
Retaliation Charges

Sumitomo Shoji America, Inc. v. Avagliano, 457
US 176 - Supreme Court 1982

8-8-1964

Equal Employment Opportunity Commission Determination of R. Bellini's Charge

Lewis M. Steel '63



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

Rosemary Bellini
51 East 97th Street
New York, NY 10029

Charge No. 021-83-1381

Charging Party

Sumitomo Corporation of America
345 Park Avenue
New York, NY 10154

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met.

Charging Party alleges that she was harassed, and that she was denied promotion in retaliation for having filed a previous Title VII charge with this Commission, and for her persistence in pursuing her rights protected by Title VII of the Civil Rights Act of 1964, as amended.

Respondent denies the allegations.

Investigation reveals that Charging Party has been employed by Respondent since 1972. On February 28, 1977, she filed a sex and national origin discrimination charge with the Commission (charge no. 021-77-1361). She subsequently requested a Right-to-Sue letter to allow her to join a private action entitled Avagliano v. Sumitomo Shoji America, Inc. She is the only plaintiff from this action who is still employed by Respondent.

Charging Party alleges that because of the actions she had taken to protect her Title VII rights, she was not awarded the title of senior secretary until January 1982. She alleges that on December 29, 1982, after her lawsuit was reactivated in the District Court, her supervisor engaged her in a conversation about her suit and possible settlement in the absence of her attorney. She alleges that she was intimidated during the conversation. Respondent admits having a conversation with Charging Party about her Title VII case out of the presence of her attorney, but denies harassing her or pressuring her into resolving it through settlement.

Investigation shows that Respondent was aware that Charging Party had been represented by counsel, and her counsel's objection to any direct contacts with his clients concerning their case. Investigation further shows that Respondent attempted to find out from another Charging Party during a deposition how the class is paying for attorney fee.

It is undisputed that the December 29, 1982 conversation involving Charging Party and her supervisor was held in the absence of her attorney. Whether Respondent had instructed the supervisor to engage in such a conversation or not does not affect this Commission's decision, because Respondent would still be responsible, one way or the other, for the supervisor's conduct if it was found to be in violation of Title VII.

Contents of the conversation submitted by both parties were reviewed and considered. I conclude that, even judging from the information submitted by Respondent, there is reasonable cause to believe that Charging Party was intimidated by the conversation, especially by the remarks made by her supervisor concerning the great deal of money Respondent was spending on the lawsuit. I further conclude that Charging Party was intimidated by what could reasonably be construed as another attempt to seek information concerning the plaintiffs' financial ability and their attorney fee arrangement. Charging Party's response along these lines, and her subsequent gesture of her friendship to her supervisor, including a farewell visit and a gift, do not understate what she believes was an intimidating message delivered for Respondent to have her successfully settled her case. Accordingly, I conclude that there is reasonable cause to believe that the intimidation allegation is true.

It is undisputed that Charging Party was not among the six (6) senior secretaries promoted in January 1983. Respondent contends that Charging Party did not have the required two-year service as a senior secretary to qualify her for the promotion. It further states that she was not retaliated against because none of the senior secretaries promoted in 1983 had spent less than two years on the job. It also states that the selections for the promotion had been made prior to the December 29, 1982 conversation.

Examination of Respondent's records shows that the recommendations and the selections for the 1983 promotion had been made prior to Charging Party's December 29, 1982 conversation with her supervisor. However, prior promotion records covering the 1980 through the 1982 promotions show that there were at least four (4) senior secretaries promoted without having to meet the required two-year title seniority requirement. Respondent contends that this requirement was waived only in exceptional cases. The record, nevertheless, shows that in at least one instance the senior secretary promoted did not receive an evaluation normally considered outstanding to warrant a waiver. Although performance is described by Respondent as one of the many factors considered for promotion, it appears that it was at least a major factor.

The record shows that there were five employees who also had one year service as senior secretaries but who received the same or higher

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numerical scores than Charging Party in their December 1982 evaluations. The record shows that no waivers for the two-year title seniority requirement were granted in 1983, despite that one employee received a score as high as 92 in her evaluation. Examination of Charging Party's previous evaluations, including those given prior to her filing of her original charge, shows that she had never been given any evaluation with numerical score higher than 82. While some of the evaluations, especially those given shortly after she had filed her original charge, might have been acts of retaliation in themselves, her 1981 and 1982 evaluations appear to be consistent.

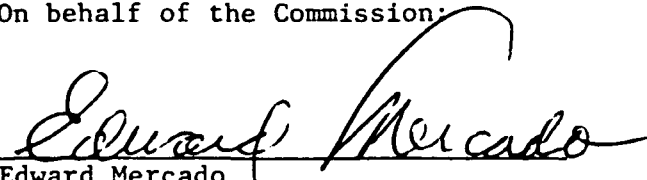
The record as a whole does not provide enough evidence to support either party's version in this matter, I therefore make no finding on the issue of promotion.

Having determined that there is reasonable cause to believe that the charge is true in part, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A "Notice of Conciliation Process" is enclosed for your information. A representative of this office will be in contact with each party in the near future to begin the conciliation process.

On behalf of the Commission:

AUG - 8 1984

Date


Edward Mercado
District Director

Enclosure:

Notice of Conciliation Process