Analysis
As of: May 30, 2016

JONATHAN BONDS vs. SCHOOL COMMITTEE OF BOSTON.

10-P-2180

APPEALS COURT OF MASSACHUSETTS

80 Mass. App. Ct. 1113*; *956 N.E.2d 800*; *2011 Mass. App. Unpub. LEXIS 1154

November 3, 2011, Entered

PRIOR-HISTORY: *Bonds v. City of Boston Sch. Comm., 2010 Mass. Super. LEXIS 59 (Mass. Super. Ct., Mar. 2, 2010)*

JUDGES: Kafker, Trainor & Meade, JJ.

OPINION

MEMORANDUM AND ORDER PURSUANT TO *RULE 1:28*

The plaintiff, Jonathan Bonds, appeals from an order allowing a motion for judgment notwithstanding the verdict (judgment n.o.v.) filed by the school committee of Boston (school committee) after a favorable jury verdict was returned for Bonds. Bonds also claims error in the judge's refusal to instruct the jury on the issue of punitive damages. We reverse.

In order to prevail on his retaliation claims under *G. L. c. 151B, § 4(4)*, Bonds was required to prove that: (1) he engaged in protected activity by cooperating with the office of equity of the Boston public school department and filing a complaint with the Massachusetts Commission Against Discrimination (MCAD), (2) the school committee was aware of both of these activities, (3) adverse employment action was taken against Bonds, and (4) but for those protected activities, the adverse

employment action would not have occurred. See *Poon v. Massachusetts Inst. of Technology, 74 Mass. App. Ct. 185, 199-200, 905 N.E.2d 137 (2009)*.

In reviewing a judgment n.o.v., "the judge's task, taking into account all the evidence in its aspect most favorable to the plaintiff, [is] to determine whether, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the jury reasonably could return a verdict for the plaintiff." *Phelan v. May Dept. Stores Co., 443 Mass. 52, 55, 819 N.E.2d 550 (2004)*, quoting from *Tosti v. Ayik, 394 Mass. 482, 494, 476 N.E.2d 928 (1985)*. A judge may consider "whether 'anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn' in favor of the nonmoving party." Ibid., quoting from *Poirier v. Plymouth, 374 Mass. 206, 212, 372 N.E.2d 212 (1978)*.

1. Protected activity. There is no dispute that the MCAD filing was a protected activity. Bonds claims that his involvement with the office of equity investigation constituted protected activity. We agree. We have held that certain internal complaints constitute protected activity under *G. L. c. 151B, § 4(4)*. See *Ritchie v. Department of State Police, 60 Mass. App. Ct. 655, 664-665, 805 N.E.2d 54 (2004)*; *King v. Boston, 71 Mass. App. Ct. 460, 474-475, 883 N.E.2d 316 (2008)*. Here, the jury could reasonably have found that Bonds not only participated in the already-commenced investigation, but that during the same time he made an individual complaint to Barbara Fields, head of the office of equity. On cross-examination, Bonds was asked if he complained to Fields about his class assignment being taken away because of his race, and he answered "Yes, I did."[1]

> 1 In its brief, the school committee argues that Bonds testified he did not believe the reassignment of his classes was "racial harassment." However, the record does not support this claim. Rather, Bonds testified that he did not believe a poster created by another teacher was "racial harassment," but "that it was in response to the administrative oversights in assigning blacks to Advanced Placement classes."

2. Knowledge of the protected activity. The school committee asserted, and the judge held, that there was insufficient evidence to show its knowledge of Bonds's protected activity. We disagree. First, there is no dispute that the school committee knew of the complaint to the MCAD. Second, on cross-examination, headmaster Cornelia Kelly testified that in the summer of 2003 she became aware that Bonds had spoken to the office of equity regarding the removal of his advanced placement (AP) classes. She was also informed of the recommendations by the superintendent, which included reinstating Bonds to his AP economics classes. From this, a reasonable jury could infer knowledge of the protected activity at the time of the office of equity investigation.

3. Adverse employment action. Bonds claims that there was enough evidence for a reasonable jury to conclude that his removal from the position of floor master constituted an adverse employment action. We agree. There was evidence that, with the removal of floor master title, Bonds lost more than just his pride. He lost an office with his "own computer, printer, a designated telephone line, . . . private space, [and] file cabinets." There was also evidence that floor master was a suggested position for teachers who desired a higher position within the school. We have held that when a determination cannot be made as a matter of law that something is or is not adverse employment action, it is for the fact finder to determine. *King v. Boston, supra at 469-470*. See *Burlington N. & Santa Fe Ry. Co. v. White, 548 United States 53, 69, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006)*; *Blackie v. Maine, 75 F.3d 716, 724 (1st Cir. 1996)*. On the evidence presented, the jury were entitled to find that Bonds's removal constituted an adverse employment action.

4. Causal connection. Bonds claims that the judge erred by concluding there was insufficient evidence for a reasonable jury to find a causal connection between his participation and complaint to the office of equity and his removal as floor master, as well as between his filing of an MCAD complaint and the decision not to promote him to history program director. We agree. Contrary to the school committee's claim, temporal proximity is not a determinative factor in the causal link if there is "additional evidence beyond temporal proximity to establish causation." *Mole v. University of Mass., 442 Mass. 582, 595, 814 N.E.2d 329 (2004)*, quoting from *Anderson v. Coors Brewing Co., 181 F.3d 1171, 1179 (10th Cir. 1999)*. Here, the jury were presented with evidence of additional actions which occurred between the time of the office of equity investigation and the removal of Bonds as floor master, from which they reasonably could have determined that it was a result of

Bonds's participation in the investigation.[2] Finally, there was testimony that Kelly was upset with Bonds, and on more than one occasion she remarked that "revenge is a dish best served cold." Thus, even with the attenuated temporal proximity, the jury could reasonably have found a causal connection between Bonds's statements to Fields and his removal as floor master, as well as his MCAD complaint of 2005 and his denial of an administrative position in 2006.[3]

2 For example, Bonds testified to difficulty in obtaining substitutes for field trips and increased supervision of his teaching.

3 There was evidence presented to the jury of incidents between 2005 and 2006 that the jury could have found to be additional evidence of causation.

5. Punitive damage instructions. Finally, Bonds claims that the judge erred in refusing to instruct the jury on punitive damages. However, because there was no objection when the judge did not so instruct, the issue is not before us. See *Mass.R.Civ.P. 51(b)*, 365 Mass. 816 (1974); *Cormier v. Pezrow New England, Inc., 437 Mass. 302, 311, 771 N.E.2d 158 (2002)*.

Order allowing motion for judgment notwithstanding the verdict reversed.

Judgment shall enter for the plaintiff on the verdict.

By the Court (Kafker, Trainor & Meade, JJ.),

Entered: November 3, 2011.

********** Print Completed **********

Time of Request: Monday, May 30, 2016 18:07:37 EST

Print Number: 2826:563688105
Number of Lines: 102
Number of Pages: 3

Send To: CUI, MA Report
MA REPORTS PUBLIC ACCESS CUI
701 E WATER ST
CHARLOTTESVILLE, VA 22902-5499