A Study In Contrasts In Civil Rights Cases

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Introduction

Employment cases typically involve complex and fact-intensive allegations about discriminatory or other unlawful conduct. The claims can also be highly charged emotionally and even morally. Therefore, it should not be surprising that the outcome of such cases can vary dramatically even when the fundamental factual allegations and governing legal principles basically remain the same. Recent decisions by the Eighth Circuit illustrate this dynamic, providing a contrast in how race discrimination and retaliation claims in the workplace are addressed.

I. A Positive Plantiff Outcome

In ***Bennett v. Riceland Foods, Inc.***, two white, male maintenance employees at a rice-milling facility complained about race discrimination against African-American employees by their supervisor.[1] The employer investigated the complaint of race discrimination and found no merit.[2] Several months after the two white, male employees complained about race discrimination against African-American employees, the employer laid off the two white, male employees as part of a company restructuring.[3] The two white, male employees filed suit, alleging that the layoff was illegal retaliation.

Unlike many employment cases filed in Federal court these days, the two white, male employees' case went to trial. The Arkansas jury hearing that case found that the employer had retaliated against the two white, male employees and awarded $300,000 in emotional distress damages—in addition to substantial back pay—based only on lay testimony.[4] In other words, the jury awarded such a large amount for emotional distress damages without reference to medical records or reliance on medical testimony. It also warrants highlighting that the two white, male employees received the $300,000 in emotional distress award despite not being the target of the alleged race discrimination.[5]

The Eighth Circuit, which many to consider to be among the most favorable arenas in the country for employers, affirmed the plaintiff verdict.[6] Although the Eighth Circuit has often taken a narrow view of what constitutes a fact question precluding summary judgment, the Eighth Circuit ruled that evidence of the employer's desire for the two white, male employees to drop their complaint about race discrimination warranted a jury trial as to the retaliation claims.[7]

Even though the Supreme Court has long taken a broad view of what constitutes a valid retaliation claim,[8] the Eighth Circuit has not always followed suit—as discussed in Part II below. In ***Bennett***, however, the Eighth Circuit adopted the liberal approach established and expanded by the Supreme Court in a number of recent decisions.

continued on next page

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II. A Negative Plantiff Outcome

In *Wright v. St. Vincent Health System*,[9] an African-American surgical technician reported race discrimination against her by her supervisor. A mere 45 minutes after the African-American, female employee complained about race discrimination against her, the employer fired the African-American, female employee. The African-American, female employee filed suit, alleging the firing was illegal retaliation.

Although ***Wright***, like ***Bennett*** discussed above, involved claims of retaliation in the workplace for reporting race discrimination, ***Wright*** was decided through a bench trial rather than through a jury trial as ***Bennett*** was. After conclusion of the bench trial, the district court entered judgment against the African-American, female employee.[11] The court ruled against the African-American, female employee despite acknowledging the "incredibly suspicious timing" of the employer's decision to fire her.[12] Put another way, the district court found the employer's allegation of purported performance problems—that which has become an almost knee-jerk defense in these types of cases—to be more compelling than the "incredibly suspicious timing" of the firing.

The Eighth Circuit affirmed the adverse judgment against the African-American, female employee.[13] In the process, the Eighth Circuit deviated from the time-honored precedent that gives weight to temporal proximity when analyzing the causal connection between protected activity and adverse action concerning retaliation claims.[14] Otherwise stated, the Eighth Circuit ruled that no causal connection existed despite the "incredibly suspicious timing" of the adverse action in relation to the African-American, female employee's protected activity: complaining about

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race discrimination.[15] This narrow application of anti-retaliation protection contrasts sharply with that in ***Bennett*** and, in fact, with the Supreme Court's long line of decisions in retaliation cases.[16]

Conclusion

The two white, male plaintiffs in ***Bennett*** stood up and spoke out about race discrimination against African-American coworkers. Those plaintiffs should be commended for their courage and integrity in doing the right thing even when they were not the targets of mistreatment. The African-American, female plaintiff in ***Wright***, however, engaged in similar protected activity; she stood up and spoke out about race discrimination in the workplace. Nonetheless, the outcome of the retaliation claims in the ***Bennett*** and ***Wright*** cases could not be more different.

What accounts for discrepancies in case results has confounded commentators over the years. Here, ***Bennett*** did not involve alleged performance problems, but the adverse action consisted of a layoff pursuant to restructuring that occurred several months after the protected activity; by contrast, ***Wright*** involved purported performance problems, but the adverse action consisted of a termination that occurred almost immediately after the protected activity. A number of contextual distinctions exist, moreover, including that ***Bennett*** was decided by a jury while ***Wright*** was decided by a judge and the plaintiffs in ***Bennett*** where white and male while the plaintiff in ***Wright*** was African American and female. For the sake of the nation's civil justice system, all officers of the court must work to ensure that such contextual factors never play a role in case outcomes. The rule of law requires it, and democracy depends on it. ⍑

[1] 721 F.3d 546, 549 (8th Cir. 2013).

[2] *Id.*

[3] *Id.* at 550.

[4] *Id.* at 550-51.

[5] *Id.* at 549-51.

[6] *Id.* at 551-52.

[7] *Id.*

[8] *Kasten v. Saint-Gobain Perform. Plastics Corp.*, 131 S.Ct. 1325, 1329 (2011) (holding that the anti-retaliation provision of the Fair Labor Standards Act protects employees who only make an oral complaint, rejecting the trend under state law that increasingly requires formal and/or written reports to trigger protection); *Thompson v. North Amer. Stainless, LP*, 131 S.Ct. 863, 868 (2011) (in a unanimous opinion announced by Justice Antonin Scalia, concluding that adverse action against a third party can support a retaliation claim); *Crawford v. Metropolitan Government of Nashville*, 129 S. Ct. 846, 849 (2009) (ruling that Title VII's anti-retaliation provision protects employees from retaliation when employees merely participate in an employer's internal investigation of a potential violation); *Gomez-Perez v. Potter*, 553 U.S. 474, 478-79 (2008) (in an opinion authored by Justice Samuel Alito, basically reading an anti-retaliation provision into the Age Discrimination in Employment Act); *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 445 (2008) (holding that Section 1981 protects individuals who have complained about potential violations concerning a third party); *Burlington North and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (ruling that what constitutes adverse action to support a retaliation claim as anything that "might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.'").

[9] 730 F.3d 732, 734 (8th Cir. 2013).

[10] *Id.* at 736.

[11] *Id.* at 736-37.

[12] *Id.* at 738.

[13] *Id.* at 737-39.

[14] *See, e.g., Bassett v. City of Minneapolis*, 211 F.3d 1097, 1105 (8th Cir. 2000), abrogated on other grounds by *Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011) (en banc).

[15] Id. at 738-39.

[16] *Kasten*, 131 S.Ct. at 1329; *Thompson*, 131 S.Ct. at 868; *Crawford*, 129 S. Ct. at 849; Potter, 553 U.S. at 478-79; *Humphries*, 553 U.S. at 445; *White*, 548 U.S. at 68.

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