

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-20517
Summary Calendar

HERMAN R. JESSIE,

Plaintiff-Appellant,

versus

MARVIN T. RUNYAN, JR., Postmaster General, ET AL.,

Defendants,

VERSUS

MARVIN T. RUNYAN, JR. Postmaster General and
UNITED STATES POSTAL SERVICE, Southern Region,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-3399)

(April 17, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:¹

Jessie appeals the district court's order dismissing his Title VII action against the United States Postal Service for discriminatory personnel action based upon race. We affirm.

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Jessie was removed from employment with the U.S. Postal Service in August 1991. The removal letter charged Jessie with improper conduct, creating a hostile work environment, aggravated sexual harassment and unsatisfactory work performance. Specifically, a number of female Postal Service employees had complained that Jessie had sexually harassed them.

Jessie filed a formal complaint with the EEOC, alleging racial and sex discrimination and retaliation. The EEOC denied the complaint. Jessie appealed to the Merit Systems Protection Board ("MSPB"), which affirmed the removal. Jessie then sought review of the MSPB decision by the EEOC, which rendered an adverse decision. Jessie also filed a grievance through the labor collective bargaining agreement grievance/arbitration procedure. After a hearing, the arbitrator concluded that just cause did not exist for removal. However, the arbitrator determined that Jessie's conduct warranted a one-year disciplinary suspension and ordered that Jessie be returned to service with no back pay.

Jessie filed this Title VII action in district court against the Postal Service and a number of officials, alleging that he was discharged because of race. The defendants filed motions for summary judgment asserting that Jessie was removed from employment because of improper conduct towards and sexual harassment of a number of female employees. The district court granted the defendants' motion for summary judgment, and this appeal followed.

We, of course, review a grant of summary judgment de novo, applying the same standard as the district court. **Bodenheimer v.**

PPG Indus., 5 F.3d 955, 956 (5th Cir. 1993). Summary judgment is proper where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). In a Title VII case such as this, once the defendants proffer a legitimate, nondiscriminatory reason for the adverse employment decision, the employee bears the burden of showing that the explanation is a pretext for discrimination. **EEOC v. Louisiana Office of Community Servs.**, 1995 WL 93892, at *4 (5th Cir. March 23, 1995). A plaintiff cannot show that an employer's explanation is pretextual "without countervailing evidence that it was not the real reason for the discharge." **Id.**

The summary judgment evidence reveals that after an initial complaint by a female employee concerning Jessie, the Postal Service interviewed twenty-three employees, ten of whom described harassment by Jessie. These employees described incidents in which Jessie touched them inappropriately, persistently asked them out on dates, tried to kiss them, and otherwise made them feel uncomfortable. At least one woman stated that she was afraid of Jessie. Moreover, in the MSPB proceeding, Jessie stipulated to the merits of the Postal Service's charges against him. Thus, the summary judgment evidence is uncontradicted that Jessie had harassed female co-workers.

Jessie nevertheless contends that the real reason for his discharge was race, arguing that other, non-black, employees accused of similar misconduct had not been discharged. However, Jessie produced no summary judgment evidence to support this

argument, other than his subjective belief that the real reason for his discharge was race. A conclusory allegation that an adverse employment action was taken because of race, without more, cannot support a Title VII case. **See Portis v. First Nat'l Bank of New Albany, Miss.**, 34 F.3d 325, 329 (5th Cir. 1994). The district court did not err in dismissing Jessie's Title VII complaint.

AFFIRMED.