

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Julia Prewitt Brown v. Trustees of Boston University

891 F.2d 337 (1st Cir. 1989) · No. No. 88-1288 · Decided January 24, 1990

SUMMARY

The First Circuit reviewed a sex-discrimination and breach-of-contract action arising from Boston University’s denial of tenure to an assistant professor. The court affirmed the findings of liability and the award of tenure, concluding that comparative evidence supported the jury’s finding that the University had manifestly applied unequal tenure standards. It also addressed evidentiary rulings, jurisdiction, and the scope of the anti-discrimination injunction.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Levin H. Campbell, Chief Judge; Stephen G. Breyer, Circuit Judge; Juan R. Torruella, Circuit Judge
JURISDICTION	Federal
DECIDED	January 24, 1990
DOCKET	No. 88-1288
DISPOSITION	other
PROCEDURAL POSTURE	Brown sued Boston University in Massachusetts Superior Court for denying her tenure because of her sex, alleging breach of an antidiscrimination provision in a collective bargaining agreement and violations of Title VII and Massachusetts General Laws chapter 151B. The University removed the action to the United States District Court for the District of Massachusetts. A jury found for Brown on the contract claim and awarded \$200,000; the district court entered statutory relief, including emotional-distress damages, an award of tenure, and an injunction. The University appealed.
STANDARD OF REVIEW	Evidentiary rulings were reviewed for abuse of discretion; jury instructions were reviewed as a whole to determine whether they confused or misled the jury; legal and jurisdictional questions were reviewed de novo. The sufficiency of the evidence was not considered because the University failed adequately to preserve and brief that issue.

PRECEDENTIAL VALUE	published and precedential
PARTIES	Trustees of Boston University v. Julia Prewitt Brown

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion by admitting comparative tenure evidence and evidence of alleged discriminatory attitudes by university officials.
2. Whether the jury instructions correctly required proof that sex discrimination was a but-for cause of the tenure denial and adequately limited the jury's role.
3. Whether the district court had jurisdiction to exercise pendent jurisdiction over Brown's contract claim after the NLRB determined that Boston University faculty were supervisors rather than employees under the National Labor Relations Act.
4. Whether the collective bargaining agreement created an enforceable right to a discrimination-free tenure decision.
5. Whether awarding Brown tenure was an appropriate Title VII remedy despite disputed evidence concerning her qualifications.
6. Whether the injunction prohibiting sex discrimination against Boston University faculty other than Brown was impermissibly overbroad.

HOLDINGS

1. The district court did not abuse its discretion by admitting evidence comparing Brown's qualifications and tenure support with those of other faculty members, because the evidence was relevant to whether the University's stated reasons were pretextual and was sufficiently compelling to permit a finding of manifestly unequal treatment.
2. Evidence of President Silber's comments and conduct concerning another female tenure candidate was admissible as probative of discriminatory motive, but evidence consisting of Silber's later speech about working mothers and the Dean's views about the Women's Studies program was improperly admitted; those errors were harmless.
3. The jury instructions, considered as a whole, properly required Brown to prove that sex discrimination was a but-for cause of the University's denial of tenure; references to a decision being 'tainted' did not confuse or mislead the jury.

4. The district court properly exercised pendent jurisdiction over the contract claim because it arose from the same nucleus of operative fact as Brown's Title VII claim.
5. The University waived its argument that the agreement precluded judicial review of tenure decisions by failing to raise that specific argument before or during trial.
6. Once the University was found to have denied tenure because of sex, the district court could award Brown tenure as the most complete make-whole remedy, even though the University disputed her qualifications.
7. The injunction was overbroad insofar as it prohibited sex discrimination against Boston University faculty generally, because Brown had not established a classwide violation or a need for relief benefiting nonparties; the injunction was proper insofar as it protected Brown from future discrimination or retaliation.

KEY QUOTATIONS

"Absent discrimination, a university must be given a free hand in making such tenure decisions." (891 F.2d at 341)

"A court may not simply substitute its own views concerning the plaintiff's qualifications for those of the properly instituted authorities; the evidence must be of such strength and quality as to permit a reasonable finding that the denial of tenure was "obviously" or "manifestly" unsupported." (891 F.2d at 342)

"Academic freedom does not include the freedom to discriminate against tenure candidates on the basis of sex or other impermissible grounds." (891 F.2d at 363)

"An injunction should be narrowly tailored to give only the relief to which plaintiffs are entitled." (891 F.2d at 365)

FACTUAL BACKGROUND

Julia Prewitt Brown was an assistant professor of English literature at Boston University who became eligible for tenure after six years. Her department, the College of Liberal Arts APT committee, the university-wide APT committee, and a majority of an outside tenure-review committee recommended tenure, but the Provost and President recommended against it based principally on concerns about the quantity and quality of her scholarship. The Trustees denied tenure after Brown raised concerns that she had been held to a stricter standard than male faculty members and that university officials had acted with discriminatory animus.

PROCEDURAL HISTORY

The district court denied summary judgment on the contract claim and permitted the jury to decide factual issues common to the contract, Title VII, and chapter 151B claims. After the jury found that sex discrimination caused the denial of tenure, the district court applied that finding to the statutory claims, awarded Brown \$15,000 for emotional distress, ordered her reinstated as an associate professor with tenure, and entered an injunction against sex discrimination. The First Circuit affirmed liability and the tenure award, affirmed the injunction insofar as it protected Brown, vacated the portion benefiting other faculty members, and denied rehearing.

DISPOSITION

other

REMAND INSTRUCTIONS

The judgment is affirmed as to liability, the jury verdict, the tenure award, and the portion of the injunction protecting Brown. The portion of the injunction prohibiting sex discrimination against Boston University faculty generally is vacated. The opinion states no further remand instructions.

CASES CITED

- Kumar v. Board of Trustees, University of Massachusetts, 774 F.2d 1 (1st Cir. 1985)
- Namenwirth v. Board of Regents of University of Wisconsin System, 769 F.2d 1235 (7th Cir. 1985)
- Dente v. Riddell, Inc., 664 F.2d 1 (1st Cir. 1981)
- United States v. Gonsalves, 668 F.2d 73 (1st Cir. 1982)
- Hunter v. Allis-Chalmers Corp., Engine Division, 797 F.2d 1417 (7th Cir. 1986)
- Morris v. Washington Metropolitan Area Transit, 702 F.2d 1037 (D.C. Cir. 1983)
- Scaramuzzo v. Glenmore Distilleries Co., 501 F. Supp. 727 (N.D. Ill. 1980)
- Lynn v. Regents of the University of California, 656 F.2d 1337 (9th Cir. 1981)
- United Mine Workers v. Gibbs, 383 U.S. 715 (1966)
- Bell v. Hood, 327 U.S. 678 (1946)
- N.L.R.B. v. Yeshiva University, 444 U.S. 672 (1980)
- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
- Fields v. Clark University, 817 F.2d 931 (1st Cir. 1987)
- Geller v. Markham, 635 F.2d 1027 (2d Cir. 1980)
- Service Merchandise Co. v. Boyd Corp., 722 F.2d 945 (1st Cir. 1983)
- McKinnon v. Skil Corp., 638 F.2d 270 (1st Cir. 1981)
- Boston University Chapter, American Association of University Professors v. N.L.R.B., 835 F.2d 399 (1st Cir. 1987)
- Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975)
- Sweezy v. New Hampshire, 354 U.S. 234 (1957)
- Powell v. Syracuse University, 580 F.2d 1150 (2d Cir. 1978)
- Califano v. Yamasaki, 442 U.S. 682 (1979)
- Zepeda v. United States I.N.S., 753 F.2d 719 (9th Cir. 1985)
- Professional Association of College Educators, TSTA/NEA v. El Paso County Community College District, 730 F.2d 258 (5th Cir. 1984)
- N.L.R.B. v. Express Publishing Co., 312 U.S. 426 (1941)
- International Longshoremen's Association v. Davis, 476 U.S. 380 (1986)
- Johnson v. Armored Transport of California, Inc., 813 F.2d 1041 (9th Cir. 1987)

- *Reithmiller v. Blue Cross & Blue Shield of Michigan*, 824 F.2d 510 (6th Cir. 1987)

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