

Vaughn case brief

Business



Appeal from the United States District Court for the Eastern District of Louisiana. Before GEE, SMITH, and WIENER, Circuit Judges. WIENER, Circuit Judge: Plaintiff-Appellant Emma S. Vaughn contests the judgment rendered in favor of defendant Texaco, Inc.

, dismissing with prejudice Vaughn’s race and sex discrimination suit filed pursuant to Title VII of the Civil Rights Act of 1964 as amended, 42 U. S. C. Sec. 2000e et seq.

Because the magistrate clearly erred in finding no racial discrimination, we reverse. I Procedural History

Vaughn filed a Charge of Discrimination with the Equal Employment Opportunity Commission, which determined that the evidence did not establish a violation of Title VII. She then filed this lawsuit against Texaco and against Roger Keller, manager of the Land Department for much of Vaughn’s tenure with Texaco; Ronald O’Dwyer, who succeeded Keller as manager; and Robert Edel, chief contract analyst and Vaughn’s supervisor. When Texaco assumed responsibility for the individual defendants, Vaughn agreed to their dismissal as defendants.

The parties consented to proceedings before a magistrate who, finding as a “matter of law” that Vaughn’s firing did not constitute racial discrimination, dismissed the suit.

Vaughn timely appealed. 1 II A. Operable Facts In August 1979, Vaughn, a black female attorney, became an associate contract analyst in Texaco’s Land Department. Her supervisors were Edel and Alvin Earl Hatton, assistant

chief contract analyst. In Vaughn's early years with Texaco she was promoted first to contract analyst and then to petroleum contract analyst.

During this period she was the " highest ranked contract analyst" in the department.

The events leading to this dispute began on April 16, 1985, the day after Vaughn had returned from a second maternity leave. On that day, Edel complained to Vaughn about the low volume of her prior work and the excessive number of people who had visited her office. Vaughn later spoke to Keller about Edel's criticism. In a memorandum concerning this discussion, Keller wrote that he had told Vaughn that he had been told that Vaughn's productivity " was very low"; that he " had become aware for some time of the excessive visiting by predominantly blacks in her office behind closed doors"; and that " the visiting had a direct bearing on her productivity. " Keller then told Vaughn, as he noted in his memo, that " she was allowing herself to become a black matriarch within Texaco" and " that this role was preventing her from doing her primary work for the Company and that it must stop.

" Keller's remarks offended Vaughn, so she sought the advice of a friend who was an attorney in Texaco's Legal Department. Keller learned of this meeting and of Vaughn's belief that he was prejudiced.

To avoid charges of race discrimination, Keller, as he later testified, told Edel " not [to] have any confrontations with Ms. Vaughn about her work. " Keller added that "[i]f he [Edel] was dissatisfied, let it ride.

If it got serious, then see [Keller]. ” Between April 1985 and April 1987 when Vaughn was fired, neither Edel nor Hatton expressed criticism of Vaughn’s work to her. During this period all annual written evaluations of Vaughn’s performance (which, incidentally, Vaughn never saw) were “ satisfactory. ” Vaughn also received a merit salary increase, albeit the minimum, for 1986.

Keller testified that for several years he had intentionally overstated on Vaughn’s annual evaluations his satisfaction with her performance because Page 520 he did not have the time to spend going through the procedures which would result from a lower “ rating” and which could lead to termination. In 1985-86 Texaco undertook a study to identify activities it could eliminate to save costs.

To meet the cost-reduction goal set by that study, the Land Department fired its two “ poorest performers,” one of whom was Vaughn, as the “ lowest ranked” contract analyst; the other was a white male.

B. The Magistrate’s Findings The magistrate found as a matter of fact that Vaughn did have “ excessive visitations and [that] her output was down” and that Keller’s memorandum on the “ black matriarch” conversation accurately detailed what had occurred. She also found that “ from April or May of 1975 [sic] until [Vaughn] ..

. is terminated, she is not in any way formally criticized or told anything regarding these problems” because of Keller’s “ personality of ... not rocking the boat” and “ because she was black. The magistrate added that “ I think had the lady been white, Texaco would .

.. have counselled her and told of the problems. ” The magistrate stated that when Keller told Vaughn’s supervisors not to criticize Vaughn’s work, “ he’s concerned about a Title 7 [sic] suit; he doesn’t want any problems. ” The magistrate also found that the Land Department fired two people because Texaco wanted to reduce costs and that Keller and O’Dwyer picked the “ two lowest rated individuals.

The magistrate did “ not believe in any way that [Vaughn’s termination] is race-related, other than the fact that I do believe had she not been black, that she would have been counselled and would have been criticized. ”

Noting that the facts were not in dispute, the magistrate found “ as a matter of law” that failure to counsel and to criticize Vaughn because she was black and later firing her as one of the “ lowest rated” contract analysts was not racial discrimination.

This direct evidence clearly shows that Keller acted as he did solely because Vaughn is black. Texaco has never offered any evidence to show that in neither confronting Vaughn about her poor performance nor counselling her it would have acted as it did without regard to her race. Vaughn has, consequently, Page 522 established that Texaco discriminated against her. Even were we to apply the principles articulated in the McDonnell Douglas line of cases, Vaughn has shown that Texaco treated her differently than other similarly situated employees on the basis of race.

Vaughn established a prima facie case of discrimination by showing that (1) she belongs to a racial minority; (2) she held a job for which she was qualified; (3) she was fired; and (4) after she was fired, others who were not

members of a protected group remained in similar positions. See McDonnell Douglas, 411 U. S. at 802, 93 S. Ct.

at 1824. Texaco responded that Vaughn was one of the two Land Department employees whom it could afford to fire to meet cost-reduction goals. Vaughn countered that Texaco's proffered reason was mere pretext—that racial discrimination was the reason she was in the position to be fired in 1987.

She introduced evidence that Keller's decision not to allow Vaughn's supervisors to criticize her was based on discrimination. Keller's admission that he initiated the non-confrontation policy in order to avoid a race discrimination suit confirms her allegations.

Despite finding that had Vaughn been white, Texaco would have both criticized and counselled her, the magistrate, concluded that Texaco had not discriminated against Vaughn. In focusing only on the final act of firing and in disregarding Texaco's discrimination in not counselling or criticizing Vaughn, the magistrate committed clear error.

Although Vaughn's race may not have directly motivated the 1987 decision to fire her, race did play a part, as the magistrate found, in Vaughn's employment relationship with Texaco from 1985 to 1987. Texaco's treatment of Vaughn was not color-blind during that period. In neither criticizing Vaughn when her work was unsatisfactory nor counselling her how to improve, Texaco treated Vaughn differently than it did its other contract analysts because, as the magistrate found, she was black.

As a result, Texaco did not afford Vaughn the same opportunity to improve her performance, and perhaps her relative ranking, as it did its white employees. One of those employees was placed on an improvement program. As for the others, Texaco does not deny that they received, at least, informal counselling. The evidence indicates that Vaughn had the ability to improve. As Texaco acknowledges, she was once its “ highest ranked contract analyst.

” Had her dissatisfied supervisors simply counselled Vaughn informally, such counselling would inevitably have indicated to Vaughn that her work was deficient.

Had Keller given Vaughn the evaluation that he believed she deserved, Texaco’s regulations would have required his placing her on a ninety-day work improvement program, just as at least one other employee—a white male—had been placed. 6 A Texaco employee who has not improved by the end of that period is fired. Consequently, an employee on an improvement program certainly knows what Texaco thinks of his performance, knows that he is in imminent Page 523 danger of being fired, and at least has an option to improve, thereby reducing or removing the risk of being fired.

This case is not, as Texaco suggests, one in which the employer merely ignored its own regulations and procedures, but had no racial motive in doing so. See *Risher v.*

Aldridge, 889 F. 2d 592 (5th Cir. 1989) (failure to use written employee appraisals in deciding not to promote woman); *Sanchez v. Texas Comm’n on Alcoholism*, 660 F. 2d 658 (5th Cir.

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1981) (disregarding own hiring system in hiring white male and not Hispanic). We have no doubt that, in not criticizing or counselling Vaughn, self-interest rather than racial hostility motivated Texaco.

Nevertheless, we agree with the magistrate that Texaco ignored its own procedures for a racial reason, however benign that reason may initially appear to be. The magistrate specifically found that had Vaughn been white Texaco would have both criticized and counselled her. When an employer excludes black employees from its efforts to improve efficiency, it subverts the “ broad overriding interest” of Title VII–“ efficient and trusty workmanship assured through fair and racially neutral employment and personnel decisions. ” See *Price Waterhouse*, 109 S.

Ct. at 1786-87 (quoting *McDonnell Douglas*, 411 U. S. t 801, 93 S. Ct.

at 1823-24). When an employer is implementing such decisions, “ Title VII tolerates no racial discrimination, subtle or otherwise. ” *Id.* Initially, Texaco’s decisions not to criticize Vaughn and not to state her correct evaluations may have appeared beneficial, even–had she been aware of them–to Vaughn. She did, for example, receive a merit pay increase in 1986 that she would not have received had Keller given her the evaluation that he believed she deserved.

Ultimately, however, whether Texaco’s decisions may have damaged Vaughn’s employment status at Texaco will never be known.

Furthermore, whether Texaco’s decisions ultimately benefitted or harmed Vaughn is irrelevant. The decisions not to apply the usual procedures in

Vaughn's case were racial decisions. Texaco has never stated any reason other than that she was black for treating Vaughn as it did. Had Texaco treated Vaughn in a color-blind manner from 1985 to 1987, Vaughn might have been fired by April 1987 for unsatisfactory work; on the other hand, she might have sufficiently improved her performance so as not to be one of the two "lowest ranked" employees, thereby avoiding termination in April 1987.

Consequently, Texaco must bear the cost of its lost opportunity to determine whether Vaughn might have remained one of the two "lowest ranked" contract analysts had it not made decisions based on race. This circuit will not sterilize a seemingly objective decision to fire an employee when earlier discriminatory decisions have infected it. Because Texaco's behavior was race-motivated, Texaco has violated Title VII. Texaco limited or classified Vaughn in a way which would either "tend to deprive [her] of employment opportunities or otherwise adversely affect [her] status as an employee."