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## Two Got Fired For Fighting But One Still Gets to Sue For Discrimination

by Dennis J. Merley - Wednesday, December 06, 2017

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Two co-workers – one African American and one Caucasian – both got fired for a verbal altercation at work yet the African American employee still gets to sue for race discrimination. How does that work?

Johnny, the African-American employee, got into a shouting match with Nick, the Caucasian co-worker, after Nick allegedly insulted then-President Obama and called Johnny “boy” one or more times. The exchange never got physical but the company, Transplace Freight Services, fired them both for breaching their core value of “Respecting the Individual.” At the time, Johnny was the only African-American employee working at that particular location.

### How Can Equal Treatment Be Discriminatory?

Johnny sued for race discrimination under Title VII of the Civil Rights Act of 1964 and the Arkansas Civil Rights Act claiming that he was the victim in the fracas, that the company had been looking for a chance to terminate him and that the decision to do so because of the fight was just a pretext for illegal race discrimination. The company brought a motion for summary judgment (early dismissal).

The district court judge found that Johnny easily met the first three of the four elements of the prima facie case needed to move forward, namely that he (1) is a member of a protected class, (2) he was meeting his employer’s legitimate expectations, and (3) he suffered an adverse employment action. The fourth element – that other similarly situated employees not within the protected class were treated differently – was also satisfied after Johnny presented evidence that several Caucasian employees involved in previous verbal altercations had not been fired.

With Johnny having carried his initial burden of proof, it fell to the company to offer a legitimate, non-discriminatory reason for the termination. They accomplished this by explaining that the altercation violated their core value and that both participants had been treated equally. Since two employees of different races were terminated for the same reason, how could one of them claim to be treated in a discriminatory manner?

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## Employer's Defense Doesn't Add Up

Johnny replied that he was not the aggressor but rather, the victim of a racially motivated attack by a White co-worker so the two employees were not actually guilty of the same offense. In addition, the company had never fired anyone for a verbal altercation so why did they all of a sudden start doing so when it involved the only African American employee on the premises?

Johnny essentially argued that the company just seized on this incident as a way to finally get rid of him because of his race. They should not be allowed to get off the hook for treating him more harshly than all the previous employees involved in verbal disputes just because they decided to sacrifice a White employee this time to make it look equal.

The court decided that Johnny had done enough to allow his claim to move forward to a full trial and they therefore [denied](#) the motion for dismissal. The judge explained that Johnny was not required to prove that racial discrimination was the one and only reason why he was fired. Instead, he just needed to show that his race was a motivating factor for the decision, even if there were other legitimate factors present as well. By presenting evidence that could discredit the company's stated reasons for their decision, he created "a reasonable inference of discriminatory animus" on the company's part and should be allowed to pursue the claim further.

This does not necessarily mean that the judge thought the case was a winner but rather, Johnny's case wasn't a sure-fire loser simply because two employees of different races were both fired for the same offense.

## Bottom Line

This is a very interesting analysis of what many of us would have thought was a simple non-issue of two employees being treated exactly the same. It is a good reminder that situations that seem simple may still pose very complex issues beneath the surface. As such, it is always a good idea to avoid quick decisions and to examine issues carefully from all perspectives before reaching a conclusion.

Since this case came from the federal district court in Arkansas, any appeal will be heard by the 8th Circuit, which covers Minnesota. Therefore, the analysis of this case could have a significant impact for Minnesota employers.