

Third Circuit Sends Title VII Discrimination Case Back to the Trial Court for Failing to Properly Apply the Burden Shifting Framework of McDonnell Douglas

In an opinion which helped further flesh out how to apply the burden shifting framework in Title VII cases which was set forth by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), the Third Circuit vacated the district's court's summary judgment ruling for further proceedings consistent with the guidance it had provided. The case, *Andes v. New Jersey City Univ.*, 2011 WL 1053619 (3d Cir. 2011) involved an assistant professor at New Jersey City University who had filed a Title VII discrimination claim and retaliation claim on the basis of his race (Asian) and national origin (Filipino) when he was passed over for a position as dean and, subsequently, promotion to full professor.

The Third Circuit agreed with the District Court that in opposing the University's motion for summary judgment the plaintiff had provided adequate evidence of a *prima facie* case of discrimination by alleging that three similarly situated colleagues, who were not Asian or Filipino, were promoted and that at least one of those colleagues did not hold a degree as advanced as his own. The Third Circuit also agreed with the District Court that the University had articulated a legitimate nondiscriminatory reason for its adverse employment actions against the plaintiff by submitting that the employee did not meet all the requirements of the University's promotion guidelines and/or because his colleagues, who were promoted, were in fact more qualified than he.

However, the Third Circuit found fault with the District Court's conclusion that the plaintiff had failed to show that the University's rationale was pretextual. The District Court had

required the plaintiff to meet his burden by proving his case, *i.e.* by proffering affirmative evidence suggesting that illegal discrimination was a motivating factor in the University's decision. What it should have done is to assess whether the plaintiff had pointed to sufficient evidence from which a fact-finder might reasonably disbelieve the University's articulated rationale. Accordingly, the court remanded to the trial court to further proceedings consistent with its opinion.

The Third Circuit also held that in resolving the retaliation claim the trial court had erred in finding that there was no causal connection between the plaintiff's failure to be offered the deanship and the University's subsequent failure to promote him to full professor. The trial court focused only on whether there was a temporal proximity between the two adverse employment actions rather than on all circumstantial evidence that would suggest a retaliatory reason for the failure to promote.