



Age/Retaliation

JURY AWARDS \$395,000 TO 56-YEAR-OLD MAN WHO ALLEGED BIAS IN RIF BY NEW JERSEY FIRM

A 56-year-old employee who was discharged during a reduction in force by a New Jersey manufacturing company has been awarded \$395,000 by a state court jury on his claims of age discrimination, retaliation, defamation, and breach of contract (*Prill v. Peerless Tube Co.*, NJ SuperCt LawDiv, No. ESX-L-6608-94, 1/27/98).

The jury in the Superior Court of New Jersey, Law Division, found that Peerless Tube Co. had fired plaintiff Wallace Prill Jr. because of his age and then retaliated against Prill in violation of the New Jersey Law Against Discrimination by giving a poor reference to a prospective employer. After a trial presided over by state Judge Kenneth R. Stein, the jury also found that Peerless had breached Prill's contract of employment and had defamed him and that Peerless CEO Frederic Remington Jr. is individually liable for retaliation and defamation.

However, the jury awarded no compensatory damages against Remington, according to attorney Leonard J. Felzenberg of Felzenberg, Winter & Winkler in Livingston, N.J., who represented the CEO. The jury found the company liable for \$295,000 in lost wages and benefits and awarded an additional \$100,000 in punitive damages to Prill.

Denial Of 'Bumping Rights' Challenged

Prior to his termination, Prill had worked at Peerless for almost 36 years, beginning in 1958. He began working in the shipping and receiving department and later moved to the inventory control department.

Several times prior to Prill's termination, the company offered him the job of production scheduler. In his deposition, Prill said: "They always kept pestering me to take the job. I told them I don't want it."

Peerless contended that Prill was laid off at age 56—along with several hundred other employees who were terminated—because of a reduction in force necessitated by "a severe business downturn." Prill successfully argued, however, that this justification was a pretext for age discrimination.

Prill contended that under the company's employee handbook, as a senior employee, he should have been allowed to exercise "bumping rights" in order to keep his job. He cited the New Jersey Supreme Court's 1995 opinion in *Wooley v. Hoffmann-La Roche* for the proposition that an employee handbook "could constitute a promise that employees would not be fired except for good cause."

Seeking to distinguish the *Wooley* case, Peerless argued that its handbook did not create an employment contract because it contained no promises of job security. The company also contended that Prill's bumping argument is "nonsensical and would be impossible to implement." Nevertheless, Prill maintained that the handbook established an employment contract and that his termination was a breach of that pact.

Poor Reference Found To Be Retaliation

After he left Peerless, Prill twice attempted to get a job at Mountainside Hospital. On the first occasion, Prill received a positive reference from the Peerless plant manager, according to attorney Andrew Dwyer of Reinhardt & Schacter in Newark, N.J., who represented Prill. The hospital did not offer a job to Prill on this first occasion.

Prill again applied for a job at the hospital after he had filed his age discrimination suit against Peerless, Dwyer explained. On this occasion, the Peerless plant manager took Prill's request for a reference to the company's personnel administrator who, in turn, brought the matter to CEO Remington's attention, according to Dwyer. Remington then ordered that this reference should contain a negative review of Prill's work and that the plant manager should sign the letter, according to Dwyer.

This marked the first time that the personnel administrator had ever brought a reference request to Remington and that Remington had ever given a reference, either negative or positive, while at Peerless, according to Dwyer. Based on the negative reference, the jury found that Remington was liable for both defamation and retaliation against Prill for filing an age discrimination claim.

In defense of his client's actions, Felzenberg said that "the case should not have gone to the jury as he was expressing an opinion."

Admission That Age Was Factor

Prill acknowledged that none of his supervisors ever made a comment related to his age. However,

under both direct and cross examination, Paul Peterik, Peerless' former chief financial officer, admitted to considering an employee's age in determining whether a worker should be laid off.

During Prill's case-in-chief, Peterik testified: "To the extent that in those cases where we couldn't separate one person from another, then we certainly looked to other factors including age." On cross-examination, Peterik elaborated: "Yes, age and certainly seniority" were taken into account in the company's layoff policy, according to a trial transcript of his testimony.

Characterizing Peerless' layoff policy as "a fabrication, a sham," Dwyer said that Peerless "gave away the whole game" when Peterik testified.

Kathleen M. DalCortivo, formerly of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel in Iselin, N.J., and presently of Sterns & Weinroth in Trenton, N.J., represented Peerless when working at the former law firm. With regard to Peterik's testimony, DalCortivo said, "My reaction to that is that [his reference to age] could only have meant seniority."

As for the jury verdict, DalCortivo expressed "disappointment because I... know that there was no age discrimination" at Peerless Tube Co.

Prill will not seek further injunctive relief as he has found another job, according to his attorney. However, Dwyer said that the plaintiff will seek attorneys' fees, which he estimated as "definitely in the six figures."

Defense attorney Felzenberg has filed a motion to dismiss the defamation judgment against CEO Remington. If his motion is successful, Felzenberg explained, the retaliation claim will also fail as it arises from what the jury found to be the defamatory letter of reference to the hospital. However, Remington will "probably not" appeal if his motion to dismiss is denied, Felzenberg said.

Harriet F. Klein of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel in Iselin, N.J., also represented Peerless Tube Co.