

JUDICIAL COUNCIL
OF THE FIRST CIRCUIT

IN RE
COMPLAINT NO. 01-14-90021

BEFORE
Lynch, Chief Circuit Judge

ORDER

ENTERED: APRIL 13, 2015

Complainant is an employee of a court in the First Circuit. She filed a complaint under the court's Employment Dispute Resolution (EDR) Plan alleging that the chief judge and clerk engaged in racial and age discrimination when they did not promote the complainant to a position for which she had applied. Pursuant to the EDR Plan, the complaint was referred to the Chief Circuit Judge for disposition under the judicial conduct and disability procedure.¹ For the reasons explained below, the complaint is dismissed as lacking any reliable factual foundation. See 28 U.S.C. § 352(b)(1)(B), and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-

¹ EDR Plans in the First Circuit provide, in part, that claims that a judge violated any rights granted under the Plans will be referred to the Chief Circuit Judge who will administer the claim[s] pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. § 351 *et. seq.*, and the Rules for the Judicial Conduct and Judicial-Disability Proceedings.

Conduct), Rule 11(c)(1)(D) (“A complaint may be dismissed . . . to the extent that the chief judge concludes that the complaint . . . is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred . . .”).

Complaint

After several counseling sessions with the court’s EDR Coordinator failed to resolve her claims, complainant filed a formal EDR complaint. Complainant alleges that she was wrongfully denied a promotion because of her race and age. Complainant identifies a number of other employees, each of whom she alleges has received promotions and/or salary increases based only on their race, and who complainant contends have "equal or fewer qualifications” than complainant. Complainant infers that the failure to promote her to the position for which she had applied demonstrates the court's "blunt patterns of racial discrimination"

Complainant goes on to assert that she has been "systematically discriminated” against during her many years of service, as evidenced by unfair discipline for "insignificant reasons," and told that she is "no one in this Court." She notes that she did not complain sooner out of fear of retaliation and suggests that she intends to prove two theories of discrimination - disparate treatment and disparate impact. Complainant maintains that she has been "labeled as having interpersonal relations issues in order to help these [other] employees succeed," though complainant's interpersonal skills are superior to theirs. Complainant adds that she consistently has been assigned "supervisory duties without the pay nor the title," only to later be "punished and belittled," and accused

of being untrustworthy and having "interpersonal relationship issues," without any evidence. Complainant asks for corrective action, including placement in the denied position or a comparable position.

Limited Inquiry

As part of a limited inquiry into complainant's allegations conducted under the Rules of Judicial-Conduct, I requested that the chief judge and the clerk of court respond in writing to the allegations contained in the complaint. See Rules of Judicial-Conduct, Rule 11(b) ("In determining what action to take under Rule 11(a), the chief [circuit] judge may conduct a limited inquiry. The chief [circuit] judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter . . .").

The chief judge denied all of the allegations and said that there was no support for the claims. I ordered further investigation to be made. With complainant's consent, my staff interviewed a number of other employees and judges who were identified as having information relevant to complainant's claims. The information obtained offers no support for complainant's claims. There is no evidence to suggest that either complainant's race or age had anything whatsoever to do with the court's employment decision or to support complainant's other related claims. Complainant's allegations are addressed below.

The reviewed record demonstrates that complainant was one of a number of current employees who applied for a promotion to three positions that were created as part of an internal reorganization of the clerk's office. The new positions involved

working directly and continuously with a particular judge, training and supervising staff, and engaging in regular contact with counsel, other staff and the public. The human resource specialist and operations manager conducted initial screening and interviews and referred a number of top applicants, including the complainant, to the clerk for final selection.² The clerk then selected the “three candidates who [were] considered to best fit the needs of the three individual judges and the court.” In doing so, the clerk had had the opportunity to observe the applicants in court and had communicated with each of the judges concerning the specific qualities they sought in the successful candidate.

With respect to complainant’s claim of racial discrimination, the uncontroverted evidence, including complainant’s birth certificate and the racial composition of the court’s workforce as defined in the Fair Employment Practices System (FEPS), is that complainant is the same race as each of the other applicants for the position. She is also the same race as the several employees who were promoted to the position. Nevertheless, several employees are aware that complainant defines herself as black due to her skin tone but say that she has not been treated differently.

Complainant’s identification of a number of other employees who were promoted, allegedly due to their race, does not further her claim. While complainant is the same race as these employees, she asserts that she has a different skin tone and physical appearance from her colleagues. The record indicates that complainant did not apply for each of these other positions, and the court denies that skin tone or race played any role in any of the

² The chief judge had delegated the appointment authority to the clerk of court.

court's hiring or promotion decisions. None of the other staff members who were interviewed in connection with this matter reported that, in their experience, race or skin color was a factor in any of the court's hiring or advancement decisions. The complaint and the reviewed record offer no facts in support of the claims that complainant was not promoted due to her race, skin color or appearance, or was otherwise subject to "blunt patterns of racial discrimination" during her employment with the court.

Complainant's claim of age discrimination is also without merit. While complainant was the oldest of the applicants, the three selected applicants were not among the youngest. In fact, two of the three promoted employees were above the average age of the applicant pool.

The record demonstrates that, while complainant has been commended repeatedly for her technical competence, several of her supervisors independently have reported over the years that complainant's interpersonal, communication and other related skills were in need of improvement. A number of years ago, a conflict with another employee resulted in complainant being transferred to another team and complainant's performance evaluations indicate that multiple supervisors have identified weaknesses in complainant's attitude, communication and interpersonal relation skills, adapting to change and working with her colleagues as a team. A number of the other staff members who were consulted noted that complainant could be "loud," defensive, has a difficult time "letting things go," and tends to "hold a grudge." They indicated that these problems have worsened over recent years and that her attitude interferes with her success on the

job. However, without exception, judges and staff alike commended complainant's technical and operational competence.

In short, there is no evidence whatsoever that race or age played any role in the court's decision to choose other employees for the new posts. Instead, the record suggests that the particular position(s) required skills specific to the needs of individual judges that were not among complainant's strengths.

Complainant's remaining claims that she consistently has been mistreated, overlooked, improperly disciplined and belittled over the years are equally baseless. Complainant's only instance of discipline was the transfer to a different team after the noted conflict with a colleague. By complainant's own admission, she has received both monetary promotions and verbal acknowledgments of her success on the job. Complainant includes several notes from the chief judge and others complementing her on the quality of her work, and she has received over a dozen performance awards or commendations. She has been promoted to the higher classification level for her position and to the top of the grade.

Furthermore, complainant identifies no instances of being "belittled" or improperly admonished. Nor does her employment record indicate that she has made any such claims over her many years of service. Complainant's colleagues likewise reported that they had not witnessed any instances of complainant being mistreated or demeaned in the workplace, either based on her skin color or for any other reason. Complainant's contention that she has been given "supervisory duties without the pay nor the title" is

equally without merit, as the description of her current position provides that she may be responsible for training and reviewing others' work.

Complainant asserts she is sincere in her belief that she has been subjected to discrimination. Even so, the evidence does not support the assertions. I hope complainant will come to accept this conclusion. Her skills are in fact valued, and have been recognized by the court.

As there is no support for complainant's allegations of discrimination or for her other related claims of wrongdoing, Complaint No. 01-14-90021 is dismissed as lacking factual foundation, pursuant to 28 U.S.C. § 352(b)(1)(B). See also Rules for Judicial-Conduct, Rule 11(c)(1)(D).

4/13/15

Date

Sandra Lynch

Chief Judge Lynch