

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

August 15, 2023

Lyle W. Cayce  
Clerk

---

No. 22-40438

---

STAN KOZLOWSKI; JASON HALL; MIKE STALLINGS; JASON  
ROBERTS; KYLE JORDAN; JUSTIN MEADOR,

*Plaintiffs—Appellants,*

*versus*

WILLIAM BUCK, *individually and in his official capacity as Fire Chief for the  
Port of Houston Authority*; MARCUS WOODRING, *individually and in his  
official capacity as the Chief Port Security and Emergency Operations Officer for  
the Port of Houston Authority,*

*Defendants—Appellees.*

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 3:20-CV-365

---

Before GRAVES, HIGGINSON, and DOUGLAS, *Circuit Judges.*

PER CURIAM:\*

An investigation revealed that six firefighters harassed their  
colleagues, so their employer fired or suspended them. The firefighters  
allege that they were punished for more sinister reasons: retaliation for union-

---

\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

No. 22-40438

related speech and membership. But since they have not shown that they were disciplined because of their union activities, we AFFIRM.

## I.

Plaintiffs are firefighters who worked for the Port of Houston. Their tenure was mixed. At first, they rose through the ranks, received raises, and even helped change department policy. In 2015, for instance, the firefighters advocated with their union to modify the shift schedule. While the fire chief, William Buck, initially opposed the proposed shift change for safety reasons, the firefighters pressed on. These efforts paid off in October 2019 when Buck approved the shift change.

But beneath this veneer were serious allegations of misconduct. In March 2020, a subordinate, Robert Jones, accused the firefighters of harassment. He said the firefighters made derogatory remarks about an injury he sustained while in the military, asked him to “prove” it existed, and flashed their genitalia at him. To escape the bullying, Jones transferred to another department.

Another employee, Dennis Andrejczak, corroborated these allegations. He also revealed that the firefighters were hazing junior employees. In one instance, the firefighters coerced two subordinates to tape various objects to their head and groin, hold metal spoons, and stand on a boat while the firefighters mocked them. Both employees eventually quit, as did “[c]ountless” others over the years.

In response, Port Houston hired a third-party investigator. The investigator questioned the firefighters, some of whom confessed to facts supporting Jones’s allegations of harassment. She also interviewed many other witnesses, including Buck, who said the firefighters were a “cancer” to the department. In June 2020, the investigator reported her findings, noting that she found Jones to be credible and that many of his complaints were generally

No. 22-40438

corroborated by other witnesses. Less than a month later, Port Houston fired the worst offenders, and suspended two others.

The firefighters shot back, suing Buck and another fire department official in their official capacities under 42 U.S.C. § 1983. They claimed that Buck retaliated against them because of their union-related speech and membership, in violation of the First Amendment. The district court disagreed. It determined that the firefighters failed to show causation and granted summary judgment. They now appeal.

## II.

We review the grant of summary judgment *de novo* and draw every reasonable inference in the firefighters' favor. *Newbold v. Operator, L.L.C.*, 65 F.4th 175, 178 (5th Cir. 2023) (citation omitted). Summary judgment is appropriate if there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). We may affirm “on any ground raised below and supported by the record.” *Ballard v. Devon Energy Prod. Co., L.P.*, 678 F.3d 360, 365 (5th Cir. 2012) (citation omitted).

### A.

First Amendment retaliation claims are governed by a three-step framework. At step one, the employee must set forth a prima facie case for retaliation. *See Haverda v. Hays Cnty.*, 723 F.3d 586, 591–92 (5th Cir. 2013). Next, the employer must provide a “legitimate reason” for its conduct. *Coughlin v. Lee*, 946 F.2d 1152, 1157 (5th Cir. 1991) (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977)). Last, the employee may rebut this explanation by showing that it was pretextual. *See id.*

The elements of a prima facie case are “slightly different [] depending on whether a retaliation claim turns on a plaintiff’s union-related speech or

No. 22-40438

association.” *United Steel, Paper & Forestry, Rubber Mfg. v. Anderson*, 9 F.4th 328, 331 (5th Cir. 2021) (citing cases). Both claims, however, require proof of causation. *See id.* (citation omitted). That is, the speech or membership must be a “substantial or motivating factor” in the retaliation. *Haverda*, 723 F.3d at 591; *Hitt v. Connell*, 301 F.3d 240, 246 (5th Cir. 2002). Because this case turns on causation, we focus there.

To prove causation, employees have two options. First, they can show directly that defendants “possessed a retaliatory motive.” *Brady v. Houston Indep. Sch. Dist.*, 113 F.3d 1419, 1424 (5th Cir. 1997). Or they can allege indirectly a “chronology of events from which retaliation may plausibly be inferred.” *Butts v. Martin*, 877 F.3d 571, 588 (5th Cir. 2017) (citation omitted).

## B.

Relying solely on indirect evidence, the firefighters argue that the chronology supports an inference of retaliation. Their timeline is this:

- From 2015 to 2019, the firefighters advocated for the shift change;
- Buck opposed the change and reluctantly adopted it;
- To retaliate, he ordered Jones to encourage others to file a false complaint;
- When Port Houston hired an outside investigator, Buck directed that investigation and its result;
- And disciplined the firefighters in retaliation for their union activity.

But there are serious flaws with this chronology.

One is the timing. The firefighters were disciplined nine months after they ceased advocating for the shift change. That is not suspiciously close in time, *see Newbury v. City of Windcrest*, 991 F.3d 672, 679 (5th Cir. 2021), especially because they spent four years advocating for the change without

No. 22-40438

reprisal. *See Benfield v. Magee*, 945 F.3d 333, 338 (5th Cir. 2019) (declining to infer retaliation when the harassment “did not begin soon enough after” the speech).

There is also no pattern of antagonism. We may infer retaliation when there is a “pattern of hostility,” *Jordan v. Ector Cnty.*, 516 F.3d 290, 301 (5th Cir. 2008), or a “tight chain of events between the predicate events and alleged retaliatory acts.” *Petzold v. Rostollan*, 946 F.3d 242, 253 (5th Cir. 2019) (citation omitted). There are none here. Even though Buck knew about the firefighters’ advocacy, there is no indication he retaliated against them at all during this gap. *See Benfield*, 945 F.3d at 338. Instead, all evidence suggests the opposite: he continued to promote the firefighters and give them pay raises, even after the shift change. That is “utterly inconsistent” with an inference of retaliation. *Brady*, 113 F.3d at 1424; *cf. Jordan*, 516 F.3d at 300–01 (inferring retaliatory motive where, among other things, plaintiff did not receive a pay raise after the protected speech).

The story is the same for the firefighters’ union-membership claim. The discipline came years after they joined the union; for some, over a decade. That is “too remote” to suggest retaliation. *Benfield*, 945 F.3d at 338. And again, the record shows the reverse: Buck, a former union leader, had *encouraged* the firefighters to join the union when he had been a member.

The firefighters’ claims also lack proof. Only four are worth discussing. First, the firefighters imply that Buck enticed Jones to participate in his scheme by promising Jones a promotion. But the record does not show that Buck made any such promise. Consistent with this, Jones denied being offered a promotion, and Buck refused to promote him to a position for which he was not qualified. While Jones later testified that he “felt . . . used and manipulated” by Buck, his vague, conclusory assertions are not enough to

No. 22-40438

carry the firefighters' case. *See Doe v. William Marsh Rice Univ.*, 67 F.4th 702, 707 (5th Cir. 2023).

Second, the firefighters argue Buck ordered Jones to encourage a colleague to file a false harassment complaint. In support, they cite the declaration of Mike Stallings, a plaintiff. In it, Stallings alleges Buck told Jones he was “receptive” to a false harassment complaint; Jones relayed that message to a colleague; who then conveyed it to Stallings. This type of layered and unsubstantiated hearsay “cannot [] create a genuine issue of fact at summary judgment.” *Est. of Bonilla v. Orange Cnty.*, 982 F.3d 298, 311 n.2 (5th Cir. 2020). And it is inconsistent: the firefighters admitted to several of the allegations of harassment the harassment.

Third, the firefighters insist the investigation was a farce—an instrument of Buck's revenge. They point to several alleged defects in the investigatory process, but none rouse our suspicion. For instance, the firefighters insinuate that the investigator's decision to interview Buck was “inappropriate.” It was not. As chief, Buck was an obvious candidate for questioning. Nor was it unusual that the investigator tried to avoid “tip[ping] off” the firefighters to the investigation. These statements reflect the investigator's desire to maintain the integrity of the investigation. That supports the investigation's reliability, not impeaches it.

Finally, the firefighters point to Buck's comment to the investigator, referring to the firefighters as a “cancer” to the department. We make short work of this claim. For starters, nothing suggests this comment influenced the outcome of the investigation. Nor is there reason to believe it would: multiple employees substantiated the harassment, and the firefighters confessed to multiple instances of hazing. And there is no sign that Buck made this statement *because of* the firefighters' union-activity. In context, he

No. 22-40438

stated so while being questioned about the well-known allegations of harassment against the firefighters.

**III.**

The firefighters insist they were disciplined because of their union activities. But their claims rest on speculation and hearsay. Because that is not enough to establish a genuine dispute of material fact as to causation, we AFFIRM.