

Employee Failed to Show Race Discrimination or Retaliation

Jackson v. United Parcel Service Inc., 8th Cir., No. 10-1440 (July 5, 2011).

The trial court properly granted summary judgment to the United Parcel Service in a case where an employee alleged race discrimination in promotion and retaliation, the 8th U.S. Circuit Court of Appeals ruled. Jeanette Jackson challenged UPS' failure to promote her in 2004, 2005 and 2007.

As to the promotion sought in 2004, the court found that Jackson was not similarly situated to the pool of "ready now" candidates. Jackson's supervisor had never completed a promotional packet for her as required under the employer's 2004 "opt-in" promotional system. There was no evidence presented that the supervisor had been motivated by a discriminatory or retaliatory animus. In fact, there was evidence that the supervisor had not completed promotional packets for any employee under his direction that year. Although

the court questioned the wisdom of the employer's use of a system that allowed it to deny promotional opportunities to interested employees due merely to the negligence or apathy of direct supervisors, the court found that this did not amount to evidence of discrimination.

The evidence clearly established that Jackson was not qualified for the promotion she sought in 2005; however, Jackson argued that the denial of the 2005 promotion should be part of a continuing violation. The court easily disposed of this argument, finding that the continuing violation doctrine did not apply to a discrete act, such as a failure to promote.

In 2007, Jackson did not receive the promotion she sought because her supervisor failed to give her a passing score on the initial assessment under

the employer's 2007 promotional system. Although Jackson claimed that the supervisor acted in retaliation for prior grievances she had filed against him, she failed to present

evidence that the supervisor knew about her grievances prior to giving her the failing grade. Therefore, the retaliation claim failed.

Professional Pointer

An employee's failure to meet the company's criteria at any point in the procedure can provide a nondiscriminatory reason for failing to promote an employee.

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