forest Hills Distributors, Inc., 692 F.2d 214, 217-18 (1st Cir. 1982)

- Freeman v. Package Machinery Co., 865 F.2d 1331, 1341 (1st Cir. 1989)
- Benitez-Allende v. Alcan Aluminio do Brasil, S.A., 857 F.2d 26, 33 (1st Cir. 1988)
- EEOC v. University of Notre Dame du Lac, 715 F.2d 331, 336-38 (7th Cir. 1983)
- Keyes v. Lenoir Rhyne College, 552 F.2d 579, 581 (4th Cir. 1977)
- Gray v. Board of Higher Education, 692 F.2d 901, 907-08 (2d Cir. 1982)
- In re Dinnan, 661 F.2d 426, 430-31 (5th Cir. Unit B 1981)
- EEOC v. Franklin & Marshall College, 775 F.2d 110, 115, 117 (3d Cir. 1985)
- United States v. Nixon, 418 U.S. 683, 710 (1974)
- Trammel v. United States, 445 U.S. 40, 50 (1980)
- Sweezy v. New Hampshire, 354 U.S. 234, 262-63 (1957)
- Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989)
- Conway v. Electro Switch Corp., 825 F.2d 593, 597 (1st Cir. 1987)

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