IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-50710

CLEO GONZALES,

Plaintiff-Appellant,

versus

I.T.T. CONSUMER FINANCIAL CORPORATION, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court for the Western District of Texas
(SA-92-CA-749)

October 27, 1995

Before REAVLEY, JOLLY, and WIENER, Circuit Judges.

PER CURIAM:[*]

The district court found, and we agree, that the plaintiff, Cleo Gonzales, failed to produce evidence that she was laid off while younger, less qualified employees were retained and transferred to positions similar to hers. Her deposition testimony made clear that, at the time of the RIF, she was in a position with much greater responsibilities than the secretarial positions that

---

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

she alleges were not offered to her. Gonzales stated in her deposition that the secretarial position "wasn't similar to [hers] at all," yet she urges precisely what this Court rejected in Walther v. Lone Star Gas Co., 952 F.2d 119 (5th Cir. 1992)--a bumping policy, whereby older employees caught in a RIF would have the right to return to previously-held jobs still available, merely because of their age. We have rejected the adoption of such a rule.

Gonzales might still have survived summary judgment, had she come forward with some evidence from which a reasonable juror could have concluded that I.T.T. intended to discriminate in reaching its decision to terminate her. In this regard, she submitted statistical evidence showing that four out of the five employees in her office who were over age forty were terminated. The district court found, however, and we agree, that this "evidence" was not properly authenticated, and was inadmissible for summary judgment purposes. The district court further found--and we again agree--that, even if admissible, the statistical "evidence" was legally insufficient to create a material issue of fact on the issue of age discrimination. See, e.g., Turner v. Texas Instruments, 555 F.2d 1251, 1257 (5th Cir. 1977), overruled on other grounds, Burdine v. Texas Dept. of Community Affairs, 647 F.2d 513, 514 n.3 (5th Cir. 1981) (noting, in case involving statistical comparison utilizing eight employees, that "the sample upon which the trial court relied was far too small even to be statistically significant, much less

sufficiently clear to have probative significance."). Because Gonzales made no attempt to show what percentage of those individuals not in the protected age group were terminated (during a reduction in force in which 5,000 employees--or ninety-one percent of the I.T.T.'s workforce--were terminated), her statistics have little or no probative value, and the district court correctly held that this evidence did not create an issue of material fact.

In sum, the evidence adduced by the parties in this case points to only one reasonable conclusion--that Gonzales, like most of her co-workers, was terminated by I.T.T. because of a massive reduction in force. Gonzales has produced no evidence to support her age discrimination claim, and we therefore AFFIRM the district court's judgment in favor of I.T.T.

A F F I R M E D.