

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11135

RICHARD CASAREZ,

Plaintiff-Appellant,

v.

BURLINGTON NORTHERN/SANTA FE COMPANY,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Texas

January 14, 2000

ON PETITION FOR REHEARING AND REHEARING EN BANC

(Opinion 10/18/99, 5th Cir., _____, _____ F.3d _____)

Before JOLLY, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:

We have carefully examined Burlington's arguments in its request for rehearing and find nothing to undermine our previous determination that a fact issue exists with respect to whether a discriminatory motive underlay Casarez's termination. We find no merit in Burlington's arguments favoring judgment as a matter of law, as they overlook several salient facts. First, the company had advertised to replace Casarez even before the alleged deficiencies in his job performance arose. Second, he was the only

Hispanic employee working in this area. Third, he was assigned menial tasks rather than the supervisory duties he was accustomed to performing. Finally, with respect to the alleged altercation with co-workers at Zacha Junction, Lou Rees, Casarez's supervisor, never told Casarez that complaints had been made about him and never investigated the situation. It is clear that Casarez has met his burden under the first prong of Rhodes by creating a factual question as to what actually motivated Burlington to terminate his employment.

The Petition for Rehearing is DENIED and no member of this panel nor judge in regular active service on the court having requested that the court be polled on Rehearing En Banc, (FED.R. APP.P. and 5TH CIR. R. 35) the Petition for rehearing En Banc is also DENIED.