

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Dimanche v. Mass. Bay Transp. Auth.

Dimanche v. Mass. Bay Transp. Auth., 893 F.3d 1 (1st Cir. 2018) · No. No. 17-1169 · Decided June 18, 2018

SUMMARY

The First Circuit affirmed a \$2.6 million jury verdict for a black female MBTA employee on race discrimination claims under 42 U.S.C. § 1981 and Mass. Gen. Laws ch. 151B. The court held that sufficient evidence supported both compensatory damages for wrongful termination and punitive damages, and that the district court's erroneous default sanction (limiting the MBTA's trial evidence to affidavits) was not prejudicial under plain error review. The court also found no reversible error in submitting a hostile work environment theory to the jury, and held that the MBTA waived its belated argument that § 1981 does not apply to state actors. Key topics: race discrimination, § 1981, state law discrimination, hostile work environment, punitive damages, default sanctions, plain error, waiver.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch; Kayatta; Barron
JURISDICTION	Federal
DECIDED	June 18, 2018
DOCKET	No. 17-1169
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from jury verdict awarding compensatory and punitive damages on racial discrimination claims after trial in district court
STANDARD OF REVIEW	Sufficiency of evidence: review weighted toward preservation of jury verdict, evidence viewed in light most favorable to verdict; unpreserved issues reviewed for plain error under four-part test
PRECEDENTIAL VALUE	Published
PARTIES	Massachusetts Bay Transportation Authority v. Michelle Dimanche

TOPICS

employment discrimination

civil rights

appellate procedure

default judgment

sanctions

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the jury's compensatory and punitive damages awards.
2. Whether the district court erred in imposing an evidentiary sanction as a condition for lifting the default.
3. Whether the district court erred in instructing the jury on a hostile work environment theory.
4. Whether *Buntin v. City of Boston* requires dismissal of the § 1981 claim and the entire action.

HOLDINGS

1. The evidence was more than sufficient to support the wrongful termination verdict. Direct evidence of racial animus by supervisors and Dimanche's testimony that prior infractions were fabricated supported the jury's conclusion.
2. The evidence was sufficient to support the punitive damages award. The Haddad factors were amply met: the MBTA was on notice of harassment, failed to investigate or remedy it, and engaged in a concerted effort to terminate Dimanche.
3. The district court's sanction order was clear error, but the MBTA failed to show prejudice under plain error review because it did not make offers of proof at trial.
4. Even assuming error, the MBTA has not shown prejudice or miscarriage of justice under plain error review.
5. The MBTA waived the Buntin argument by failing to raise it in the district court or in its initial brief on appeal. The argument was available well before Buntin was decided.

KEY QUOTATIONS

"Like the proverb that a battle can be lost for want of a nail, the MBTA loses its appeal largely for want of its making appropriate objections and offers of proof before the trial court." (2)

"We are reasonably sure, for the reasons stated earlier, that the jury did not rely on the hostile work environment assertion to enter the compensatory damages award." (14)

"the default sanction order was in error, the MBTA cannot demonstrate prejudice." (19)

"This is not an instance where defendants could not have raised the issue before appeal. ... The MBTA must live, as to the jury verdict, with the consequences of its own mistakes." (27)

FACTUAL BACKGROUND

Michelle Dimanche, a black woman of Haitian descent, worked as a motor person for the MBTA from 2000 until 2013. She testified that throughout her employment she was subjected to racial harassment by supervisors and coworkers, including racial slurs, mocking of her accent, and threats. After a workplace altercation with a coworker on January 25, 2013, Dimanche was suspended and terminated on March 20, 2013. She claimed that her termination was part of a concerted effort to fire her because of her race and that prior disciplinary actions were fabricated.

PROCEDURAL HISTORY

Dimanche filed suit in federal district court alleging racial discrimination under 42 U.S.C. § 1981 and Mass. Gen. Laws ch. 151B, § 4. The district court entered default against the MBTA, then lifted it with conditions limiting the MBTA's proof at trial. After a four-day trial, the jury returned a general verdict for Dimanche, awarding over \$2.6 million. The district court denied MBTA's post-trial motions, and the MBTA appealed.

DISPOSITION

affirmed

CASES CITED

- *McMillan v. Mass. Soc'y for the Prevention of Cruelty to Animals*, 140 F.3d 288 (1st Cir. 1998)
- *Morrison v. Carleton Woolen Mills, Inc.*, 108 F.3d 429 (1st Cir. 1997)
- *Gillespie v. Sears, Roebuck & Co.*, 386 F.3d 21 (1st Cir. 2004)
- *Cariglia v. Hertz Equip. Rental Corp.*, 363 F.3d 77 (1st Cir. 2004)
- *Gyulakian v. Lexus of Watertown, Inc.*, 56 N.E.3d 785 (Mass. 2016)
- *Haddad v. Wal-Mart Stores, Inc.*, 914 N.E.2d 59 (Mass. 2009)
- *Stewart v. Astrue*, 552 F.3d 26 (1st Cir. 2009)
- *Affanato v. Merrill Bros.*, 547 F.2d 138 (1st Cir. 1977)
- *Indigo Am., Inc. v. Big Impressions, LLC*, 597 F.3d 1 (1st Cir. 2010)
- *Powerserve Int'l, Inc. v. Lavi*, 239 F.3d 508 (2d Cir. 2001)
- *Krause v. Featherston*, 376 F.2d 832 (1st Cir. 1967)
- *Smith v. Kmart Corp.*, 177 F.3d 19 (1st Cir. 1999)
- *Acevedo-Garcia v. Monroig*, 351 F.3d 547 (1st Cir. 2003)
- *Chestnut v. City of Lowell*, 305 F.3d 18 (1st Cir. 2002)
- *Crowe v. Bolduc*, 334 F.3d 124 (1st Cir. 2003)
- *Rodowicz v. Mass. Mut. Life Ins. Co.*, 279 F.3d 36 (1st Cir. 2002)
- *Walton v. Nalco Chem. Co.*, 272 F.3d 13 (1st Cir. 2001)
- *Jennings v. Jones*, 587 F.3d 430 (1st Cir. 2009)
- *Buntin v. City of Boston*, 857 F.3d 69 (1st Cir. 2017)
- *DSC Communications Corp. v. Next Level Communications*, 107 F.3d 322 (5th Cir. 1997)
- *Pall Corp. v. Entegris, Inc.*, 249 F.R.D. 48 (E.D.N.Y. 2008)
- *Prescott v. Higgins*, 538 F.3d 32 (1st Cir. 2008)

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