

Summary Judgment Review

Case Name: *Butts v. Centimark Corp.*

Nature of the Order: Magistrate's Report & Recommendation

Magistrate Judge: Catherine M. Salinas

District Judge: Mark H. Cohen

Claims & Outcomes:

1. **Claim:** Title VII Race/Color Discrimination
 - a. **Outcome:** Recommend Summary Judgment Granted
2. **Claim:** Retaliation (Title VII)
 - a. **Outcome:** Recommend Summary Judgment Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: African-American

Gender of Plaintiff: N/A

Summary

Plaintiff Keian Butts, Sr. ("Butts" or "Plaintiff") was a crew member, building and repairing roofs for Defendant CentiMark Corporation ("CentiMark" or "Defendant"). CentiMark selected Butts (African-American) and a White employee (James Streetman) ("Streetman") for training to become a Service Salesman. To pass the training program, each trainee had to learn how to "sell" and how to "tech" (that is, identifying potential repairs and drawing a detailed picture so CentiMark could prepare a quote). Streetman passed both portions. But Butts struggled with the "tech'ing" portion of the training. Butts believed "tech'ing" was unnecessary to the Service Salesman job. When CentiMark gave him a chance to re-do the "tech'ing" part of the training, he did not complete it. CentiMark issued a disciplinary action and demoted him back to crew. Butts then filed an EEOC Charge, alleging race discrimination and retaliation. His last day of work was December 16, 2019 – three days after he filed the Charge. After that date, he wrecked his car and lacked transportation to get to work. He did not show up to work again, and CentiMark terminated him on January 6, 2020 for job abandonment.

Butts filed suit against CentiMark for race discrimination and retaliation for the demotion and termination. CentiMark moved for summary judgment on all claims.

As a preliminary matter, Butts, filing *pro se*, did not follow the local rules regarding presentation of facts and evidence at summary judgment. He responded to most of CentiMark's

Statement of Undisputed Material Facts, but he did not cite any evidence to support his responses. Nor did he provide a Statement of Additional Material Facts. In the words of Magistrate Judge Catherine M. Salinas, “Butts never rebutted CentiMark’s facts, nor did he provide an acceptable alternative statement of material facts to support his version of events.”

As to the Title VII Race Discrimination claim, Judge Salinas held that Butts failed to identify a similarly situated comparator outside his protected class who was treated better. As to the demotion, Butts only identified Streetman as a comparator. But Streetman was not “similarly situated in all material respects”, as required by the Eleventh Circuit. He had 12 years more experience than Butts. Unlike Butts, Streetman had served as a Service Foreman before and did not struggle with the training. Butts offered no meaningful response (let alone evidence) to show that Streetman was similarly situated to him. As to the termination, Butts identified no comparator whatsoever. Judge Salinas, therefore, held that Butts had failed to prove a *prima facie* case of race discrimination.

Moreover, Judge Salinas held that Butts failed to show pretext. While Butts disagreed that “tech’ing” was necessary to the Service Salesman job, he did not dispute (with evidence) that company policy required him to complete “tech” training and that he failed to do so, thus leading to his demotion. Nor did he dispute that he stopped showing up for work, leading to his termination.

As to the Title VII Retaliation claim, Judge Salinas found that Butts was terminated shortly after filing an EEOC charge. However, as noted above, Butts provided no evidence to support any response to CentiMark’s non-retaliatory justifications for the demotion and termination.

Judge Salinas, therefore, recommended GRANTING summary judgment on all claims.