

Case Summary Article – Intended for Lay Audience
(Primarily geared toward human resources professionals.)

Tenth Circuit Denies County Employees’ Appeal on Political, Racial, and Age Discrimination Claims

In a recent decision, the U.S. Court of Appeals for the Tenth Circuit, which hears appeals from federal courts in New Mexico, upheld the dismissal of a case against a public employer where two former employees alleged retaliation based on political association, race discrimination, and age discrimination.

Facts

Until 2005, William Trujillo and Ronald Cruz worked as foremen of the Huerfano County, Colorado Road and Bridge Department (“the Department”). The Department was divided into three districts, and each district had a foreman. Both Trujillo and Cruz are Hispanic; the third district was run by William Brunelli, a white male.

In the fall of 2004, Trujillo ran in the Democratic primary for County Commissioner of Huerfano County. He lost to another candidate, but both he and Cruz supported the other candidate against his Republican opponent, Roger Cain. When Cain won the election, he joined the Board of County Commissioners (“the Board”), where he served with two Democratic Commissioners, Scott King and Oress DeHerrera.

After the election, DeHerrera suggested to the other two that the Department should be reorganized into a unified system with a single supervisor. A non-profit organization called County Technical Services, Inc. (“CTSI”) also recommended the unification as a more efficient method of running the Department. In March 2005, Cain introduced the proposal, along with a motion that Brunelli be appointed as the new Road Supervisor in charge of the Department, and that two new “Operator/Shop Manager” positions be created under Brunelli’s supervision, to be selected by Brunelli. The proposal passed unanimously, and Brunelli thereafter chose as his Operators Jerry Sporcich and Nick Archulta (an Hispanic who had been employed by the Department for twenty years), both of whom had voted for Cain in the 2004 election. Trujillo and Cruz remained with the Department, but their salaries were cut as a result of the reorganization.

In 2005, Brunelli fired Trujillo, who was 54 years old at the time, citing three safety-related incidents that had occurred within a two-month period, including sleeping at a safety training and an accident in which Trujillo pulled down a low-hanging power line with a dump truck.

Cruz remained with the Department, but his personnel file accumulated, among other things, records of a written reprimand for insubordination (for using obscenities against Brunelli) and written complaints from other employees about his attitude and behavior. He claimed that he was effectively fired by being forced into early retirement in October 2006 by this “papering” of his personnel file, in addition to the fact that he was given less desirable work after the reorganization.

In March 2006, Trujillo and Cruz filed discrimination charges with the EEOC, and thereafter

filed a complaint in the U.S. District Court for the District of Colorado. The complaint, which was brought against both the Board and Roger Cain as an individual, alleged, among other things, 1) retaliation for political speech in violation of the First Amendment; 2) race discrimination under multiple laws, including Title VII of the Civil Rights Act of 1964 (“Title VII”); and 3) age discrimination in violation of the Age Discrimination in Employment Act (“ADEA”).

When the district court dismissed all of the claims against the Board and Cain, Trujillo and Cruz appealed to the Tenth Circuit, which reviewed all of the evidence again and upheld the district court’s decision.

First Amendment Claim

The First Amendment, said the circuit court, “protects public employees from discrimination based upon their political beliefs, affiliation, or non-affiliation unless their work requires political allegiance. Trujillo and Cruz were required to prove, among other things, that there was a genuine dispute of fact about whether their political affiliation was a “substantial” or “motivating” factor in the decision to fire them. The court concluded that they had provided no direct evidence to support the idea that the Board’s decisions were made as a result of Trujillo’s and Cruz’s political affiliations.

The only evidence of discrimination that Trujillo and Cruz offered was the relatively short period of time (three months) that passed between their campaign activity and the Board’s consideration of the Department’s reorganization. But the court made it very clear that “temporal proximity” alone is not sufficient to create a real question as to whether political affiliation motivated the employment decision. The court also pointed out that the decision had been made by a majority-Democrat Board, and there was no evidence to support the idea that Cain, the only Republican, held some special influence over the Board.

Age/Race Discrimination Claims

The court easily dismissed the discrimination claims against Cain as an individual, since it found no evidence that Cain had any control or influence over Brunelli’s personnel decisions.

With respect to the claims against the Board, after Trujillo and Cruz made out their initial case, Title VII required the Board to provide a “legitimate, non-discriminatory reason” for its decision to reorganize the Department. Even if it successfully did that, however, Trujillo and Cruz could still win by proving that the Board’s reason was merely a pretext for discrimination.

The court analyzed each of the employment actions at issue—including the reorganization, Trujillo’s termination, and the discipline Trujillo received—and found that in each case, the decision makers in the Department presented legitimate reasons for their actions, and that Trujillo and Cruz failed to present evidence that those reasons were merely pretexts for discrimination.

The Board justified the decision to reorganize the Department based on the belief that it would be more efficient, and the court noted that the question before it was not “whether the employer’s proffered reasons were wise, fair or correct, but whether it honestly believed those reasons and acted in good faith upon those beliefs.” The court found no evidence that the Board didn’t honestly believe the reorganization would improve efficiency.

The Board's reasons for hiring Brunelli as Road Supervisor—that he was foreman of the largest district and had a twenty-year history with the Department—were also legitimate, said the court. Trujillo and Cruz offered no proof that they were clearly better qualified than Brunelli, and no evidence that the Board had based the decision on race or age.

Finally, the court determined that Brunelli based his decision not to hire Trujillo and Cruz as Operators on legitimate criteria as well, namely, that they had often disagreed with Brunelli when they were foremen. Specifically, the court noted that “an employee’s ability to work well with others, particularly with management, is a legitimate, non-discriminatory qualification.”

In addition to questioning the hiring decisions, Trujillo argued that he was treated differently from other employees in the discipline he received for his safety violations. Under Title VII, Trujillo was required to prove that the other employees were “similarly situated, nonprotected employees,” meaning that they 1) dealt with the same supervisor, 2) were subject to the same performance evaluation and discipline standards, and 3) were in a different “class” (e.g., are of a different race, age, gender, etc.). In this case, Trujillo failed to identify the age or race of any of the employees who he claimed were treated differently. Nor did he offer evidence that the violations of the other employees were of “comparable seriousness;” the incidents Trujillo cited all involved a single accident, whereas Brunelli fired Trujillo after three safety violations within a two-month period. *Trujillo v. Huerfano County Board of County Comm’rs*, 2009 U.S. App. LEXIS 22790 (10th Cir., October 19, 2009).

Bottom Line

This case emphasizes that where an employer has a legitimate, non-discriminatory reason for taking a certain action, the courts will not allow a discrimination lawsuit to succeed unless the employee can offer strong evidence that the employer’s reasons are “merely a pretext” for discrimination. Thus, if an employer voices a legitimate reason, the courts will not second-guess that decision unless the employee can offer proof that the employer didn’t honestly believe its own reason, or that discrimination was still the determinative factor in the decision. As the Tenth Circuit reiterated in this case, it is not the court’s job to determine whether an employer’s actions were “wise, fair or correct;” the court simply steps in to ensure that the reason for the action is not discriminatory.