

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1796
Summary Calendar

JANET WYATT,

Plaintiff-Appellant,

v.

MARVIN RUNYON, POSTMASTER GENERAL,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:87-CV-2398-T)

(September 26, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM*:

This appeal concerns a case of alleged employment discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16. The plaintiff, Janet Wyatt ("Wyatt"), alleges that she was illegally discharged from her employment with the United States Postal Service ("Postal Service") on the basis of sex and physical handicap. An administrative law judge ("ALJ") of the Equal Employment

*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 the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

Opportunity Commission ("EEOC") recommended a finding of sexual discrimination. In a final decision letter issued September 9, 1987, however, the Postal Service refused to concur in the ALJ's finding. Wyatt then filed a timely civil action in the district court alleging sexual discrimination.¹ Following a bench trial on the merits, the district court entered judgment for the Postal Service on grounds that Wyatt had failed to establish that her sex played any role in her termination. Wyatt filed a timely notice of appeal, contending that the district court relied upon an inaccurate statement of the law. We affirm.

I. BACKGROUND

A. *Factual Background.*

Wyatt was hired as a part-time flexible letter carrier in Richardson, Texas, beginning February 1, 1986. As with all such new postal employees, Wyatt was required to serve a ninety-day probationary period, during which she was considered an at-will employee and was evaluated for compliance with Postal Service competency standards.

During her probationary period, Wyatt's supervisor, Frank Lawrence ("Lawrence"), reviewed Wyatt's performance three times: at the end of thirty, sixty, and eighty days. In her thirty-day evaluation, Wyatt received unfavorable ratings on two out of five standardized criteria, including "task performance," a category

¹ Wyatt did not present the question of discrimination based upon physical handicap in the district court.

which encompasses proficiency in "casing" (i.e., sorting) the mail. Lawrence noted on this evaluation that Wyatt was particularly slow in casing the mail.

On March 22, 1986, Wyatt suffered an on-the-job injury when she slipped and fell while delivering the mail. As a result of this accident, Wyatt was completely unable to work until April 6, 1986, at which time she was placed in a light-duty position which primarily involved casing mail.

On March 31, 1986, prior to Wyatt's return to work, Lawrence completed the sixty-day evaluation. In this evaluation, Wyatt received unfavorable ratings in three of five categories, including task performance. Lawrence again noted that Wyatt had not achieved the required level of proficiency in sorting mail.

In her third evaluation, conducted April 28, 1986, Wyatt did not fare any better, being cited as deficient in three of five categories, including task performance. This evaluation was based in part on informal monitoring conducted by fellow employees, who found that Wyatt was able to case only eight to ten letters per minute-- far less than the eighteen per minute standard. Following these evaluations, Lawrence rated Wyatt's overall performance unsatisfactory and recommended that she be discharged. This recommendation was approved by the Postmaster at the Richardson, Texas, facility and Wyatt's employment was terminated on April 28, 1986.

B. Allegations of Sexual Discrimination.

Wyatt and another discharged female probationary employee, Myrna Alberson, testified that Lawrence often referred to female employees as "girl," "gal," or "girlie," and made derogatory remarks such as "women can't read maps," and "women can't carry mail." Lawrence admitted referring to female employees as "girl," "gal," or "girlie," but denied making derogatory remarks regarding a woman's ability to read maps or carry mail.

The district court entered findings of fact which included, inter alia, a determination that Wyatt's deficiency in casing mail was the reason for her termination and that Wyatt was treated no differently from similarly situated employees. As a result of these factual findings, the district court concluded, as a matter of law, that Wyatt could "succeed on the merits of her claims only if she can prove that the Defendant intentionally discriminated against her because of her sex," and that such discriminatory animus could be proved by either direct or indirect evidence. The district court further concluded that "*Wyatt must do more than show that Defendant's explanation for its action is untrue, she must establish that the proffered reasons are a pretext for discrimination.*" (citing Texas Dep't of Community Affairs v. Burdine, 453 U.S. 248, 253 (1981)). It is this italicized portion of the district court's conclusions that Wyatt now claims is an erroneous statement of the law.

II. STANDARD OF REVIEW

Wyatt's sole argument on appeal is that the district court erred in concluding that she must do more than simply prove that the Postal Service's explanation for her discharge was untrue. Specifically, she challenges the district court's conclusion that she must prove that the Postal Service's justification for her discharge was a pretext for discrimination. It is well settled that a district court's conclusions of law are reviewed on appeal de novo. First Gibraltar Bank, FSB v. Morales, 19 F.3d 1032, 1035-36 (5th Cir. 1994); Moham v. Steego Corp., 3 F.3d 873, 876 (5th Cir. 1993), cert. denied, 114 S. Ct. 1307 (1994). We therefore have plenary power to reverse a district court's erroneous conclusions of law.

III. ANALYSIS

Applying de novo review to the question of law at hand, we conclude that Wyatt's claim is without merit. The Supreme Court recently addressed this precise issue in St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742 (1993), and concluded that a court may not hold an employer liable for alleged discriminatory practices "unless an appropriate factfinder determines, according to proper procedures, *that the employer has unlawfully discriminated.*" Id. at 2751. Thus, even if a plaintiff can prove that the employer's proffered justification is false, the plaintiff still bears the ultimate burden of persuading the trier of fact that the

employer's action was the result of discriminatory animus. In the words of the Supreme Court,

The defendant's "production" (whatever its persuasive effect) having been made, the trier of fact proceeds to decide the ultimate question: whether plaintiff has proven "that the defendant intentionally discriminated against [him]" [N]othing in law would permit us to substitute for the required finding that the employer's action was the product of unlawful discrimination, the much different (and much lesser) finding that the employer's explanation of its action was not believable. . . . It is not enough, in other words, to *disbelieve* the employer; the factfinder must *believe* the plaintiff's explanation of intentional discrimination.

Id. at 2749, 2751, 2754 (quoting Burdine, 450 U.S. at 253.).

Thus, under the rule of St. Mary's, Wyatt cannot be relieved of her burden of proving discriminatory animus by merely proving the Postal Service discharged her for something other than deficient performance. Bodenheimer v. PPG Indus., Inc., 5 F.3d 955, 957 (5th Cir. 1993); Moham, 3 F.3d at 875. That an employer's proffered justification proves to be untrue is, of course, of some probative value in determining whether discriminatory animus was present, but it is not dispositive. St. Mary's, 113 S. Ct. at 2749. But mere negation of an employer's proffered justification, without further proof of discriminatory animus, is insufficient to sustain a claim of disparate treatment under Title VII. It was therefore not error for the district court to find, as a matter of law, that Wyatt, in order to prevail, was required to prove the Postal Service's justification was pretext for discrimination based on sex.

The judgment of the district court is accordingly AFFIRMED.

