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Court 6-3 Eases Tasks of Plaintiffs in Job-Bias Suits

Linda Greenhouse

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New York: Today: Showers ending and clouds breaking. High 66. Tonight, partly cloudy. Low 50. Tomorrow, sun then increasing clouds. High 64. Yesterday: High 58, low 51. Details, page C13.

High Court Puts Burden of Proof On Employers in Job-Bias Cases

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today almost exclusively to the technical and elusive issues of legal standards and burdens of proof. But these technical rules often are the ones that determine the outcome of lawsuits.

Lawyers representing women's groups said the decision was a victory because the question of which side in a lawsuit has the legal burden of proof is often crucial.

That is particularly so in the category of discrimination cases represented by this case, in which there is some evidence that the employer based an adverse decision on some reasons that may be legitimate and on some that may be illegal.

The question for the Supreme Court was which side in such a mixed motive

Plaintiffs will have an easier road in a broad range of lawsuits.

case has the legal responsibility of showing that the adverse decision would have been different in the absence of the illegal discrimination.

Technical but Crucial

The burden of proof may be an impenetrable barrier to a plaintiff who possesses some evidence of discrimination but who, lacking access to the full range of factors that went into the company's decision-making, may not be able to meet the legal burden of showing that the discrimination was the key factor.

Lower courts around the country have been split on the question of which side should have the burden of proof in a mixed motive case under Title VII of the Civil Rights Act of 1964. That law prohibits employment discrimination based on sex, race and religion. Another Federal law, the Age Discrimination in Employment Act, uses the procedures of Title VII and is also affected by the ruling today.

In a concurring opinion today, Justice O'Connor said there was "mounting evidence" from lower-court cases that plaintiffs were losing meritorious job discrimination cases because they could not meet the burden of proof placed upon them.

Justice O'Connor said: "Particularly in the context of the professional world, where decisions are often made by collegial bodies on the basis of largely subjective criteria, requiring the plaintiff to prove that any one factor was the definitive cause of the decision-makers' action may be tantamount to declaring Title VII inapplicable to such decisions."

Plaintiff Has Left Firm

According to the trial record, Ms. Hopkins was the only woman among 88 candidates for partnership at Price Waterhouse in 1982, when her name was proposed. She had brought more business to the firm than any of the other candidates. Some partners praised her, but others criticized her as lacking "interpersonal skills," one described her as "macho" and another said she "overcompensated for being a woman."

Ms. Hopkins left Price Waterhouse and now works at the World Bank here.

The firm, which now has 24 women among its 898 partners, said in a statement that it was "gratified" it would have a chance to prove its defense by the "preponderance of the evidence" standard. The firm said it was confident it would be able to persuade the lower courts that Ms. Hopkins "was denied partnership for legitimate reasons."

Reflecting the complexities of the case and the many questions involved, there was no single majority opinion for the Court in Price Waterhouse v. Hopkins, No. 87-1167.

Justice Brennan wrote an opinion for himself and Justices Marshall, Blackmun and Stevens. Justice O'Connor wrote a separate concurring opinion, as did Justice White.

Differing on Burden

While there were numerous subtle differences, Justices O'Connor and White differed from the other four in the majority principally in the initial burden that they placed on a plaintiff in an employment discrimination case. They said that in order to go forward with a Title VII lawsuit, the plaintiff had to show that discrimination was at least a "substantial" factor in the adverse decision; the employer then must prove that the adverse decision would have been made in any event.

Justice Brennan's opinion said a plaintiff would have the somewhat less onerous task of showing initially that discrimination was a "motivating factor" in the adverse action.

Justice Kennedy's dissenting opinion, joined by Chief Justice Rehnquist and Justice Scalia, said that the Court had needlessly made Title VII more confusing.

COURT 6-3, EASES TASK OF PLAINTIFFS IN JOB-BIAS SUITS

ISSUE IS BURDEN OF PROOF

Employer in Many Cases Must Justify Decisions About Hiring and Promoting

By LINDA GREENHOUSE

Special to The New York Times

WASHINGTON, May 1 — The Supreme Court, ruling in a significant job discrimination case, today made it easier for plaintiffs to prevail in many lawsuits based on sex, race and age discrimination in employment.

The Court ruled, 6 to 3, that an employer has the legal burden of proving that its refusal to hire or promote someone is based on legitimate and not discriminatory reasons.

The decision, in a case concerning the failure of the Price Waterhouse accounting firm to promote a woman to partnership, rejected the firm's argument that the woman should be required to prove that it was sex discrimination, and not legitimate judgments on her managerial ability, that cost her the position.

Were Comments Relevant?

Further, the Court said evidence that a woman was judged by her male supervisors on the basis of stereotyped notions of appropriate female appearance and behavior can establish the existence of illegal discrimination. Price Waterhouse had disputed the legal relevance of comments by male partners to the woman, Ann B. Hopkins, that she should go to "charm school," dress "more femininely" and wear makeup and jewelry.

Voting for the plaintiff were Justices William J. Brennan Jr., Thurgood Marshall, Harry A. Blackmun, John Paul Stevens, Sandra Day O'Connor and Byron R. White. Justice Anthony M. Kennedy filed a dissenting opinion, joined by Chief Justice William H. Rehnquist and Justice Antonin Scalia.

Defendant Wins a Point

Price Waterhouse did prevail on one significant aspect of the case. The Court ruled that the firm has to show only by "a preponderance of the evidence" that its reasons for denying the partnership were legitimate. That standard of proof, the least onerous and most commonly used standard in civil cases, means that a court must be satisfied that the firm's reasons were "more likely than not" legitimate.

The United States Court of Appeals for the District of Columbia Circuit, had ruled for Ms. Hopkins. It applied a more rigorous standard to Price Waterhouse's evidence, requiring "clear and convincing" proof that its reasons were legitimate. The Supreme Court overturned that ruling and directed the appeals court to consider the case again using the lesser standard.

The Supreme Court addressed itself

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