

PUBLICATION

Employer's Use of Spreadsheet Categorizing Employees by Race Supports Plaintiff's Discrimination Claim

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An employer's use of a spreadsheet categorizing employees in part by race doomed its attempt to obtain summary judgment on a former employee's race discrimination claims in the case of *Fuller v. Edward B. Stimpson Co., Inc.*, 2013 WL 4710863 (S.D. Fla. Aug. 30, 2013). Defendant Edward B. Stimpson Co., Inc. is a manufacturing company specializing in metal eyelets, grommets, snap fasteners and hole plugs. African-American Plaintiff Elzie Fuller III was employed as a tool-and-die maker in Stimpson's tool-and-die department when he was terminated along with eighty-five other employees in a mass reduction in force in February 2009. At the time of his termination, he was one of the most senior employees at Stimpson, having worked there for approximately 39 years.

Approximately two months before the reduction in force (RIF), Stimpson began determining the employees to be laid off by evaluating their activity levels for the months of November and December 2008. The company considered factors including each employee's productivity, flexibility, cross-training, reliability, attendance and seniority. The foremen and department heads of each job grouping used this criteria to make recommendations regarding which employees should be terminated. Two executive-level managers then reviewed the recommendations with each group's foreman. According to Stimpson, the Plaintiff was selected for termination largely because of his attendance record, which was the worst among the group of employees being considered for termination.

After the initial list of recommended terminations was compiled, a Stimpson executive vice president put together a Workforce Review spreadsheet. The spreadsheet listed all employees by their department, job classification, race, gender, age and years of service, among other categories. The spreadsheet also grouped together all employees of the same race within the same job type. Accordingly, the Plaintiff was grouped with other African Americans who held non-clerical positions in his same general department. In addition, for each grouping by race, the spreadsheet contained a calculation of the percentage of employees of that race who were to be included in the RIF. According to Stimpson, it reviewed the Workforce Review spreadsheet only to ensure that the RIF was not adversely affecting any particular racial group. As a result of the spreadsheet review, three termination decisions were changed. The plaintiff's was not among them.

In denying Stimpson summary judgment on the Plaintiff's race discrimination claim, the Court found that a reasonable jury could find that Stimpson had acted with discriminatory intent. In particular, the fact that Stimpson had created the spreadsheet and categorized employees by race, and then used it to make several termination decisions to balance out the racial proportions, was sufficient to establish that a reasonable jury could conclude that Stimpson used race as a factor in its RIF decisions. Whether the company had used it impermissibly was a credibility determination best left to a jury.

Even though Stimpson had produced a legitimate non-discriminatory reason for the Plaintiff's inclusion in the RIF – that is, his attendance record – there was evidence in the record that could lead to the conclusion that the reason was pretext for unlawful discrimination. Again, the Court pointed to the creation and use of the spreadsheet, as well as the fact that Stimpson had placed the Plaintiff not only with all other members of his department, but also with other African-American employees. Further, although Stimpson claimed to have

considered seniority in the decisions, the Plaintiff was among the most senior employees at the company. Therefore, a jury question existed with respect to Stimpson's motives in terminating him.

Employers should pay attention to this case when going through a reduction in force. Be wary of the use of spreadsheets or similar tools that make it very easy to categorize employees by race or other protected categories in making termination decisions. As this case makes clear, any employer that uses tools reflecting that a protected category was a factor in making employment-related decisions is risking liability. While a jury may still find Stimpson utilized the spreadsheet appropriately, the company must now go through the substantial cost of trial to obtain a verdict in its favor. This is not a cost any company wants to face.