

CHAPTER 2

INTENTIONAL DISCRIMINATION

I. THE TRIPARTITE ANALYSIS

Easily the most well-known area of employment discrimination law is the tripartite or three-part analysis of intentional discrimination cases involving circumstantial evidence. The problem in these cases is a rather simple one and appears not just in discrimination law, but in many other facets of law. How to prove frame of mind when, if guilty, the actor will probably deny any illegal motive and fabricate a legitimate motive for acting? The Supreme Court devised an analytical scheme that even relatively inexperienced practitioners can recite in their sleep:

The complainant must present a *prima facie* case of discrimination;

The employer must then articulate a legitimate, nondiscriminatory reason; and

The complainant must be given a full and fair opportunity to demonstrate pretext.

The analysis and burdens of proof were flushed out in three cases—*McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973); *Furnco Construction Corporation v. Waters*, 438 U.S. 567, 98 S. Ct. 2943 (1978); and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 228, 109 S. Ct. 1089 (1981).

The facts of *McDonnell Douglas*, recounted in more detail in the opinion below, were that Mr. Green, a black mechanic, was laid off in a general reduction-in-force. While out of work, he engaged in certain civil rights activities directed against McDonnell Douglas by the Congress of Racial Equality, most notably a “stall-in” and a “lock out,” at McDonnell’s St. Louis plant. When the company started to rehire mechanics, Mr. Green applied and was not hired, although the company continued to seek applicants with Mr. Green’s qualifications. Mr. Green pointed to this evidence to maintain that he was not rehired because of his color. McDonnell Douglas asserted that he was not rehired because of his activities on behalf of the CRE. With those dueling contentions, the Supreme Court addressed the appropriate analysis in cases of intentional discrimination under Title VII.

McDonnell Douglas Corporation v. Green,
411 U.S. 792, 93 S. Ct. 1817 (1973)

Mr. Justice POWELL delivered the opinion of the Court.

The case before us raises significant questions as to the proper order and nature of proof in actions under Title VII of the Civil Rights Act of 1964, 78 Stat. 253, 42 U.S.C. 2000e et seq.

Petitioner, McDonnell Douglas Corp., is an aerospace and aircraft manufacturer headquartered in St. Louis, Missouri, where it employs over 30,000 people. Respondent, a black citizen of St. Louis, worked for petitioner as a mechanic and laboratory technician from 1956 until August 28, 1964 when he was laid off in the course of a general reduction in petitioner's work force.

Respondent, a long-time activist in the civil rights movement, protested vigorously that his discharge and the general hiring practices of petitioner were racially motivated. As part of this protest, respondent and other members of the Congress on Racial Equality illegally stalled their cars on the main roads leading to petitioner's plant for the purpose of blocking access to it at the time of the morning shift change. The District Judge described the plan for, and respondent's participation in, the "stall-in" as follows:

"(F)ive teams, each consisting of four cars would 'tie up' five main access roads into McDonnell at the time of the morning rush hour. The drivers of the cars were instructed to line up next to each other completely blocking the intersections or roads. The drivers were also instructed to stop their cars, turn off the engines, pull the emergency brake, raise all windows, lock the doors, and remain in their cars until the police arrived. The plan was to have the cars remain in position for one hour."

"Acting under the 'stall in' plan, plaintiff (respondent in the present action) drove his car onto Brown Road, a McDonnell access road, at approximately 7:00 a.m., at the start of the morning rush hour. Plaintiff was aware of the traffic problems that would result. He stopped his car with the intent to block traffic. The police arrived shortly and requested plaintiff to move his car. He refused to move his car voluntarily. Plaintiff's car was towed away by the police, and he was arrested for obstructing traffic. Plaintiff pleaded guilty to the charge of obstructing traffic and was fined." 318 F. Supp. 846

On July 2, 1965, a "lock-in" took place wherein a chain and padlock were placed on the front door of a building to prevent the occupants, certain of petitioner's employees, from leaving. Though respondent apparently knew beforehand of the "lock-in," the full extent of his involvement remains uncertain.

Some three weeks following the "lock-in," on July 25, 1965, petitioner publicly advertised for qualified mechanics, respondent's trade, and

respondent promptly applied for re-employment. Petitioner turned down respondent, basing its rejection on respondent's participation in the "stall-in" and "lock-in." Shortly thereafter, respondent filed a formal complaint with the Equal Employment Opportunity Commission, claiming that petitioner had refused to rehire him because of his race and persistent involvement in the civil rights movement, in violation of sections 703(a)(1) and 704(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)(1) and 2000e-3(a). The former section generally prohibits racial discrimination in any employment decision while the latter forbids discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory conditions of employment.

The Commission made no finding on respondent's allegation of racial bias under section 703(a)(1), but it did find reasonable cause to believe petitioner had violated section 704(a) by refusing to rehire respondent because of his civil rights activity. After the Commission unsuccessfully attempted to conciliate the dispute, it advised respondent in March 1968, of his right to institute a civil action in federal court within 30 days.

On April 15, 1968, respondent brought the present action, claiming initially a violation of section 704(a) and, in an amended complaint, a violation of section 703(a)(1) as well. The District Court, 299 F. Supp. 1100, dismissed the latter claim of racial discrimination in petitioner's hiring procedures on the ground that the Commission had failed to make a determination of reasonable cause to believe that a violation of that section had been committed. The District Court also found that petitioner's refusal to rehire respondent was based solely on his participation in the illegal demonstrations and not on his legitimate civil rights activities. The court concluded that nothing in Title VII or section 704 protected "such activity as employed by the plaintiff in the 'stall in' and 'lock in' demonstrations." 318 F. Supp., at 850.

On appeal, the Eighth Circuit affirmed that unlawful protests were not protected activities under section 704(a), but reversed the dismissal of respondent's section 703(a)(1) claim relating to racially discriminatory hiring practices, holding that a prior Commission determination of reasonable cause was not a jurisdictional prerequisite to raising a claim under that section in federal court. The court ordered the case remanded for trial of respondent's claim under section 703(a)(1).

In remanding, the Court of Appeals attempted to set forth standards to govern the consideration of respondent's claim. The majority noted that respondent had established a *prima facie* case of racial discrimination; that petitioner's refusal to rehire respondent rested on "subjective" criteria which carried little weight in rebutting charges of discrimination; that, though respondent's participation in the unlawful demonstrations might indicate

a lack of a responsible attitude toward performing work for that employer, respondent should be given the opportunity to demonstrate that petitioner's reasons for refusing to rehire him were mere pretext. In order to clarify the standards governing the disposition of an action challenging employment discrimination, we granted *certiorari*, 409 U.S. 1036 (1972).

I

We agree with the Court of Appeals that absence of a Commission finding of reasonable cause cannot bar suit under an appropriate section of Title VII and that the District Judge erred in dismissing respondent's claim of racial discrimination under section 703(a)(1). Respondent satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue, 42 U.S.C. 2000e-5(a) and 2000e-5(e). The Act does not restrict a complainant's right to sue to those charges as to which the Commission has made findings of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of claims of employment discrimination in the federal courts. The Commission itself does not consider the absence of a "reasonable cause" determination as providing employer immunity from similar charges in a federal court, 29 CFR 1601.30, and the courts of appeal have held that, in view of the large volume of complaints before the Commission and the nonadversary character of many of its proceedings, "court actions under Title VII are *de novo* proceedings and...a Commission 'no reasonable cause' finding does not bar a lawsuit in the case." *Robinson v. Lorillard Corp.*, 444 F.2d 791, 800 (CA4 1971); *Beverly v. Lone Star Lead Construction Corp.*, 437 F.2d 1136 (CA5 1971); *Flowers v. Local 6, Laborers International Union of North America*, 431 F.2d 205 (CA7 1970); *Fekete v. United States Steel Corp.*, 424 F.2d 331 (CA3 1970).

Petitioner argues, as it did below, that respondent sustained no prejudice from the trial court's erroneous ruling because in fact the issue of racial discrimination in the refusal to re-employ "was tried thoroughly" in a trial lasting four days with "at least 80%" of the questions relating to the issue of "race." Petitioner, therefore, requests that the judgment below be vacated and the cause remanded with instructions that the judgment of the District Court be affirmed. We cannot agree that the dismissal of respondent's section 703(a)(1) claim was harmless error. It is not clear that the District Court's findings as to respondent's section 704(a) contentions involved the identical issues raised by his claim under section 703(a)(1). The former section relates solely to discrimination against an applicant or employee on account of his participation in legitimate civil rights activities or protests, while the latter section deals with the broader and centrally important question under the Act of whether for any reason, a racially discriminatory employment decision has been made. Moreover, respondent should have been accorded the right to prepare his case and plan the strategy of trial