

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9183
Summary Calendar

SHIRLEY C. MILLER,

Plaintiff-Appellant,

versus

ORYX ENERGY CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Texas
(3:92 CV 1795 G)

(November 25, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant Shirley Miller contests the district court's rendition of summary judgment against her age discrimination claim. Miller was involuntarily terminated as part of Oryx's significant reduction in force in 1991 after having worked there for over 32 years. At the time of Miller's discharge, she was 54 years old,

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

while the man who assumed some of her duties, Tom Holland, was then about 51.

We affirm the court's summary judgment for essentially the reasons set out in its thorough and conscientious opinion. We add only a couple of additional comments.

Miller misinterprets the decision in Walther v. Lone Star Gas Co., 952 F.2d 119 (5th Cir. 1992) reh'g, en banc, denied, 977 F.2d 161, in suggesting that her proffered statistical evidence supports a jury issue on intentional discrimination. Walther went out of its way to urge district courts carefully to evaluate the relevance of statistical evidence in Title VII disparate treatment cases. In this case, Miller relied on company-wide statistics that were of no probative value because the reduction in force was handled by Oryx on a department-by-department basis. See Walther, supra.

Further, Miller's statistical evidence concerning her department improperly considered all terminations, both voluntary and involuntary, that occurred as a result of the RIF. Her own expert Dr. Schucany admitted on cross-examination that when the voluntary terminations were eliminated, there was no statistically significant evidence of age discrimination. For these reasons, in addition to those reasons offered by the district court, the district court did not abuse its discretion in refusing to consider Miller's statistical evidence.

Additionally, having considered the course and amount of discovery in this case, we are unable to conclude that the district

court abused its discretion in denying Miller's Rule 56(f) motion for a continuance for further discovery. Miller took a number of depositions and offered what even she describes as "overwhelming" statistical evidence. She was not unfairly deprived of an opportunity to generate sufficient evidence to withstand summary judgment.

The judgment of the district court is therefore AFFIRMED.