

Informal Layoff Decision Survives Age Discrimination Claim - But You May Not Want To Try This At Home

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Truck

A recent decision from the Northern District of Ohio rejected a truck driver's claim that his selection for a layoff was due to age discrimination where his evidence consisted of (1) the fact that younger drivers were not laid off and (2) his supervisor's comment that driving was a "young man's game." The case, *McCormick v AIM Integrated Logistics*, Case No. 4:11cv01524, involved a full service truck leasing company which laid off three drivers, ages 55 (the plaintiff), 54 and 51, but which kept drivers ages 54, 49, 47, 43, 40, 38 and 37.

According to the key decisionmaker, there was no formal process for deciding who would be laid off. He explained that he simply picked the plaintiff because of his "attitude" and because the company had received some negative comments about the plaintiff from a customer. During the termination meeting, the plaintiff became angry and cursed company officials. He later brought an age discrimination claim based on the ADEA and Ohio state law.

On summary judgment, the company first argued that the plaintiff's outburst when he was informed of the layoff decision was an independent and superseding cause of his termination. The court quickly dismissed this argument, noting that it was unrelated to the decision – which already had been made – to terminate the plaintiff's employment.

The company, however, fared better on the merits. The court observed that in a workforce reduction case, the simple fact that there happens to be an age differential between the plaintiff (55 years old) and the individuals not selected for the layoff (54, 49, 47, 43, 40, 38 and 37) was insufficient to state a *prima facie* case under the ADEA. Moreover, the court also was unconvinced that the ages of several of the retained drivers (notably the ones who were 54, 49 and 47) were "significantly younger" than the plaintiff.

With respect to the allegedly ageist remark that truck driving is a "young man's game," the court also viewed this as too isolated, ambiguous and remote in time – having been made 6 months before the layoff – to support an age discrimination case. Added to that, the plaintiff did not present evidence that the truck leasing company's reasons were a pretext for discrimination.

It ought to go without saying that employers who contemplate layoffs should arrive at their decisions cautiously and only after a certain amount of legally appropriate handwringing. Nevertheless, this case stands as a good reminder

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that even informally arrived at layoff decisions can be supported by the courts *when the facts warrant* (this last part being critical and decisive). Fortunately for the defendant in this case, the facts did not point to age discrimination: there was scant evidence of ageist motivations and – based on the ages of the individuals involved – a more-or-less balanced division between those selected for the layoff and those who were retained.