

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Barnes v. GenCorp Inc.

Barnes v. GenCorp Inc., 896 F.2d 1457 (6th Cir. 1990) · Decided February 22, 1990

SUMMARY

Barnes v. GenCorp Inc., 896 F.2d 1457 (6th Cir. 1990), addresses the Age Discrimination in Employment Act (ADEA) in the context of a corporate restructuring and workforce reduction. The Sixth Circuit held that a plaintiff cannot establish a prima facie case of age discrimination in a workforce reduction solely by showing membership in the protected class, qualifications, and discharge; additional direct, circumstantial, or statistical evidence of discriminatory intent is required. The court further ruled that strong statistical evidence showing a significant disparity in discharge rates for older employees can establish a prima facie case, but such aggregate statistics alone cannot rebut an employer's proffered legitimate, nondiscriminatory reasons for individual discharges unless the plaintiff also presents individual evidence of pretext. The court also held that an employer has no duty under ADEA to permit bumping (displacing less senior employees) during a workforce reduction, even if an informal bumping practice previously existed.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Kennedy; Keith; Peck
JURISDICTION	Federal
DECIDED	February 22, 1990
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court’s grant of summary judgment for defendants in consolidated age discrimination actions.
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	Published
PARTIES	Jon F. Barnes, Homer L. Gibson, Jean Z. Gipson, Clarence P. Kennedy, Norman J. Muth, Febo C. Spagnuolo, Richard S. Novitsky, Willy P. Kulhanek, Theophilos A. Millis, Milan A. Rolik, Norman S. Trommer v. GenCorp Inc. and DiversiTech

TOPICS

employment law

summary judgment

civil procedure

appellate procedure

evidence

PRACTICE AREAS

Employment Law

Age Discrimination

QUESTIONS PRESENTED

1. Whether the plaintiffs established a prima facie case of age discrimination under the McDonnell Douglas framework in a work force reduction context.
2. Whether the statistical evidence presented by the plaintiffs was sufficient to establish a prima facie case of discrimination.
3. Whether the plaintiffs presented sufficient evidence of pretext to survive summary judgment.
4. Whether individual plaintiffs presented sufficient evidence to create a genuine issue of material fact regarding the defendants' asserted nondiscriminatory reasons for their discharge.

HOLDINGS

1. In a work force reduction case, a plaintiff cannot establish a prima facie case merely by showing the basic McDonnell Douglas elements (age 40 or over, qualified, discharged) and that younger employees were retained. The plaintiff must present additional direct, circumstantial, or statistical evidence tending to indicate that the employer singled out the plaintiff for discharge for impermissible reasons.
2. Yes, appropriate statistical data showing a significant disparity in discharge rates between older and younger employees, if unrebutted, can create an inference of discrimination and establish a prima facie case for all plaintiffs in the group.
3. No, statistics alone cannot demonstrate pretext in individual cases when the employer has provided specific nondiscriminatory explanations for each discharge. The plaintiff must present additional evidence to show that the employer's reasons are not credible.
4. The elimination of an informal bumping policy during a large-scale reorganization does not create an inference of discrimination, especially when the policy was not part of a formal seniority system and the employer's decision was reasonable given the scale of the reduction.
5. Yes, each of these plaintiffs presented sufficient evidence to create a genuine issue of material fact regarding the defendants' asserted nondiscriminatory reasons for their discharge. For Kulhanek, there was a dispute about his qualifications; for Millis, a contradiction in the employer's explanation; for Rolik, a pattern of allegedly discriminatory actions; for Trommer, a contradiction in the employer's explanation about the market conditions.

KEY QUOTATIONS

"We do not believe the same rationale applies to a work force reduction where the plaintiff has done no more than show the elements of the McDonnell Douglas formula that relate to his or her situation: (1) that he or she was age forty or over; (2) that he or she was qualified to perform the job; and (3) that he or she was discharged." (896 F.2d at 1464)

“A work force reduction situation occurs when business considerations cause an employer to eliminate one or more positions within the company. An employee is not eliminated as part of a work force reduction when he or she is replaced after his or her discharge. However, a person is not replaced when another employee is assigned to perform the plaintiff’s duties in addition to other duties, or when the work is redistributed among other existing employees already performing related work.” (896 F.2d at 1465)

“Appropriate statistical data showing an employer’s pattern of conduct toward a protected class as a group can, if unrebutted, create an inference that a defendant discriminated against individual members of the class.” (896 F.2d at 1466)

“When a plaintiff’s statistics indicate a disproportionate discharge rate for a protected group there are three possible explanations for the discrepancy: the operation of legitimate selection criteria, chance, or the defendant’s bias. ... The statistics do not and cannot determine whether the more likely cause is the defendant’s bias or a legitimate selection criterion.” (896 F.2d at 1468-69)

FACTUAL BACKGROUND

In March 1987, GenCorp was the target of a hostile takeover and instituted a \$1.4 billion stock repurchase program financed by the sale of its largest subsidiaries. As part of the restructuring, GenCorp reduced its Research Division staff and its subsidiary DiversiTech also cut payroll. The plaintiffs, all employees aged 40 or over, were discharged. The plaintiffs presented statistical evidence showing a significant disparity in the discharge rates of older employees compared to younger employees. The defendants asserted that the discharges were based on legitimate, nondiscriminatory reasons, such as the elimination of positions and the relative qualifications of employees. The plaintiffs also alleged that the defendants eliminated an informal bumping policy shortly before the layoffs, which they argued was evidence of discriminatory intent.

PROCEDURAL HISTORY

The District Court granted summary judgment for the defendants in these consolidated age discrimination cases, concluding that the plaintiffs failed to establish a prima facie case of discrimination and/or failed to rebut the defendants' nondiscriminatory reasons for discharge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

remanded for further proceedings consistent with this opinion

CASES CITED

- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981)
- International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977)
- LaGrant v. Gulf and Western Mfg. Co., 748 F.2d 1087 (6th Cir. 1984)

- McMahon v. Libbey-Owens-Ford Co., 870 F.2d 1073 (6th Cir. 1989)
- Sahadi v. Reynolds Chemical, 636 F.2d 1116 (6th Cir. 1980)
- Laugesen v. Anaconda Co., 510 F.2d 307 (6th Cir. 1975)
- Ackerman v. Diamond Shamrock Corp., 670 F.2d 66 (6th Cir. 1982)
- Castaneda v. Partida, 430 U.S. 482 (1977)
- NAACP v. City of Mansfield, 866 F.2d 162 (6th Cir. 1989)
- Simpson v. Midland-Ross Corp., 823 F.2d 937 (6th Cir. 1987)
- McCorstin v. U.S. Steel Corp., 621 F.2d 749 (5th Cir. 1980)
- Moore v. Sears, Roebuck and Co., 464 F.Supp. 357 (N.D. Ga. 1979)
- Segar v. Smith, 738 F.2d 1249 (D.C. Cir. 1984)
- Palmer v. Schultz, 815 F.2d 84 (D.C. Cir. 1987)
- Capaci v. Katz & Besthoff, Inc., 711 F.2d 647 (5th Cir. 1983)
- Ridenour v. Lawson Co., 791 F.2d 52 (6th Cir. 1986)
- Ayala v. Mayfair Molded Prods. Corp., 831 F.2d 1314 (7th Cir. 1987)
- Furnco Constr. Corp. v. Waters, 438 U.S. 567 (1978)
- Merkel v. Scovill, Inc., 787 F.2d 174 (6th Cir. 1986)
- Blackwell v. Sun Elec. Corp., 696 F.2d 1176 (6th Cir. 1983)

CITED IN

- Barnes v. GenCorp Inc., Barnes v. GenCorp Inc., 896 F.2d 1457, 1465 (6th Cir. 1990)
- Barnes v. GenCorp Inc., Barnes v. GenCorp Inc., 896 F.2d 1457, 1465-67, 1469 (6th Cir. 1990)