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3 99-CV-01227-BCST

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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 KHALIL NOURI, *et al.*,

9 Plaintiffs,

10 v.

11 THE BOEING COMPANY,

12 Defendant.

No. C99-1227L

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14 MEMORANDUM OF DECISION
15 ON DISPARATE IMPACT CLAIM

16 In this class action, plaintiffs have asserted race and national origin discrimination
17 claims against defendant The Boeing Company under Title VII and 42 U.S.C. § 1981. In
18 particular, plaintiffs allege that Boeing's compensation process, which involves the delegation of
19 compensation decisions to first level managers, the use of primarily subjective criteria in making
20 those decisions, and the use of "totem" groups to evaluate and rank employees, has created
21 statistically significant disparities between the salaries of class members and white, non-class
22 members in the Boeing work force. Between May 17, 2004, and May 28, 2004, plaintiffs'
23 Section 1981 and disparate treatment claims were tried to a jury and the disparate impact claim
24 was tried to the Court. On June 2, 2004, the jury rendered a verdict for defendant on both the
25 Section 1981 and the disparate treatment claims. The Court then heard closing arguments on the
26 remaining disparate impact claim.

Plaintiffs' disparate impact claim is based on the allegation that Boeing violated

1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, *et seq.*, by using a facially neutral
2 employment practice that has had a significant disparate impact on a protected class or group.
3 Because this claim does not depend on defendant's intent to discriminate, the jury's verdict in
4 favor of Boeing on both the disparate treatment and Section 1981 claims does not control the
5 Court's analysis here.

6 Plaintiffs' disparate impact claim extends back to September 14, 2000 (300 days
7 prior to the filing of Mr. Taing's Equal Employment Opportunity charge on July 11, 2001) and
8 continues to March 1, 2001, for technical workers and to the present for engineers. This Court
9 has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331.

10 Throughout this litigation, plaintiffs have argued that Boeing's compensation
11 processes, taken as a whole, caused a disparate impact on the salaries of class members when
12 compared to those of white, non-class members. During closing arguments, and in light of the
13 statistical evidence provided by defendant's statistician, plaintiffs identified two specific
14 employment practices as the cause of the alleged compensation disparity: salary differentials
15 associated with year-of-hire and the assignment of Salaried Job Classification ("SJC") levels.
16 The Court has considered the evidence presented at trial, the exhibits admitted into evidence, the
17 arguments of counsel and, being fully advised, finds as follows:

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19 To make a *prima facie* case of disparate impact under Title VII, plaintiffs must
20 "(1) show a significant disparate impact on a protected class or group; (2) identify the specific
21 employment practices or selection criteria at issue; and (3) show a causal relationship between
22 the challenged practices or criteria and the disparate impact." Hemmings v. Tidyman's Inc., 285
23 F.3d 1174, 1190 (9th Cir. 2002). In order to show that the class has suffered a disparate impact
24 in compensation, plaintiffs offered the testimony of Dr. Bernard Siskin regarding various
25 statistical analyses he performed. Using a statistical model that is based on that used by Boeing
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1 when it conducted its own compensation analyses, Dr. Siskin concluded that class members
2 experienced statistically significant differences in pay throughout the relevant time period. Trial
3 Exs. 391 and 416.

4 The Court, however, finds the analysis presented by Dr. Michael Ward more
5 persuasive. Dr. Ward added a number of variables to Dr. Siskin's statistical model, most of
6 which had very little impact on the estimated salary differences between class members and
7 white employees. The two variables that make the biggest difference in the analyses are "year of
8 hire," which takes into account the strength of the labor market when the employee was hired,
9 and "SJC level," which takes into account the level of work performed by the employees. Dr.
10 Ward's model included "year of hire" for both technical and engineering employees. Because
11 Dr. Siskin's model already took into consideration the sophistication of the work performed by
12 technical workers through a grade system, the SJC level was added only to the model applied to
13 engineers. The Court finds that both of these variables are appropriate considerations when
14 determining whether membership in a protected class is having an adverse impact on salary.

15 Plaintiffs strenuously argue that SJC level is simply a proxy for salary and that
16 including SJC level in the regression analysis for engineers leads to the circular finding that
17 differences in salaries can be explained because salaries are different. Through the testimony of
18 Todd Zarfos, Jeffrey Janders, and others, Boeing showed that, while there is a correlation
19 between salary and SJC level, both are strongly correlated to the sophistication of the work being
20 performed. This correlation was mandated by the governing collective bargaining agreement,
21 which also provided avenues of appeal if an employee disagreed with the level to which he or
22 she was assigned. An employee unhappy with his or her assignment could request a
23 management review or take the issue through the union grievance process. Although
24 approximately 40% of the initial assignments were changed during the transition, the class
25 representatives were apparently satisfied with the levels to which they were assigned and did not
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1 challenge their assignments. The Court finds that SJC levels are related to the level of work
2 performed and were established through a fair process. Given those findings, a statistical
3 analysis that incorporates SJC level in order to compare employees who are performing similar
4 work is perfectly reasonable and provides a much better picture of what is driving perceived
5 salary differences than the analysis presented by Dr. Siskin.

6 Using Dr. Siskin's model as a starting point and adding other variables deemed
7 relevant, including "year of hire," Dr. Ward concluded that, for the period between September
8 2000 and March 2001, there is no statistically significant difference between the salaries of
9 technical workers who are class members and those who are whites. Trial Ex. 1173. As Dr.
10 Ward testified, once the regression analysis accounts for all of the identified relevant factors, any
11 differences between salaries are well within the realm of chance. The picture is slightly more
12 complicated when one compares the salaries of engineers between September 2000 and
13 September 2002 (the last date for which statistics were analyzed). After adjusting Dr. Siskin's
14 model by adding "year of hire," "SJC level," and other factors, the disparity between the salaries
15 of engineers who are class members and those who are white was well below the level of
16 statistical significance during 2000 and 2001. In 2002, Dr. Ward calculated the disparity in pay
17 among engineers at 2.22 standard deviations in favor of plaintiffs. Trial Ex. 1142. Although
18 one could conclude that a salary difference represented by 2.22 standard deviations is not due to
19 chance alone, this difference favors plaintiffs and can hardly be characterized as an actionable
20 impact. When engineers performing the same level of work are compared to each other, any
21 unidentified factor that is driving the compensation process has resulted in higher compensation
22 paid to engineers who are members of the class.

23 Plaintiffs have not met their burden of showing by a preponderance of the
24 evidence that they have suffered a significant disparate impact in compensation. Their belated
25 attempt to identify Boeing's payment of different starting salaries in different years and/or the
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1 payment of higher salaries for more sophisticated work as the practices that caused the disparate
2 impact must fail. The Court has found that "year of hire" and "SJC level" are relevant and
3 appropriate variables to include in the regression analysis. Once those variables are included,
4 there is no disparate impact and plaintiffs' have not met their burden of proof. In addition,
5 plaintiffs' attempt to pull out these variables as the "cause" of the disparate impact is illogical.
6 The point of the analysis is to identify and control for factors that properly impact salary and to
7 determine whether there are any unexplained disparities that may be associated with improper
8 considerations of race and national origin. Everyone acknowledges that there are certain non-
9 discriminatory, job-related factors which properly impact salary, such as "BS equivalent" and
10 "years in current job." Having found that "year of hire" and "SJC level" are also valid, non-
11 circular, non-discriminatory factors that should be considered in the analysis, plaintiffs' attempt
12 to blame those factors for the alleged disparities makes no more sense than an attempt to identify
13 the use of "years in current job" as the culprit.

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15 For all of the foregoing reasons, the Court concludes that plaintiffs did not
16 suffer a disparate impact in compensation during the relevant time period. The Clerk of Court is
17 directed to enter judgment in favor of defendant Boeing and against plaintiffs.

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19 DATED this 4th day of June, 2004.

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22 Robert S. Lasnik
23 United States District Judge
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