Black Mail Carrier Charged with Theft Failed to Show Similarly Situated White Employee

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A black Postal Service employee who failed to allege that a white co-worker was treated more favorably than he was cannot proceed with his claim of race discrimination in violation of Title VII of the Civil Rights Act, the 6th U.S. Circuit Court of Appeals ruled.

Dexter Wayne Dodd, a mail carrier for the U.S. Postal Service (USPS), filed suit when, after customer complaints, USPS investigative agents brought criminal charges against him for mail theft.

Title VII prohibits employers from discriminating against any individual with respect to compensation, terms, conditions or privileges of employment based on that individual's race. To make an initial case for discrimination, the employee must show that 1) he is a member of a protected class; 2) he suffered an adverse employment action; 3) he was qualified for the position; and 4) a similarly situated employee outside the protected class or classes was treated more favorably than he.

The district court dismissed Dodd's Title VII claim because he failed to satisfy the fourth element. The district court held that to satisfy this element, the plaintiff was required to identify a white mail carrier who stole mail but was not prosecuted. Dodd challenged this ruling, claiming it was flawed because it assumed that he actually stole mail and that he would be required to identify a white colleague who really did commit this crime and was treated differently.

The 6th Circuit agreed with Dodd that he was not obligated to point to an employee who actually stole mail; nonetheless, the court affirmed the dismissal of the Title VII claim because, regardless of whether Dodd engaged in misconduct, he still had to show that someone outside the protected class was treated more favorably than he was, the court said.

Because Dodd failed to identify any other employee not in a protected class who was not investigated for stealing mail, the trial court properly dismissed the claim, the appellate court ruled.

Dodd v. Donahoe, 6th Cir., No. 11-5509 (April 19, 2013).

Practice Pointer: This case reinforces the rule that a claim of disparate treatment under Title VII requires an allegation that a similarly situated employee outside the protected class was treated more favorably than the aggrieved employee.

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