

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-50080

ANNIE L. WHITLEY,

Plaintiff-Appellant,

VERSUS

CAPITAL METROPOLITAN TRANSIT AUTHORITY, STARTRAN, INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas
(A-97-CV-674-SC)

December 14, 1999

Before POLITZ, GARWOOD and DAVIS, Circuit Judges.

PER CURIAM:*

Annie L. Whitley, a black female, challenges the district court's order dismissing her Title VII action against her employer, Capital Metropolitan Transit. Appellant argues that a factfinder could infer from the summary judgment evidence presented that the employer applied the "changeout" rule against her in a discriminatory fashion. Our review of the record persuades us that fact issues were presented as to whether the work rule at issue was applied to Whitley in a discriminatory fashion and whether her discharge was related to this application of the work rule.

Because fact issues are presented, the district court erred in

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

granting summary judgment. The order of the district court is therefore vacated and the case is remanded for further proceedings.

VACATED and REMANDED.