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United States District Court, N.D. Illinois.

Glenn KOSKI, et al., Plaintiffs,
v.
Terrance GAINER, et al., Defendants.

No. 92 C 3293. | March 18, 1998.

Attorneys and Law Firms

Kimberly Ann Sutherland, Attorney at Law, Chicago, IL, for Glenn Koski, plaintiff.

Kimberly Ann Sutherland, (See above), for Fred Winterroth, plaintiff.

Kimberly Ann Sutherland, (See above), for Jesse Bean, plaintiff.

Kimberly Ann Sutherland, (See above), for Jerry Myers, plaintiff.

Kimberly Ann Sutherland, (See above), for Anthony Bishop, plaintiff.

Kimberly Ann Sutherland, (See above), for Aaron Booker, individually and as a member of a class of persons similarly situated, plaintiff.

Kimberly Ann Sutherland, (See above), for Owen Reeves, plaintiff.

Kimberly Ann Sutherland, (See above), for Dale Volle, plaintiff.

Kimberly Ann Sutherland, (See above), for James Harte, plaintiff.

Paula J. Giroux Chicago , Illinois Attorney General's Office, Chicago, IL, for Terrance Gainer, defendant.

Paula J. Giroux, (See above), for Harry Orr, defendant.

Paula J. Giroux, (See above), for John Rednour, defendant.

Paula J. Giroux, (See above), for David P Schippers, defendant.

Paula J. Giroux, (See above), for Richard T Mitchell, defendant.

Paula J. Giroux, (See above), for Nancy Beasley, defendant.

Paula J. Giroux, (See above), for Fred E Inbau, defendant.

Paula J. Giroux, (See above), for James E Seiber, defendant.

Paula J. Giroux, (See above), for James Redlich, in their individual and official capacities, defendant.

Paula J. Giroux, (See above), for State of Illinois, defendant.

Opinion

AMENDATORY RULING

LEINENWEBER, J.

*1 There are currently five (5) motions pending before the court to modify this court's Ruling on Remedies issued on January 15, 1998.

1. Koski's and Bolerjack's Motion for Premium Pay and Command Time.
2. Plaintiffs' Motion to Determine Back Pay Dates.
3. Plaintiffs' Motion to Amend Promotion Remedy.
4. Plaintiffs' Motion to Amend and Clarify the Hiring Remedies.
5. Defendants' Motion to Reconsider or Modify.

In addition, plaintiffs ask the court to determine the applicable interest rate for calculating prejudgment interest.

Defendants argue that all of plaintiffs' motions (Nos. 1-4 above) are too late, in so far as they seek to amend this court's previous rulings, because of the ten (10) day limit of Rule 59(e). However, as plaintiffs correctly point out, there is no final and appealable judgment as of this date. Therefore the court does have jurisdiction to revisit its previous rulings and make changes, if necessary.

KOSKI AND BOLERJACK'S MOTION

Koski and Bolerjack have sought to amend the court's ruling by adding "premium pay and command time" to their back pay awards. According to Koski, Sharon Eller, of the ISP payroll unit, told him that all master sergeants are entitled to premium pay at the rate of \$100 per month in addition to their regular salary. They are also given 15 minutes of "time due" for each day worked which is called "command time." This can be accumulated and taken in the future as time off.

The defendants do not deny that master sergeants are entitled to these two benefits, but claim that both of these are intended to compensate a master sergeant for overtime pay which he gives up when he accepts an appointment to the rank of master sergeant.

The court has examined the arguments and supporting documents filed by the parties and finds that Koski and Bolerjack have the better of the argument. It appears to the court that Premium Pay and Command Time are benefits to which only Master Sergeants are entitled. They are offered separate and apart of any entitlement, or lack thereof, to overtime pay. Since the court is ordering the appointments retroactively, the court finds that both are entitled to these past benefits lost. Of course neither is entitled to premium pay during the period in which it was suspended (October 1, 1995 through June 30, 1996).

It is so ordered.

MOTION TO DETERMINE BACK PAY DATES

In this motion the plaintiffs urge the court to use dates in which minorities were placed into "acting" positions as the retroactive promotion, seniority, and back pay dates. The defendants argue that the acting appointments were not actually considered promotions by the ISP and thus no change is needed.

The evidence before the court supports defendants because the ISP does not consider placing a trooper into an acting position a promotion. From this the court deduced that there was no change in pay. Since the plaintiffs were requesting promotions in this suit the fact of moving a minority into an acting position was evidence of discrimination, *i.e.*, giving him an edge toward a future promotion, but not the discriminatory act itself which was the promotion to the rank of sergeant.

*2 Accordingly, the plaintiff's motion is denied.

MOTION TO AMEND PROMOTION REMEDIES

The plaintiffs, Hanford, Roberts, Volle, and Myers seek to amend the court's promotion remedy ruling as it effects them.

Hanford and Roberts

According to the plaintiffs, Mahoney, the individual who scored No. 1 on the exam was promoted, and Zadnick, who scored No. 2, had transferred and was unavailable for promotion. Thus they each had a better chance of obtaining the spot given to the lower scoring minority than the court gave them credit.

The defendants apparently do not dispute plaintiffs' claims concerning Mahoney and Zadnick, except to assert that Zadnick might have returned to District 5 to accept the appointment had he been offered it.

There is a certain amount of speculation involved in both plaintiffs' and defendants' arguments. The court will however modify its January 15, 1998 ruling to find that Hanford, who scored third had a 45% chance of receiving the promotion to the one remaining sergeant's position and Roberts, who scored fourth had a 30% chance. This leaves a 25% chance that Zadnick would have returned to District 5 to accept the appointment.

Volle

Volle claims that since he had drug enforcement experience he would have been promoted over the white males that scored ahead of him. However, Volle did not make this claim at trial and there was no evidence introduced that this might be so. Volle's evidence was limited to demonstrating that he was better qualified than the minority candidate who actually received the appointment. The burden to show that Volle would have leap-frogged the whites who scored better than he did was his. He failed to meet this burden.

Volle also claims that he can challenge the promotion of a lower scoring white male, Mueller, who also received a promotion over him. He cites *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 116 S.Ct. 1307, 134 L.Ed.2d 433 (1996) and *Carson v. Bethlehem Steel*, 82 F.3d 157 (7th Cir.1996) Volle is correct in that the cases he cites allow a plaintiff to challenge an adverse action in which a co-racial employee benefits at his expense. Volle failed to argue that he was entitled to Mueller's spot and why at trial. Thus he waived the point. Standing to challenge a promotion does not alone entitle a plaintiff to receive the promotion.

Myers

Myers requests that the court award him retroactive seniority to October 1, 1990. Defendants do not apparently dispute this date. In any event the court finds that Myers is entitled to retroactive seniority to October 1, 1990.

MOTION TO AMEND AND CLARIFY THE HIRING REMEDIES

I.

Koski v. Gainer, Not Reported in F.Supp. (1998)

The decision of the court denying damages is limited only to the named class members. This is in line with the ruling of the court on July 14, 1994.

II.

With regard to monetary relief to Booker, the class representative, the evidence showed that he was very far down on the list of white males who passed the written exam. Had the ISP administered the list in a non-discriminatory manner his chance of appointment was still highly speculative, even considering the white hiring shortfall, because white males who scored higher would presumably have done better on the balance of the application process. Accordingly, the court refuses to modify its denial of back pay to Booker.

III.

*3 Booker requests that the court invoke a number of equitable remedies against the ISP. All the court ordered was that the class members be notified that if they otherwise qualify for appointment to the ISP they will be considered to have passed the written exam and be entitled to proceed with the application process. This is of course a very limited remedy, the reasons for which were explained in detail in the court's January 15, 1998 Memorandum Opinion and Order. The defendant is ordered to so notify the class members. The remainder of the requests for equitable relief are denied.

DEFENDANTS' MOTION TO RECONSIDER

1. As stated above, the promotion and back pay dates are from the date of the denied promotions, not the date that a minority was made acting. Therefore Winterroth's date is May 1, 1993.
2. Volle's date is May 1, 1993.
3. Volle, Hanford, and Roberts' entitlement to front pay will, of course, cease in the event they are promoted to the rank of sergeant in the future, or if they resign or retire. As plaintiffs point out, the easy way for defendants to protect themselves would be to pay these front pay benefits to plaintiffs monthly in the future until one of these contingencies occurs.

INTEREST RATE

As plaintiffs argue, the correct rate of interest for calculating prejudgment interest is the prime rate. *Partington v. Broyhill Furniture Ltd.*, 999 F.2d 269, 274 (7th Cir.1993). Therefore the court orders the prejudgment interest to be so calculated.

IT IS SO ORDERED.