

"Same Actor" Rule Results in Dismissal of Race Discrimination Claim

by Dennis J. Merley - Tuesday, February 26, 2019



A recent federal court decision was a textbook example of why, when the same supervisor hires and fires a worker within a relatively short time frame, that worker is going to have a hard time proving that the supervisor was motivated by illegal discrimination.

Doug Jennings (Caucasian) hired Mathlon Pulliam (African American) to work under him in a newly created Analyst position at Loews Company. Unfortunately, things did not go well right from the beginning and Pulliam fell behind schedule in his most critical project. Jennings admonished Pulliam that he was too “hands off” with the project and needed to get more personally involved.

Same Actor Rule

Seven months into the project, and after consulting with a Human Resources Representative, Jennings fired Pulliam. Pulliam sued in federal court for race discrimination, but North Carolina Federal District Court Judge Frank Whitney dismissed the claim based primarily upon the “same actor” rule. The “same actor” rule provides that when the same company official does both the hiring and the firing, and they both occur within a relatively short period of time, there is a strong inference that the termination was not based on illegal motivation.

Here, Judge Whitney’s found the seven-month interval between hiring and firing to be short enough to allow the same actor rule to apply. The fact that Jennings consulted the human resource department prior to termination was not sufficient to undermine the same actor rule since that was done merely to obtain a “sounding board” and Jennings still was the person with

final authority to make the termination decision. (The judge also observed that the HR Rep was also African American, which would also weaken Pulliam's claim even in the absence of the same actor inference).

Is There An Exception to the Rule?

The judge cautioned, however, that the same actor rule is only an inference, and it can still be overcome with the presentation of evidence showing that the reason offered for termination is a pretext for illegal discrimination. In this regard, Pulliam offered up the following:

- On one occasion, Jennings made an offhand remark to Pulliam about Ebony Magazine, which is marketed to African Americans;
- Jennings frequently invited white colleagues to coffee or lunch and not him;
- When Pulliam was going to hire a friend for the project, Jennings hired him for another team; and
- A note from the HR Rep that the termination was “more about fit than performance.”

Judge Whitney concluded that this evidence was “far from egregious”, which is what is required to overcome the strong inference created by the same actor rule. The judge concluded that the Ebony Magazine remark and the note from the HR Rep were merely isolated statements of minimal value, while Jennings' failure to invite Pulliam to lunch merely showed that he did not (and was not legally required to) consider Pulliam to be his friend. Finally, even if the assertion about hiring away Pulliam's friend was true, it had no reasonable bearing on a claim of race discrimination.

Therefore, in the absence of any evidence approaching the high standard of proof needed to overcome the same actor rule, Pulliam's **claim was dismissed**.

Bottom Line

The same actor rule is a very effective defense but all the right elements have to be there. The same employer official has to have had final authority for both hiring and firing, the time frame at issue has to have been relatively short and there cannot have been any intervening act that might give rise to a strong inference of improper motive.

The employer in this case hit this trifecta and received a quick dismissal as a result.

