

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-5221  
Conference Calendar

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WALLACE A. THIBODEAUX,

Plaintiff-Appellant,

versus

LAMAR UNIVERSITY,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:91-CV-941

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August 17, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Wallace A. Thibodeaux, a former employee of Lamar University, filed a lawsuit against the University under the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq., alleging that the University had fired him because he was over sixty years of age. Thibodeaux contends that the district court erred by concluding that he had not established a prima facie case of age discrimination, and that he had not proved that the University's non-discriminatory reasons for

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

terminating his employment were pretextual.

The district court's conclusions, following a bench trial, are reviewed on appeal for clear error, and will not be disturbed unless this Court is "left with the definite and firm conviction that a mistake has been committed." Knight v. City of Bogalusa, La., 717 F.2d 249, 251 (5th Cir. 1983) (internal quotations and citations omitted); Fed. R. Civ. P. 52(a). In cases where, as here, there was a trial on the merits, this Court need not address whether the plaintiff established a prima facie case of age discrimination, but "may instead proceed directly to the ultimate question whether plaintiff has produced sufficient evidence for a jury to find that discrimination has occurred." Walther v. Lone Star Gas Co., 952 F.2d 119, 122-23 (5th Cir. 1992) (citation omitted).

Lamar University offered a legitimate, non-discriminatory explanation for Thibodeaux's discharge. The University offered testimony that Thibodeaux was discharged because: he refused to wear a pager while on the job, he left campus without notifying his superiors, he abused sick leave, and he was insubordinate. Dr. William Nylin, former vice president of personnel and computer services, testified as to the University's official policy regarding the possibility of immediate termination for insolence, insubordination, and unauthorized and inexcusable absences.

The burden then shifted to Thibodeaux to demonstrate that a discriminatory motive more than likely motivated the University to fire him, or to demonstrate that the University's proffered

reasons were unworthy of credence. Walther, 952 F.2d at 123 (citations omitted). The only evidence Thibodeaux offered to prove that the above-stated reasons were pretextual is his own testimony concerning a June 1989 meeting where, according to Thibodeaux, the University's director of communications Brad Wilcox allegedly raised the issue of early retirement in order to force Thibodeaux out of the department. Thibodeaux testified that it was Wilcox's stated desire to replace him with a younger man whom they could train to repair computers.

Wilcox, however, testified that it was Thibodeaux who broached the subject of medical retirement, and Russell Best, Thibodeaux's immediate supervisor who was also present at the June 1989 meeting, testified that Thibodeaux's age was never discussed at that meeting. Best further testified that it was Thibodeaux who initially raised the issue of medical retirement. Dr. Nylin also testified that it was his understanding that Thibodeaux had initiated discussions regarding the possibility of medical retirement, and that Thibodeaux made no mention to him regarding Wilcox's alleged references to the need to hire younger employees. The district court was entitled to credit the defendants' witnesses over the testimony of Thibodeaux.

Additionally, there is further evidence in the record to support the district court's decision and, based on such evidence, a rational trier of fact could have concluded that there was no discrimination in Thibodeaux's discharge. See Walther, 952 F.2d at 125. The district court's decision is AFFIRMED.