

Dunlap v. tennessee valley authority: overview



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1. What were the legal issues in this case? The U. S. Court of Appeals for the Sixth Circuit was to determine if the plaintiff, David Dunlap Dunlap, had met the burden of proof that the Tennessee Valley Authority (TVA) was liable under Title VII of the Civil Rights Act of 1964 by intentionally discriminating against him under both disparate impact and disparate treatment analyses and whether the TVA appeal to the District Court erred in each of these analyses could be legally supported to reverse their decision (FindLaw, 2011).

David Dunlap brought suit under Title VII, alleging racial discrimination by the TVA. The district court found that Dunlap had been subjected to discrimination under both disparate treatment and disparate impact analyses, concluding that TVA's subjective hiring processes permitted racial bias against both Dunlap and other black applicants (Walsh, 2010). The Appeals Court affirmed the disparate treatment claim, reversed the disparate impact claim, and affirmed the district court's award of damages and fees to Mr. Dunlap (Walsh, 2010). 2. Explain why the plaintiff's disparate (adverse) impact claim failed. The disparate impact theory requires a plaintiff to demonstrate that an apparently neutral employment practice affects one group more harshly than another and that the practice is not justified by business necessity. Under this theory, proof of discriminatory intent is not required.

Although the district court concluded that TVA's interview process had been manipulated to exclude African-American candidates in general, the court of appeals disagreed, citing the lack of statistical proof demonstrating that a protected group was adversely affected thus establishing a "prima facie" case. Mr. Dunlap couldn't prove his claim by only challenging the process

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used in his own interview, thus the ruling was that the district court clearly erred in finding a prima facie case of disparate impact (FindLaw, 2011). 3. Explain why the plaintiff's disparate treatment claim succeeded. The disparate treatment doctrine requires a plaintiff to demonstrate that an employer has treated some people less favorably than others because of their race, color, religion, sex, or national origin. Three provisions required to prove disparate treatment are (1) the plaintiff must establish a prima facie case of racial discrimination; (2) the employer must articulate some legitimate, nondiscriminatory reason for its actions, and (3) the plaintiff must prove that the stated reason was in fact pretextual.

Proof of discriminatory motive is critical and may be inferred from the mere fact of differences in treatment. Proof may also be inferred from the falsity of the employer's explanation for the treatment, (Walsh, 2010). Mr. Dunlap successfully established a prima facie case of disparate treatment by meeting the above 3 provisions; (1) he was African-American; (2) he was qualified for the position sought; and (3) white applicants with less experience were hired for 9 of the 10 open jobs.

TVA attempted to rebut his claim by offering the selection matrix used during his interview as evidence to prove that he didn't rank as one of the top 10 applicants due to his interview scores. However, Mr. Dunlap was able to refute TVA's claim by demonstrating that his matrix score was manipulated to keep him out of top 10, thus proving it was merely a 'pretext' way for TVA to hide discriminatory intent.

Both courts noted that the increased weight given to the interview created a more subjective process and the lack of an objective evaluation of the interview questions allowed the alteration of scores to produce a racially biased result. Also, there was proof that some of the score sheets were changed as many as 70 times without evidence of any legitimate reason to support the revisions. The court of appeals concurred with the district court that due to the above irregularities, the hiring matrix score used by TVA for not hiring Mr. Dunlap was “unreliable” and that discrimination motivated the hiring committee’s decision-making. (FindLaw, 2010). 4. What should the TVA have done differently with regard to interviewing and selecting candidates for these jobs? The following reflect several provisions the TVA should have done with regard to interviewing and selecting candidates for the 10 jobs. First, TVA should have done everything within its power to ensure the selection committee didn’t consist of racist representatives which is a bad reflection on the company.

TVA needed to ensure these people are very aware and adhere to the company’s hiring and discrimination policies. Second, these representatives should be very familiar with and adhere to TVA’s “Principles and Practices” on filling vacant positions, mandate that “merit and efficiency form the basis for selection of job candidates,” stating that “education, training, experience, ability, and previous work performance serve as a basis for appraisal of merit and efficiency” (Walsh, 2010).

The committee should also have adhered to the Cumberland plant HR Director’s e-mail that explicitly stated that interviewers should not award points for being a “diversity candidate” and “it is really important up front

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before your interviews start to have a definition of what ‘ Outstanding,’ ‘ Well-Qualified,’ and ‘ Qualified’ is. This needs to be documented and dated before the interview process starts” (Walsh, 2010). The district court found the interviewers placed candidates in these categories after the interviews and ranking had been completed.

In turn, this ensured the number of “ Outstanding” applicants equaled the ‘ exact’ number of job openings and their candidates of choice were in the top 10 group. As a result, TVA should ensure a legitimate matrix is developed for scoring purposes and not be manipulated for preferred results. Finally, TVA should screen their HR representatives very carefully prior to hiring; provide initial ethics and discrimination training and on an ongoing basis to ensure current laws are followed.