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7TH CIRCUIT TOPPLES OBSTACLE IN JOB-BIAS CASES

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Women and minorities confronted with bias as they climb the ranks in the workplace will benefit from a court decision that cleared the way for a female executive to pursue her discrimination lawsuit, the executive's attorney said Thursday.

Chicago lawyer Carmen D. Caruso said his client faced a situation that is becoming increasingly common as more women and minorities move into management-level jobs.

Caruso's client, Elizabeth C.O. Bellaver, claimed she was the victim of sex discrimination when she was fired in what her employer described as a one-person reduction in force, or RIF.

A judge rejected the discrimination claim after Bellaver -- the only employee to hold the title of "business development manager" -- was unable to point to any similarly situated male employee who was treated more favorably.

But saying that "employers will not be allowed cynically to avoid liability by terming a decision to fire an employee with a unique job description as a 'RIF,'" a federal appeals court panel Tuesday reversed the judge's ruling.

The panel of the 7th U.S. Circuit Court of Appeals said an employee in a single-discharge case is not required to show that similarly situated co-workers outside the protected class were treated better.

Instead, the fired worker can raise the inference of discrimination by showing that her duties were not eliminated but were taken over by her former co-workers, the panel said.

The panel reinstated Bellaver's suit against Quanex Corp., a Houston-based manufacturer of metal products.

Judge Michael S. Kanne wrote the opinion for the panel. Joining in the opinion were Judges Diane P. Wood and Terence T. Evans.

Elizabeth C.O. Bellaver v. Quanex Corp./Nichols-Homeshield, No. 98-3708.

Bellaver sued Quanex under Title VII of the Civil Rights Act, 42 U.S.C. [sec]2000e, after she was fired in March 1997 as the business development manager of the company's Homeshield Fabricated Products Division.

The 7th Circuit panel said Bellaver claimed she lost her job because her employer "disapproved of her aggressive and sometimes abrasive style while permitting the same characteristics in male employees."

But Quanex countered that Bellaver was laid off in a reduction in force prompted by a company restructuring, the panel said.

U.S. District Judge Charles R. Norgle Sr. granted summary judgment in favor of Quanex after holding that Bellaver had not produced sufficient evidence that she was fired because of her sex.

Norgle also held that Bellaver had failed to establish a prima facie case of sex discrimination under the standard for reduction-in-force cases because she could not point to any similarly situated male employee who was treated more favorably, the panel said.

In fact, the panel said, Norgle found that Bellaver could not point to any similarly situated employees at all.

But the panel said Bellaver's failure to meet her burden stemmed from the mischaracterization of her firing as a reduction in force.

Instead, Bellaver's termination was really a "mini-RIF," the panel said.

"The point of the mini-RIF, unlike a true RIF, is that the job really was not eliminated at all; because the fired employee's duties were absorbed by others, they were effectively 'replaced,' not eliminated," panel said.

And in Bellaver's case, the panel said, her workload was taken over by men.

"There does not seem to be a serious suggestion that Quanex no longer needed someone to market the HFP line," the panel said. "Rather, the company asked two male employees and two telemarketers to pick up Bellaver's duties."

The panel also said Quanex' decision to fire Bellaver may have been based on "impermissible stereotypes of how women should behave."

While Bellaver was criticized in employee evaluations for problems with dealing with others, male co-workers who suffered from the same perceived difficulties did not receive that kind of criticism, the panel said.

"Bellaver's evaluations are marred only by the repeated references to her interpersonal skills, but these same types of deficiencies seemed to be tolerated in male employees," the panel said.

Michael R. Lied, a Peoria attorney who represented Quanex in the case, denied Thursday that Bellaver was the target of sex discrimination.

And Lied said, "We believe that Judge Norgle got it right" when he determined that Bellaver had not made a prima facie showing of bias.

But Caruso contended that his client was the victim of sex discrimination.

And he said the requirement that Bellaver show that similarly situated male co-workers were treated more favorably had "threatened to become an unsurmountable hurdle" in her discrimination case.

But the 7th Circuit panel eliminated that hurdle -- one that more women and minorities are facing as they move into management-level positions in greater numbers, Caruso said.

"The 7th Circuit correctly recognized that Title VII covers people who have unique job titles at an executive level," Caruso said. "We look forward to trying the case."