

The U.S. Equal Employment Opportunity Commission

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COURT OF APPEALS RULES TARGET MUST FACE TRIAL ON RACE DISCRIMINATION CHARGES

EEOC Presented Evidence That Retail Giant Failed to Hire Four African Americans in Milwaukee Stores Because of Race

CHICAGO – The U.S. Court of Appeals for the Seventh Circuit in Chicago has reversed a lower federal court in Milwaukee and ruled that an U.S. Equal Employment Opportunity Commission (EEOC) race discrimination suit against the giant retailer Target Corporation should go to trial. The appeals court found that the EEOC had presented sufficient evidence -- that Target refused to hire four African American applicants for entry-level management positions because of their race -- to require a full trial. The court also held that a trial was required on the issue of whether Target had destroyed employment applications in bad faith, and whether its changed policies with respect to retaining records were sufficient.

"We find," the court wrote, "that the EEOC did present sufficient evidence to establish a genuine issue of material fact as to whether Target's reason for not interviewing [the African-American applicants] was a pretext for race discrimination."

"EEOC has long been convinced that the evidence we were placing of record in this case was more than enough to require that the victims of Target's alleged discrimination be afforded their day in court — their day in front of a jury," said John Hendrickson, EEOC regional attorney for the Chicago District, which now includes Milwaukee. "Thanks to this important decision from the Court of Appeals, that day is now going to come, and we are very encouraged and pleased by that."

Dennis McBride, the trial attorney in the EEOC's Milwaukee Area Office who has led the government litigation effort, said, "This seems to us to be a classic case illustrating the negative impact that race still may have upon the search for work even at leading big-name employers who are marketing to millions of African Americans. The EEOC's allegations include, for example, that Target had recruited

for entry-level management positions at multi-cultural college job fairs, but then failed to consider African American applicants because of their race. That's at the heart of what this case is about and why we are in it."

The court's unanimous decision (*EEOC v. Target Corporation*, 7th Cir. No. 04-3559, 8/23/2006) was authored by Circuit Judge Richard D. Cudahy and issued on August 23, 2006. It reversed the decision of Chief Judge Rudolph T. Randa of the U.S. District Court for the Eastern District of Wisconsin, which had granted summary judgment to Target, and ordered that the matter be remanded to the district court.

James Tucker and Lorraine Davis in the EEOC Office of General Counsel in Washington, D.C. represented the agency on the appeal to the Seventh Circuit.

EEOC associate regional attorney in the Chicago District Jean Kamp noted, "One of the most significant evidentiary points here arose from the fact that one of the African American applicants included in the EEOC's suit seemed to be well on the way to landing at job at Target, until the store realized from her name and voice that she was likely to be black — and then the job disappeared. So the Court of Appeals' ruling that the EEOC may utilize expert evidence at trial to the effect that employers may discriminate based on African-American names or accents during telephone conversations is very important."

The EEOC is responsible for enforcing the nation's laws prohibiting employment discrimination based on race, color, gender (including sexual harassment and pregnancy), religion, national origin, age, disability and retaliation. Further information about the EEOC is available on its web site at www.eeoc.gov.

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