

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-5024
Summary Calendar

WILLIE D. MITCHELL,

Plaintiff-Appellant,

VERSUS

AERO ENERGY, INC., d/b/a
Aeropres,

Defendant,

and

AEROPRES CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(92 CV 98)

(March 11, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Willie Mitchell appeals the district court's grant of summary judgment in favor of Aeropres Corporation. Finding no genuine issue of material fact, we affirm.

I. FACTS

Aeropres Corporation (Aeropres) employed Willie Mitchell as

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

a truck driver transporting liquid petroleum gas from 1983 until February 6, 1991. In March 1990, while driving through Port Allen, Louisiana, Mitchell noticed another Aeropres truck parked on the side of the road. Mitchell pulled off the road and parked eight feet from the highway. He noticed the other driver talking with a third party. He entered a nearby convenience store and, by the time he returned to his truck, the other driver had pulled away. Unknown to Mitchell, the third party was an officer of the Louisiana Liquified Petroleum Gas Commission (LPG), who had just cited the other driver for violating Rule 3.22(b) of the Liquified Petroleum Gas Commission, which provides:

3.22 Parking of Tank Trucks

(b) Trucks shall be parked at least twenty-five (25) feet from any street, highway or railroad track.

The LPG officer approached Mitchell and cited him for the same violation as the other driver.

In May 1990, the LPG Commission sent two citations to Aeropres, directing Aeropres to show just cause why it should not be fined for Mitchell's and the other driver's violations of Rule 3.22(b). Aeropres, in turn, notified Mitchell and the other driver that, as a result of the violations, both would lose one quarter of their safety bonus, their entire yearly bonus, and would be responsible for paying any related penalties imposed by the LPG Commission.

Aeropres entered guilty pleas with the LPG Commission for both citations, and was subsequently fined \$150 for the other driver's citation, and \$200 for Mitchell's citation. Aeropres

then notified both drivers of their respective fines.² Mitchell failed to pay his fine.

In October 1990, Mitchell, through no fault of his own, was injured on the job and did not work for seven weeks. He attempted to work at various intervals throughout November and December, but ultimately decided on February 3, 1991, that he could no longer work because his pain was too great. Coincidentally, also in the first week of February, Aeropres received notice from the LPG Commission that the fine relating to Mitchell's violation remained unpaid, and it threatened to revoke Aeropres's permit to operate. Aeropres consulted with Mitchell and ultimately determined that his failure to pay the LPG Commission fine was inexcusable. Mitchell was terminated on February 6, 1991.

Mitchell then sued Aeropres, alleging that he was conspired against, harassed to pay a fine, wrongfully terminated, fraudulently deprived of his safety bonus, discriminated against (Mitchell is black) by having to pay a larger fine than the other driver (who is white), and that Aeropres should be ordered to abide by its group benefit plan. The district court found that Mitchell's only viable claim was his claim of discrimination, but that no genuine issue of material fact existed regarding that claim. Summary judgment in favor of Aeropres was granted. Mitchell appeals this order.

² The Commission later testified that the fifty dollar difference resulted from Mitchell arguing with the LPG officer.

II. STANDARD OF REVIEW

Summary judgment is appropriate if the record discloses "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In reviewing the summary judgment, we apply the same standard of review as did the district court. Waltman v. International Paper Co., 875 F.2d 468, 474 (5th Cir. 1989); Moore v. Mississippi Valley State Univ., 871 F.2d 545, 548 (5th Cir. 1989). If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); see Boeing Co. v. Shipman, 411 F.2d 365, 374-75 (5th Cir. 1969) (en banc).

III. ANALYSIS

Our review of the record reveals no evidence of a conspiracy against Mitchell, harassment, wrongful termination, fraudulent deprivation of his safety bonus, or that Aeropres failed to abide by its group benefit plan.

Regarding Mitchell's charge that Aeropres discriminated against him because his fine was fifty dollars more than the other driver's fine, we note that to establish a prima facie case of disparate treatment, an employee must show that he was a member of a protected class, an adverse employment decision was made against him, and he was treated less favorably than an employee outside the protected class. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

Mitchell has not shown that he was treated less favorably by Aeropres than the other driver. The LPG Commission, not Aeropres, determined the amount of the fine imposed upon Mitchell. Furthermore, Mitchell and the other driver were both informed by Aeropres of their obligation to pay the fines. Mitchell was terminated because he failed to pay his fine; the other driver was not terminated because he did pay his fine. In sum, no issue of fact exists regarding whether Mitchell and the other driver were treated equally by Aeropres, they were. Summary judgment on this issue is proper.

IV. CONCLUSION

For the foregoing reasons, the district court's grant of summary judgment in favor of Aeropres is AFFIRMED.