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Civil Action No. 84-3040 Plaintiff's Reply Concerning Brief

United States District Court for the District of Columbia

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Court concluded that defendant had not carried its burden, Id., and the Court of Appeals expressly affirmed both the Court's analytical approach and its findings on this issue. 825 F.2d at 471-472.

Defendant's failure to satisfy its burden under Ray v. Katzev ordinarily would lead directly to relief, both prospective and retrospective (i.e., backpay). In this case, however, there was "another issue" -- the question of constructive discharge. 612 F.Supp. at 1121. The Court ruled that "[i]f plaintiff resigned voluntarily . . . she is not entitled to an order that she be made a partner." Id. The premise here is that plaintiff would be entitled to such an order if she proved constructive discharge, and the Court of Appeals has now said she did so.

As to backpay, the Court held that plaintiff had "established the predicate for an award of backpay from the date she would have been elected partner, July 1, 1983, until her voluntary resignation on January 17, 1984." Id. The amount would have been "limited to the difference between plaintiff's compensation as a senior manager during that period and what her compensation would have been if elected to partnership . . ." Id. Again, the relief in question -- backpay -- is premised on the notion that plaintiff would have become a partner. The Court denied backpay, however, because "no evidence has been presented on what compensation plaintiff would have received if she had been elected partner." Id. The Court of Appeals has now held that such evidence should be considered on remand.

In brief, this Court held that "plaintiff's failure to show a constructive discharge requires the Court to deny plaintiff's request for an order directing Price Waterhouse to make her a partner." 618 F.Supp. at 1121. And it denied backpay because there was no evidence on partnership earnings which would form the basis for such an award. Id. The Court of Appeals reversed and remanded on the first point, holding that plaintiff had been constructively discharged. 825 F.2d at 473. And given a remand on the issue of prospective relief, the Court also remanded the denial of backpay. Id.

In light of the findings of this Court on the basic issue of sex discrimination, as well as the rulings of the Court of Appeals on constructive discharge and backpay, plaintiff's entitlement to complete relief is established. Indeed, the Court of Appeals held that it is "appropriate for the [district] court to award Hopkins the full relief to which she is entitled." Id. (emphasis supplied).

We have undertaken this somewhat extended discussion of the decisions of this Court and the Court of Appeals in order to document the obvious: the issue of entitlement to relief is closed. That is the law of the case. Price Waterhouse cannot relitigate this question. The only remaining issue is the precise nature of the "full relief" to which plaintiff is entitled.

Defendant argues that, because evidence must now be adduced on the nature of relief -- e.g., partnership earnings data -- that Price Waterhouse should also be able to present evidence on

the question of basic entitlement, i.e., whether plaintiff would have been rejected absent discrimination. But defendant already had its chance on this point, and it lost. As a legal matter, this question may not be revisited. ^{1/}

III.

As shown in plaintiff's initial memorandum on relief, the premise of both the decisions of this Court and the Court of Appeals is that partnership is the appropriate remedy, given basic entitlement. Fully compensatory front pay in lieu of partnership would be permissible only in narrow circumstances, e.g., a showing that the litigation itself has caused such animosity that the parties can no longer work together. Whittlesey v. Union Carbide Corp., 742 F.2d 724, 732 (2d Cir. 1984). This is not so, and we do not read defendant's memorandum as suggesting otherwise. Price Waterhouse is a partnership of more than 700 members, only a few of whom submitted assessments on plaintiff's candidacy. Some partners also made negative comments about candidates who were successful, and with whom they now work as colleagues, and there is no reason to believe they could not do the same with plaintiff.

Of course, "full relief" would not be achieved through simple reconsideration of plaintiff's candidacy. Indeed, if that were all that was required, there would have been no need for

^{1/} It is inaccurate to suggest that the parties informally sought before trial to reserve anything other than partnership earnings data for separate presentation to the Court. See the cover document to Plaintiff's Pretrial Package (March 14, 1985).

this Court and the Court of Appeals to address both prospective relief and backpay. This Court decided, under well established principles, that plaintiff was denied admission to partnership in violation of Title VII. Price Waterhouse is seeking to challenge this determination in the Supreme Court, but unless and until that Court rules otherwise, this is the law of this case.


CONCLUSION

For the reasons set forth in this as well as plaintiff's initial submission, she requests an order directing defendant to invite her to join the partnership and awarding appropriate backpay.

Respectfully submitted,



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