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Common Sense: If Only It Could Be As Simple As That

By Moyenda M. Knapp

A recent case from a federal appellate court serves as a good reminder that when it comes to determining whether discrimination may have occurred, even judges will set aside the complex legal frameworks that have developed to apply simple common sense.

The case, [Miller v. St. Joseph County](#), involved Michael Miller, who sued St. Joseph County (in Indiana) alleging racial discrimination. Miller was a sergeant in the detective division of the police department. He had run against and lost to Michael Grzegorek for sheriff. After his loss, Miller asked Grzegorek if he could be appointed to either police department assistant chief or jail warden. Grzegorek instead appointed a previous sheriff to the assistant chief position and kept the current warden in place.

In addition, following the election, Miller was either directed or asked to work in the property room by the head of the detective bureau, who Grzegorek had appointed. Miller complained and was offered another position in a different unit, which he declined. Once he finished the assignment in the property room, he returned to his regular job duties. At no time did he suffer a change in rank, pay, or benefits. Finally, Miller complained that he was not asked whether he was interested in the vacant police department captain and lieutenant positions. Both positions were ranked higher than his position of sergeant.

The district court granted summary judgment to the county, and Miller appealed.

On appeal, the United States Court of Appeal for the Seventh

Circuit (covering Illinois, Indiana, and Wisconsin) affirmed the district court's judgment, but in doing so, the judges issuing the opinion noted their agreement with and desire for a more simplified approach to employment discrimination cases. Typically, as any human resources professional who has read enough legal briefs from their outside counsel can tell you, courts determining whether to award summary judgment to a party (and thereby avoid a trial) will apply a burden-shifting framework that requires the employee and the employer to, depending on the step of the process, put forward certain evidence or explanations for why something happened. The framework is based on Supreme Court case law, so it is binding in the Seventh Circuit, as well as other federal courts. The process has, as most legal processes do over time, grown increasingly complex and formulaic, and it has from time to time been criticized by the judges who have to apply it.

In *Miller*, the three judge panel expressed their desire to move away from that approach and apply a simpler, more common-sense-based standard: That in order for a plaintiff to defeat summary judgment, the plaintiff has to present evidence that he or she is a member of a protected class and that a rational jury could reach the conclusion that the employer took the adverse action against the plaintiff because of the plaintiff's protected class and "not for any non-invidious reason." In other words, at the end of the day, has the plaintiff presented evidence that could allow a jury to find that discrimination occurred?

In *Miller's* case, he met the two prongs of the simpler test in that he was African American and he had suffered adverse actions in that he was denied the promotions that he requested. However, *Miller* failed to present any evidence of racial slurs, racial hostility, or evidence of the racial composition of the police department or county. In addition, he was less qualified for the police department chief and jail warden positions than the persons who were appointed. There was also no evidence that race played a factor in his assuming the property room job. Moreover, he was offered a reassignment to another job and declined. As for the captain and lieutenant positions, there was no evidence that he did not know about the positions; and if he did know about them, he did not ask to be appointed to them. Nor was there any evidence that his failure to get these positions was due to his race. Finally, at no time was his rank, pay, or benefits changed.

Miller is a reminder that even though courts must apply the frameworks that they are required to apply, the ultimate question for judges deciding cases is often simpler and more grounded in common sense. Although the burden-shifting framework still applies, at the end of the day, the "big picture" question is: Could a "rational jury" decide that there was discrimination? It is a common-sense question that can get lost in legal minutiae, but for employers everywhere (especially in the Seventh Circuit), it is one they should not forget when considering whether to ask the court to grant them judgment in place of trial in a discrimination case.

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