

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

Azar v. TGI Friday's, Inc.

945 F. Supp. 485 (E.D.N.Y. 1996) · No. 94 CV-0845(ADS) · Decided November 15, 1996

SUMMARY

The court addresses a Title VII national-origin employment discrimination claim brought by an Iranian-American former employee of TGI Friday's. The plaintiff alleged that employees repeatedly referred to him as the "Ayatollah" and that he was discharged because of his Iranian national origin. The court's findings of fact credit substantial portions of the plaintiff's testimony concerning derogatory name-calling and challenge the defendant's stated reasons for termination.

CASE DETAILS

|                       |                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Eastern District of New York                                                                                                                                                                 |
| WRITING FOR THE COURT | Arthur D. Spatt                                                                                                                                                                                                                   |
| JURISDICTION          | New York                                                                                                                                                                                                                          |
| DECIDED               | November 15, 1996                                                                                                                                                                                                                 |
| DOCKET                | 94 CV-0845(ADS)                                                                                                                                                                                                                   |
| DISPOSITION           | other                                                                                                                                                                                                                             |
| PROCEDURAL POSTURE    | Following a bench trial on the plaintiff's Title VII national-origin discrimination claim, the district court entered judgment for the plaintiff and awarded back pay, lost medical insurance benefits, and prejudgment interest. |
| STANDARD OF REVIEW    | The court acted as the factfinder at trial and applied the preponderance-of-the-evidence standard to the discrimination and damages issues.                                                                                       |
| PRECEDENTIAL VALUE    | Published federal district court memorandum and order; persuasive within the Eastern District of New York and not binding precedent outside the court.                                                                            |
| PARTIES               | Farhood Azar v. TGI Friday's, Inc.                                                                                                                                                                                                |

TOPICS

- title vii
- employment discrimination
- civil rights
- employment law

## PRACTICE AREAS

employment law

civil rights

## QUESTIONS PRESENTED

1. Whether Azar established a Title VII prima facie case of national-origin discrimination.
2. Whether TGI Friday's articulated legitimate, nondiscriminatory reasons for terminating Azar and, if so, whether those reasons were pretextual.
3. Whether the evidence established that Azar's Iranian national origin was a motivating factor in his termination under a mixed-motive theory.
4. Whether Azar was entitled to back pay, lost medical insurance benefits, prejudgment interest, and an award unreduced by unemployment insurance and public assistance benefits.

## HOLDINGS

1. Azar proved by a preponderance of the evidence that he was a member of a protected class, qualified for his position, terminated, and discharged under circumstances giving rise to an inference of discrimination. TGI Friday's asserted reasons of poor performance and tardiness were pretextual, and the actual reason for the termination was Azar's Iranian national origin.
2. The evidence was sufficient to establish a mixed-motive case because discriminatory conduct and statements by a supervisor involved in the employment decision could reasonably support the conclusion that Iranian national origin was a motivating factor in the discharge. TGI Friday's failed to prove that it would have made the same decision absent the discriminatory factor.
3. Azar was entitled to back pay and lost medical insurance benefits totaling \$124,799 through April 7, 1996, less interim earnings of \$78,765.74, plus prejudgment interest from September 11, 1989. The court declined to deduct unemployment insurance and public assistance benefits because the record did not show that TGI Friday's funded those benefits.

## KEY QUOTATIONS

*"Thus, even if the defendant's reasons are found to be pretextual, the plaintiff must, nevertheless, prove that he was terminated as a result of intentional discrimination."* (496)

*"In this case, the Court finds that there was direct evidence of discriminatory animus strong enough to support a "mixed motive" theory."* (499)

*"The rationale of the cases providing for such a setoff is based on the premise that the benefit was directly funded by the employer."* (500)

*"In this case, there is no evidence that the employer funded either of these benefits and the unemployment insurance and public assistance benefits received by the plaintiff will not be deducted from the plaintiff's back pay award."* (501)

## FACTUAL BACKGROUND

Farhood Azar, an Iranian-born employee with a noticeable foreign accent, worked as a baker prep cook and fry cook at TGI Friday's Huntington restaurant from July 24, 1989, until his termination on September 11, 1989. Assistant Manager Lance Wolff and other employees repeatedly referred to Azar as the "Ayatollah," often with obscenities and derogatory comments about his Iranian nationality, despite Azar's objections. The court found that the employer's asserted reasons for termination—low productivity and tardiness—were not credible and that records concerning tardiness and performance were created or enhanced after the discharge to justify it.

## PROCEDURAL HISTORY

Azar sued TGI Friday's, Inc., alleging that he was terminated from the Huntington, New York restaurant because of his Iranian national origin. The matter proceeded to a trial before the district court. After making findings of fact and applying both pretext and mixed-motive analyses, the court found Title VII liability and determined the back-pay award through April 7, 1996, with further proceedings to update damages and address attorney's fees and expenses.

## DISPOSITION

other

## REMAND INSTRUCTIONS

No remand was ordered. The court directed the parties and counsel to appear at a November 22, 1996 status conference so the court could update the damages award through the date of judgment and schedule proceedings concerning attorney's fees and expenses.

## CASES CITED

- McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973)
- Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981)
- St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993)
- Fisher v. Vassar College, 70 F.3d 1420 (2d Cir. 1995)
- Chertkova v. Connecticut General Life Insurance Co., 92 F.3d 81 (2d Cir. 1996)
- Gallo v. Prudential Residential Services, Limited Partnership, 22 F.3d 1219 (2d Cir. 1994)
- Holt v. KMI-Continental, Inc., 95 F.3d 123 (2d Cir. 1996)
- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
- Tyler v. Bethlehem Steel Corp., 958 F.2d 1176 (2d Cir. 1992)
- de la Cruz v. New York City Human Resources Administration Department of Social Services, 82 F.3d 16 (2d Cir. 1996)
- Ostrowski v. Atlantic Mutual Insurance Cos., 968 F.2d 171 (2d Cir. 1992)
- Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977)
- Kotcher v. Rosa & Sullivan Appliance Center, Inc., 957 F.2d 59 (2d Cir. 1992)
- Douglas v. PHH FleetAmerica Corp., 832 F. Supp. 1002 (D. Md. 1993)

- Owens v. New York City Housing Authority, 934 F.2d 405 (2d Cir. 1991)
- Dugan v. Martin Marietta Aerospace, 760 F.2d 397 (2d Cir. 1985)
- Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975)
- Promisel v. First American Artificial Flowers, Inc., 943 F.2d 251 (2d Cir. 1991)
- Maxfield v. Sinclair International, 766 F.2d 788 (3d Cir. 1985)
- Gaworski v. ITT Commercial Finance Corp., 17 F.3d 1104 (8th Cir. 1994)
- Williams v. Secretary of the Navy, 853 F. Supp. 66 (E.D.N.Y. 1994)
- Dailey v. Generale, 889 F. Supp. 108 (S.D.N.Y. 1995)
- Talada v. International Service System, Inc., 899 F. Supp. 936 (N.D.N.Y. 1995)
- Meschino v. International Telephone & Telegraph Corp., 661 F. Supp. 254 (S.D.N.Y. 1987)
- Loeffler v. Frank, 486 U.S. 549 (1988)
- Clarke v. Frank, 960 F.2d 1146 (2d Cir. 1992)