

1971 WL 157
United States District Court; E.D. North Carolina,
Raleigh Division.

United States of America, Plaintiff
v.
Dillon Supply Company, Defendant.

Civil No. 1972
|
June 28, 1971

DUPREE, JR., D. J.

[History of Proceeding]

*1 On February 27, 1967, the Attorney General of the United States filed a complaint against the defendant Dillon Supply Company (hereinafter "the company"), alleging violations of Title VII of the Civil Rights Act of 1964, 42 U. S. C. 2000e, *et seq.*, in the operation of the company's Raleigh, North Carolina facilities. The company denied the plaintiff's allegations, and on May 23, 1969, trial on the merits was held before Kellam, J., sitting by designation. On July 2, 1969 [2 EPD P 10,053, 60 LC P 9295], this Court entered judgment for the defendant and dismissed the plaintiff's complaint. Plaintiff thereafter filed a notice of appeal, and on July 8, 1970 [2 EPD P 10,256, 63 LC P 9477], the Court of Appeals for the Fourth Circuit reversed the judgment of this Court and remanded the case to this Court for entry of appropriate affirmative injunctive relief.

[Agreement of Parties]

The parties being desirous of implementing a solution to the subject matter of this action without further litigation, and having waived further hearing and agreed on the form of this decree, without admission by the defendant of violation of Title VII; and the Court being of the opinion that entry of this decree will effectuate the mandate of the Court of Appeals; now therefore

It is Ordered, Adjudged and Decreed that the defendant

Dillon Supply Company, its officers, agents, employees, servants and successors and all persons in active concert or participation with them or with any of them are hereby permanently Enjoined and Restrained from discriminating on the basis of race against present black employees at the company's Raleigh facilities, or against any blacks who apply for, or obtain, employment at the company's Raleigh facilities, with respect to hiring, transfer, assignment, training, promotion, and assignment of pay rates, and from engaging in any other acts or practices which have the purpose or effect of denying to blacks equal employment opportunities.

It is further Ordered as follows:

Affected Class

I. The Affected Class, as referred to hereinafter, shall consist of all those black employees who are listed in Appendix A [not reproduced] hereto. (Members of the Affected Class who voluntarily resign from the company or who are properly dismissed for cause shall no longer be considered to be members of the Affected Class.)

Promotion and Transfer

II. A. When the company elects to fill a vacancy in any department listed in Appendix B [not reproduced] with a member of the Affected Class, it may do so at any time and without resort to any of the procedures in Article II, or Article III of this decree.

B. A member of the Affected Class shall be considered qualified for any job if he is as qualified as the least qualified white person who was hired within five years preceding the date of this decree into the same or a similar job and who remained with the company for at least six (6) months.

C. When a vacancy occurs in any job in the departments listed in Appendix B [not reproduced] hereto, the company shall notify each member of the Affected Class of the vacancy and of his right to be considered for transfer to that department, or, if he is already in that department and not working on a more desirable job, to be considered for promotion or reassignment within that department. Such notification shall be accomplished by posting a notice on the bulletin boards adjacent to the time

clocks in the departments in which members of the Affected Class are employed. The form of such notification shall be as shown on Notification Form 1 [not reproduced] or Notification Form 2 [not reproduced] attached hereto in Appendix E [not reproduced].

***2** For the purposes of this decree, a more desirable job means (a) a higher paying job or (b) a job which, although paying the same or less, leads in normal progression in the same department to a higher paying job.

D. Members of the Affected Class shall have the opportunity to be considered for transfer to the departments listed in Appendix B [not reproduced] on a "vacancy-by-vacancy" basis. To be considered for transfer on a "vacancy-by-vacancy" basis, a member of the Affected Class must signify his desire within three (3) working days after he is notified of a vacancy pursuant to Section II(C) above, by completing and submitting a form to be furnished by the company. A request for transfer on this basis shall entitle the employee to consideration for the vacancy of which he was notified, as well as for any other vacancies which occur as a result of interdepartmental promotions or reassignments connected with the filling of that vacancy. Where a vacancy is filled from within the company by promotion or reassignment, it shall not be necessary to notify a member of the Affected Class of each vacancy created by such promotion or reassignment if the notification to him of the original vacancy which resulted in such promotions or reassignments conforms substantially to the provisions of Notification Form 2 [not reproduced] attached hereto in Appendix E [not reproduced].

E. Members of the Affected Class shall be considered for promotion or reassignment to a more desirable job within their department, as provided in Sections II(B) and (C) above, whether or not they request to be so considered.

F. Members of the Affected Class who request transfer pursuant to Section II(D) above, and members of the Affected Class who are qualified for promotion or reassignment within the department where the vacancy exists, shall be considered along with other incumbent employees eligible for consideration, and preference shall be given to members of the Affected Class over applicants for employment. If there are more vacancies than qualified employees under consideration, all qualified members of the Affected Class under consideration shall be offered the jobs. If there are fewer vacancies than qualified employees under consideration, in the absence of substantial differences among the employees under consideration with respect to objective, non-racial qualifications, then, as between members and non-members of the Affected Class, jobs shall be offered

on the basis of length of service with the company. If there are substantially better qualified employees, they shall be offered the jobs first, and as between substantially equally qualified members and non-members of the Affected Class, in order of length of service with the company.

G. To the extent that on-the-job training is required to enable a member of the Affected Class to learn his job or to prepare for future promotion or reassignment, full opportunity for such training shall be provided on the same basis as it has been made available to white employees within five (5) years preceding the date of this decree.

***3** H. A member of the Affected Class who transfers to a new department shall have thirty (30) days within which to decide if he wishes to remain in the new department, and the company shall have thirty (30) days within which to determine if his performance is satisfactory in the new department. If the employee or the company decides within said thirty-day period that he should not remain in the new department, he shall return to his former job. The employee shall enjoy the benefit of the full thirty-day trial period if he so desires, except that the company may disqualify him in less than thirty (30) days in the unusual case that failure to do so would subject the employee or others to an unreasonable risk of injury.

I. When a member of the Affected Class transfers to a new department pursuant to the provisions of this Article II, he shall continue to receive at least the current straight time hourly rate of pay for the job to which he was permanently assigned prior to transferring until he is assigned to a position paying a higher rate or receives a raise to a higher rate. This rate retention protection shall not, however, apply to transfers to custodial or night watchman jobs, or to other jobs which are not more desirable jobs.

J. Within two (2) weeks after entry of this decree, the company shall furnish to all its black employees a notice, in the form of Notification form 3 attached hereto in Appendix E [not reproduced], setting forth in summary form their rights and privileges under this decree. In addition, when a member of the Affected Class is notified pursuant to Section II(C) above of vacancies in departments other than the department in which he is working, he shall be advised of his rights on transfer provided by Sections II(G), (H) and (I) above by furnishing him an explanation thereof in the form of Notification Form 4 [not reproduced], attached here in Appendix E [not reproduced].

K. The provisions of Sections II(C), (D), (F), (H), (I), and

(J) shall not be applicable to a member of the Affected Class who has (1) made one voluntary transfer pursuant to Section II(C) to a more desirable job in another department and remained in his new department for at least six (6) months, or (2) made three voluntary transfers pursuant to Section II(C) to a more desirable job in another department; but the provisions of Sections II(A), (B), (E), (G) and (L) shall continue to apply to such employee within the department to which he has voluntarily transferred or to which he has returned. This paragraph shall in no way limit such employee's rights to transfer to other departments in the future pursuant to normal transfer procedures.

L. Black employees shall also be eligible for consideration for transfer to the departments listed in Appendix C [not reproduced] and Appendix D [not reproduced] hereto on a nondiscriminatory basis.

Recruitment and Hiring

III. A. The personnel director of the company shall maintain a list of all vacancies showing the date on which he was advised of the vacancy, and the date on which it is filled. All black applicants for employment shall be interviewed by the personnel director or someone designated by him in his absence. The personnel director shall inform each black applicant of all current vacancies, without regard to his stated qualifications or interests. After the black applicant has been advised of all vacancies, with explanations of the nature of the various jobs, he shall be asked to indicate the vacancies for which he wishes to be considered, and these shall be recorded on the application form by the applicant or the personnel director.

*4 B. All application forms shall be considered as active for at least thirty (30) days after date of application, and subject to renewal in writing for thirty-day periods thereafter by the applicant.

C. In addition to the procedures in Article II, the procedure prescribed by this Section (C) shall be followed in filling vacancies in the departments listed in Appendix B [not reproduced] hereto not filled by incumbent employees. The procedures in this section may be followed contemporaneously with those in Article II (subject to the preference afforded members of the Affected Class pursuant to Section II(F) above).

1. As soon as such a vacancy occurs, the personnel director shall be notified by the departmental supervisor.

2. If the company proposes to fill such a vacancy, job orders for filling each vacancy shall be placed with the following minority recruitment sources immediately after the personnel director is notified of the vacancy and at least seven (7) days prior to recruitment of applicants from other sources:

a. Wake County Opportunities, Manpower Program, 124 West Martin Street, Raleigh;

b. MDTA Selection and Referral Officer and NAB Representative, North Carolina Employment Security Commission, Raleigh; and

c. North Carolina Employment Security Commission Raleigh.

3. If a black applicant is not deemed qualified to fill a vacancy for which he indicates a desire to be considered, the specific reasons why he was not deemed qualified shall be furnished to the United States as part of the reports referred to in Article VII below (unless such vacancy was filled by another black).

4. In the absence of substantial differences among qualified applicants with respect to objective, non-racial qualifications, priority of application date shall govern selection and hiring as between black and white applicants.

5. In all cases where a qualified black applicant is rejected in favor of a white applicant deemed substantially better qualified, the specific reasons for the rejection shall be furnished to the United States as part of the reports referred to in Article VII below.

D. The procedure prescribed in this Section (D) shall be followed in filling vacancies in the departments listed in Appendix D [not reproduced] hereto not filled by incumbent employees.

1. As soon as such a vacancy occurs, the personnel director shall be notified by the departmental supervisor.

2. If the company proposes to fill such a vacancy, it shall simultaneously place job orders with the following minority recruitment sources and any other recruitment sources the company may elect, at least seven (7) days prior to the filling of the vacancy:

a. Wake County Opportunities, Manpower Program, 124 West Martin Street, Raleigh;

b. North Carolina Employment Security Commission, Raleigh; and

c. Director of Career Placement, Shaw University, Raleigh, or Placement Director, Saint Augustine College, Raleigh.

3. If a black applicant is not deemed qualified to fill a vacancy for which he indicates a desire to be considered, the specific reasons why he was not deemed qualified shall be furnished to the United States as part of the reports referred to in Article VII below (unless such vacancy was filled by another black).

***5** 4. In all cases where a qualified black applicant is rejected in favor of a white applicant deemed substantially better qualified, the specific reasons for the rejection shall be furnished to the United States as part of the reports referred to in Article VII below.

E. In filling vacancies in the departments listed in Appendix C [not reproduced] hereto, the company may follow any nondiscriminatory procedure.

F. Within thirty (30) days after entry of this decree, the personnel director shall notify representatives of the minority recruitment sources listed in paragraphs III(C)(2) and III(D)(2) above of the company's nondiscriminatory policy and implementation of the recruitment procedure specified by Sections III(C) and III(D) above. Such notification shall be in the form set out in Notification Form 5 [not reproduced] attached hereto in Appendix E [not reproduced].

G. The procedures specified in Sections III(C) and III(D) above shall be subject to the following exceptions:

1. Any vacancy may be filled with a a black without resorting to the procedures prescribed by those sections.

2. An emergency vacancy may be filled without resorting to the procedures prescribed by those sections (but not without considering whether any member of the Affected Class is qualified to fill such emergency vacancy). An emergency vacancy is one which, unless it is filled immediately, will create a critical interference with the company's operations. A vacancy shall not be deemed to create an emergency except in unusual circumstances; and these circumstances shall be described in specific terms as part of the reports referred to in Article VII below.

3. The company may hire an extraordinarily well qualified applicant prior to resorting to the procedures prescribed by those sections (but not without considering whether any member of the Affected Class is as well qualified as the extraordinarily well qualified applicant), in the event such action is necessary to avoid losing the

applicant to another employer. This situation shall not be deemed to exist except in unusual circumstances; and these circumstances shall be described in specific terms as part of the reports referred to in Article VII below.

4. Salaried department heads, outside salesmen and officers of the company may be hired on a nondiscriminatory basis without resorting to the procedures prescribed by those sections, but this exception shall not apply to foremen or lead men, whether hourly or salaried.

Affirmative Action: Machine Shop Training

IV. A. The company shall recruit and employ blacks to work as on-the-job welder learners, mechanic learners, or machinist learners in departments 300A (Machine Shop-General) and 300C (Machine Shop-Material Handling), and endeavor to train them to become welders, mechanics or machinists as provided below. Upon the date of entry of this decree, the next six (6) persons to be added to these learner categories shall be black, and thereafter sixty (60) percent of the total number of persons added to these categories per year shall be black.

***6** B. Persons who already possess the qualifications necessary to be hired by the company as a welder, mechanic or machinist shall not be counted toward the number specified in the preceding Section (A); nor shall persons working as material movers be so counted; nor shall persons who work for less than one month in the learner category be so counted.

C. Blacks selected under Article IV may be recruited from incumbent employees, or they may be hired without resorting to the procedures prescribed in Article II above. The same rate retention protection as is prescribed by Section II(I) above shall apply to incumbent black employees recruited under this Article IV.

D. The company shall use reasonable efforts to encourage black participants under this Article IV to remain in the employ of the company until they become fully qualified welders, mechanics or machinists.

E. The company shall use reasonable efforts to retain blacks recruited under this Article IV and employ them as welders, mechanics, and machinists; but the company shall not be required to retain more welders, mechanics or machinists than it has need for. Persons who have become competent under this Article IV and who resign or are laid

off by the company shall be provided with a letter of recommendation describing the nature and extent of their training and the skills they have acquired.

Testing

V. A. The company may continue to administer its welding test to applicants for employment as welder, or for promotion to welder, except that no welding test may be administered for promotion to welder from welder helper or welder learner. The welding test shall be given only to applicants for welder positions, and no to applicants for helper or learner positions. The company may also continue to administer its typing test for secretarial applicants, provided that such test shall be adjusted if necessary in the light of experience to assure that it is job-related and nondiscriminatory.

B. All tests shall be administered on a fair and nondiscriminatory basis. A report on any test administered by the company shall be furnished to the United States as part of the reports referred to in Article VII below.

C. No tests other than those referred to in Section V(A) above shall be administered by the company without prior submission to and approval by the plaintiff. In the event the plaintiff does not approve the test and the company nevertheless wishes to utilize it, the issue shall be determined by the Court; pending decision by the Court, the test shall not be utilized.

Records

VI. The company shall maintain for at least five (5) years records of all personnel assignments and actions at its Raleigh facilities, and shall allow the plaintiff, upon reasonable notice and without further order of the Court, to inspect and copy any or all of such records. The records maintained shall include, but not be limited to, all applications for employment and any action thereon; all requests for transfer, promotion or reassignment and any action thereon; all personnel folders; and all records relating to pay rates and earnings of employees. The company's records shall include the race of each employee and of each applicant for employment.

Reports

*7 VII. Three (3) months after the entry of this decree, and every six (6) months thereafter, the company shall serve a report on the plaintiff containing the following information concerning its Raleigh facilities for the period reported on:

A. Copies of all applications for employment received during the reporting period, with the race of the applicant noted.

B. Copies of all transfer request forms received during the reporting period pursuant to Section II(D) above.

C. The following information with respect to each vacancy which occurred or was filled during the reporting period:

1. name and billing code of the department, description of the job, date the vacancy arose; and date members of Affected Class were notified of the vacancy (if applicable);

2. date each minority recruitment source was notified of the vacancy, and name of each such source notified (if applicable);

3. date the vacancy was filled;

4. name, address, telephone number, referring agency (if applicable), race, and date of application (if not incumbent employee) of each person considered or interviewed for the vacancy; and, for each incumbent employee considered, name and billing code of his department;

5. name of person selected to fill the vacancy, date he filled the vacancy, rate of pay at which he filled the vacancy; and name of any other person offered the vacancy;

6. identity of all vacancies which arose as a result of interdepartmental promotions or reassignments connected with the filing of the vacancy;

7. if a member of the Affected Class was considered for the vacancy but deemed not qualified, the specific reasons therefor;

8. if a member of the Affected Class was deemed qualified for the vacancy but a white employee filled the vacancy because he was substantially better qualified, the specific reasons why the white employee was more qualified;

9. if the vacancy was filled on the basis of length of service with the company pursuant to Section II(F) above, the length of service of each qualified employee considered;

10. if a black applicant for employment indicated a desire to be considered for the vacancy but was deemed not qualified, the specific reasons for his rejection (paragraph III(C)(3) or III(D)(3) above);

11. if a black applicant for employment was deemed qualified for the vacancy but was rejected in favor of a white applicant deemed substantially better qualified, the specific reasons for his rejection (paragraph III(C)(5) or III(D)(4) above);

12. if the vacancy was filled on the basis of priority of application date pursuant to paragraph III(C)(4) above, the application date of each qualified employee considered;

13. if the vacancy was filled as an "emergency vacancy" pursuant to paragraph III(G)(2) above, a description of the specific circumstances which created the emergency; and

14. if the vacancy was filled pursuant to paragraph III(G)(3) above, a description of the specific circumstances justifying this action.

D. The following information with respect to each transfer by a member of the Affected Class during the reporting period:

*8 1. name of transferee;

2. date of transfer; and

3. whether the transferee was disqualified by the company or elected to return to his former department during the thirty-day trial period provided by Section II(H) above; if disqualified by the company, the specific reasons therefor; if at the employee's option, the reasons assigned.

E. With respect to all promotions, reassignments or transfers during the reporting period not reported under Section VII(C) or VII(D) above, the name and race of each employee involved and a description of the circumstances giving rise to the promotion, reassignment or transfer.

F. The following information with respect to each person working as a welder learner, mechanic learner, or machinist learner in departments 300A and 300C during the reporting period:

1. name, address, telephone number, race and date he began working in this capacity;

2. which department and which capacity he is working in;

3. pay rate, and date of any changes therein during the reporting period;

4. description of training received during the reporting period;

5. date of withdrawal as welder learner, mechanic learner or machinist learner (if applicable), and reasons therefor;

6. date employee became welder, mechanic or machinist (if applicable);

7. whether he was retained after becoming welder, mechanic or machinist (if applicable); and

8. copies of any letters of recommendation written pursuant to Section IV (E) above (if applicable).

G. The following information with respect to each test given at the Raleigh facility during the reporting period:

1. name, address, telephone number and race of each person taking the test;

2. name of the person who administered each test, and nature of the test;

3. which persons passed, and which failed the test; and in the case of the typing test, copies of each document given to the applicant to be typed and each applicant's test paper; and

4. for each black who failed the test, the specific reasons he failed.

H. The following information with respect to each black employee who resigned or was terminated during the reporting period:

1. name, address, telephone number, and date of resignation or termination;

2. whether he resigned or was terminated; and

3. the reason(s) for his termination or for his resignation if given.

I. In the event that the plaintiff notifies the company that certain of its reports pursuant to this Article VII are

insufficiently specific, the company will supply such additional details relating thereto as the plaintiff reasonably requests.

Retaliation

VIII. No person shall be discriminated against in any manner on account of his participation in investigations connected with this lawsuit, complaints to the Equal Employment Opportunity Commission, or other efforts to achieve equal employment opportunity.

Limitations

IX. A. Nothing in this decree shall prohibit or in any manner limit the right of the company, on a nondiscriminatory basis: (a) to discharge, suspend, demote or otherwise discipline an employee for cause; or (b) to effectuate company-wide, plant-wide or department-wide rate reductions.

*9 B. Subject to the general injunctive requirements preceding Article I above, nothing herein shall prevent or in any manner limit the right of the company to obtain or utilize the services of persons furnished by Manpower, Inc. or other similar agencies, for temporary employment or employment for specific jobs in cases in which the job or position so filled is not intended to be permanent; nor shall anything herein prevent or in any manner limit the right of the company, on a nondiscriminatory basis, to employ high school students, summer employees, or other part time or temporary employees without regard to the provisions of Article III hereof.

C. At any time in which twenty-five (25) percent or more of all substantially equal or comparable jobs in any given category and department in the Raleigh facilities of the company are filled by black employees, the provisions of Article III and paragraphs VII(C)(2), (10), (11), (12), (13) and (14) of this decree shall not apply with respect to such job category within such department; but at any time in which fewer than twenty-five (25) percent of such jobs in such job category and department are filled by black employees, such provisions shall again become operative. All additions to or deletions from the list of job categories which are at the twenty-five (25) percent level shall be reported to the plaintiff on a monthly basis.

D. This decree shall apply only to the Raleigh facilities of the defendant.

Status of Information

X. All information furnished by the defendant to the plaintiff under the terms of this decree shall be privileged in the same manner and to the same extent as if set forth in formal pleadings filed by the defendant in the pending action.

Jurisdiction

XI. The Court retains jurisdiction of this action for such other and further relief as may be appropriate. At any time any portion of this decree works an unexpected hardship on the defendant not required by law, the company may move this Court for a modification thereof. At any time after four (4) years from the date of entry of this decree, the company may move, upon sixty (60) days' notice to the plaintiff, for modification or dissolution of this decree.

Costs of Appeal

XII. The company shall pay to the United States the costs of appeal as certified in the July 30, 1970 judgment in lieu of mandate of the Court of Appeals for the Fourth Circuit.

Effective Date

XIII. The provisions of this decree shall take effect on July 7, 1971. References in other Articles to the "date" or "date of entry" of this decree shall be construed as referring to July 1, 1971.

All Citations

Not Reported in F.Supp., 1971 WL 157, 3 Empl. Prac. Dec. P 8306