Finding Pretext for Age Discrimination Based on Alternative Interpretations of Uncontested Facts

Client Alert
4.26.2022

Last Friday, in *Courtney v. Wright Medial Technology*,[1] a split Sixth Circuit panel revived an employee's age discrimination lawsuit, holding that the plaintiff had adequately shown that a reasonable jury could conclude that the employer's stated reasons for terminating his employment were a pretext for age discrimination. In doing so, the concurring judge criticized the majority for seemingly adopting a new category for finding pretext: alternative interpretations of uncontested facts.

Facts

Fred Courtney was employed by Wright Medical Technology ("WMT") for 8 years, and prior to his termination was a Senior Director of Facilities and Maintenance. Throughout his employment his performance reviews indicated that he met or exceeded expectations. In Courtney's last year of employment, he reported to a newly hired Senior Vice President, who, in consultation with Human Resources, terminated Courtney's employment "due to disruptive behavior and inability to work effectively with his supervisor." Courtney was 54 years at the time and was replaced by a younger worker. While WMT claimed that Courtney also had prior issues with senior leadership, it focused on the three following discrete incidents:

1. Courtney provided an inadequate explanation to his supervisor regarding in-rack sprinklers that were used as means of fire protection;
2. Courtney disparaged his supervisor to the fire department; and
3. Courtney engaged in workplace violence against another employee.

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The panel agreed that a reasonable jury could find that WMT's proffered non-discriminatory reasons were pretext for age discrimination but differed on the basis for finding pretext.

Delivering the Court's opinion, Judge Clay explained that a reasonable jury could find that WMT's claims about the three incidents above were not factually supported and did not provide a sufficient basis for Courtney's termination. As to the first incident, the Court reviewed the email exchange and found that the supervisor initiated the conversation with stern and accusatory language and that Courtney had provided a full explanation that was not "evasive," "coy," and "short." As to the second incident, the Court reviewed the underlying letter from the fire department and interpreted the letter as not supporting the contention that Courtney disparaged the supervisor, as the letter did not name Courtney and referred to "several inquiries" from various employees. As to the third incident, the Court questioned WMT's characterization of the incident as workplace violence, where the so-called victim employee testified that Courtney neither raised his voice nor threatened him.

Writing separately, Judge Thapar took issue with the majority's pretext analysis, explaining that because WMT was "entitled to its own interpretation of the facts and its own judgment as to what warrants firing," Courtney had not established pretext by showing that WMT's reasons have no basis in fact. Judge Thapar, nevertheless, found pretext based on a genuine issue of material fact that WMT had a record of firing employees who were older than forty.

Take away for employers

Employers, and specifically Human Resources, are best served by following up with respect to a manager's concerns about the performance, behavior, and conduct of employees. Using the incidents described above as an example, Human Resources should follow up to confirm that there is sufficient evidence to support the manager's interpretation and conclusions regarding discipline and termination. For example, HR could review the underlying emails and letter, and interview the employee and witnesses. This case further demonstrates the importance of ensuring that performance reviews accurately depict an employee's actual performance and conduct.

As always, you are welcome to consult with the author of this Alert and any member of the Butzel Long Labor and Employment Practice Group on any questions or concerns raised by this opinion.

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[1] 2022 WL 1195209 (6th Cir. Apr. 22, 2022).