

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Edward Ackerman v. Diamond Shamrock Corporation

27 Fair Empl. Prac. Cas. 1563 (6th Cir. 1982) · No. No. 80-3578 · Decided February 1, 1982

SUMMARY

The Sixth Circuit affirmed summary judgment for Diamond Shamrock Corporation in Edward Ackerman's age-discrimination action under the ADEA. The court held that Ackerman's early retirement was voluntary and that the record contained no genuine issue of material fact showing that age motivated the elimination of his position.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	Phillips, Senior Circuit Judge; Weick, Circuit Judge; Lively, Circuit Judge
JURISDICTION	Federal
DECIDED	February 1, 1982
DOCKET	No. 80-3578
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment for the defendant employer in an action under the Age Discrimination in Employment Act.
STANDARD OF REVIEW	De novo review of summary judgment; summary judgment is proper when no genuine issue of material fact remains for the trier of fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Sixth Circuit opinion; precedential
PARTIES	Edward Ackerman v. Diamond Shamrock Corporation

TOPICS

- age discrimination
- employment discrimination
- summary judgment
- civil procedure
- employment law

PRACTICE AREAS

- Employment law
- Age discrimination
- Civil procedure

QUESTIONS PRESENTED

1. Whether Ackerman's early retirement was involuntary and therefore constituted a discharge under the ADEA.
2. Whether the record contained a genuine issue of material fact that Ackerman's age was a factor in Diamond's decision to eliminate his position and propose early retirement.
3. Whether summary judgment was properly granted in favor of Diamond Shamrock.

HOLDINGS

1. Ackerman voluntarily retired and therefore was not discharged within the meaning of the ADEA.
2. The record contained no genuine issue of material fact that Ackerman was discriminated against because of his age.
3. Summary judgment was appropriate because Ackerman presented no evidence beyond conclusory allegations creating a genuine issue for trial.

KEY QUOTATIONS

"We agree with the conclusion of the district court from these facts that Ackerman's decision to retire was voluntary." (670 F.2d at 69)

"The ultimate issue is whether age was a factor in a decision of an employer to terminate an ADEA claimant and whether the age of claimant made a difference in determining whether he was to be retained or discharged." (670 F.2d at 70)

"We find no evidence of any improper motive on the part of Diamond in the record. Therefore, we hold that summary judgment was properly granted by the district court." (670 F.2d at 71)

FACTUAL BACKGROUND

Ackerman, age 59, had worked for Diamond Shamrock and predecessor corporations for 23 years as Director of Corporate Communications. During a corporate reorganization, Diamond eliminated his position and divided his duties between two younger employees, then proposed that Ackerman take early retirement under an agreement providing substantially greater benefits than Diamond's normal separation policies. Ackerman waited approximately four weeks, stated that he would have an attorney review the agreement, signed it of his own free will, and continued accepting its benefits. The record also contained evidence that Diamond's decision was influenced by concerns about Ackerman's job performance and a desire to increase corporate efficiency, but no concrete evidence that age motivated the decision.

PROCEDURAL HISTORY

Ackerman filed an ADEA action in Ohio state court after notifying the Department of Labor of his intent to sue. Diamond removed the action to federal district court. After discovery, the district court granted Diamond summary judgment, concluding primarily that Ackerman had voluntarily retired and therefore had not been discharged under the ADEA. The Sixth Circuit affirmed, also holding that the record contained no genuine issue of material fact concerning age discrimination.

DISPOSITION

affirmed

CASES CITED

- McDonnell Douglas v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)
- Marshall v. Goodyear Tire and Rubber Co., 554 F.2d 730, 735 (5th Cir. 1977)
- Laugesen v. Anaconda Co., 510 F.2d 307, 312, 317 (6th Cir. 1975)
- Sahadi v. Reynolds Chemical, 636 F.2d 1116, 1118 n. 3 (6th Cir. 1980)
- First National Bank of Arizona v. Cities Service Co., 391 U.S. 253, 284-88, 88 S. Ct. 1575, 1590-93, 20 L. Ed. 2d 569 (1968)
- Winter v. Local No. 639, 569 F.2d 146, 151 (D.C. Cir. 1977)
- Kephart v. Institute of Gas Technology, 630 F.2d 1217, 1223 (7th Cir. 1980)
- Walter v. KFGO Radio, 518 F. Supp. 1309, 1314 (D.N.D. 1981)
- Loeb v. Textron, Inc., 600 F.2d 1003, 1013 n. 6, 1019 (1st Cir. 1979)
- Wilson v. Sealtest Foods, 501 F.2d 84 (5th Cir. 1974)
- Stanojev v. Ebasco Services, Inc., 643 F.2d 914 (2d Cir. 1981)
- Zinger v. Blanchette, 549 F.2d 901, 905 (3d Cir. 1977)

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