United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 10, 2023
Lyle W. Cayce
Clerk

No. 21-30669

OMAR A. RAHMAN,

Plaintiff—Appellant,

versus

EXXON MOBIL CORPORATION,

Defendant—Appellee.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:18-CV-894

Before SMITH, CLEMENT, and HAYNES, *Circuit Judges*.

EDITH BROWN CLEMENT, *Circuit Judge*:

Polypropylene is in nearly everything—clothes, chairs, cups, and cars.[1] But, making it is a complicated business. So, at its production plant in Baton Rouge, the Exxon Mobil Corporation requires prospective operators to pass an extensive, multi-pronged training program. If they don't, they're

[1] Polypropylene, a synthetic resin and a member of the polyolefin family, has countless applications. POLYPROPYLENE, ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/science/polypropylene; ADRECO PLASTICS, https://adrecoplastics.co.uk/polypropylene-uses (last visited Oct. 5, 2022).

fired. Omar Rahman didn't pass his tests, so Exxon let him go. Rahman then sued Exxon, insisting he wasn't fairly trained by staff because he's black. The district court disagreed and dismissed his suit. Although for different reasons, we AFFIRM.

I

Exxon operates a polyolefins plant in Baton Rouge, Louisiana. The plant—which "produces high density polyethylene and polypropylene"—is divided into product-specific units. In each unit, operators work around-the-clock to keep the plant running, handling everything from leaky gaskets to full-blown emergencies. Between explosive chemicals and heavy machinery, the job can be risky. So, it's no surprise that Exxon requires its operators to pass a two-step training program to ensure they can "independently and safely run the unit."

In the program, a trainee must first pass "basic operator training," or six weeks of classroom instruction followed by written tests. The covered topics range from plant practices—spill prevention, lockout–tagout, and unit shutdowns—to basic industry science—chemistry, fluid dynamics, and pressurized storage. If a trainee fails fifteen tests, he's fired. But, if he passes, he moves on to step two: "field training." In that phase, an operator-in-training is embedded in a specific unit to get hands-on experience. While they still have reading assignments, trainees are expected to shadow plant personnel daily and track their progress with a "qualification card." After about four months, trainees must pass a test known as a "final walkthrough," or "a series of questions" designed to discern if they, as an operator, could safely run the unit without help. If a trainee passes the walkthrough, he becomes an operator. If he doesn't, he's fired.

That brings us to Omar Rahman. In 2017, Exxon hired Rahman and nine other trainees, four of whom were minorities. In basic operator training,

Rahman "cut[] it close." He failed fourteen tests—the most in his class and the maximum allowed—and scored poorly overall. Still, Rahman passed and, along with a white classmate, started field training in the plant's polypropylene unit. With four months to go until his walkthrough, Rahman was assigned a handbook and a trainer. Each day, Rahman had time to go through his book and shadow the unit's operators, including his trainer. Over the course of four months, Rahman's co-workers—with help from his handbook—taught him about the polypropylene unit's equipment and processes. As his final walkthrough drew near, Exxon let Rahman work overtime to finish the handbook and pushed his test back. But, Rahman failed his walkthrough. Exxon then gave Rahman "two weeks to study some more and try to pass" a second time. Rahman failed again, so Exxon fired him.

Rahman then sued Exxon for race discrimination under Title VII and 42 U.S.C. § 1981. Generally, Rahman maintained Exxon "deliberate[ly] and intentional[ly]" inadequately trained him because he's black. As evidence, Rahman pointed to his classmate and his qualification card. First, Rahman emphasized that his fellow trainee—who is white—passed the final walkthrough even though he "had no greater knowledge or ability or education." Second, with the qualification card, Rahman argued he only received two days of training from his trainer on material that should've taken two weeks to teach. At the same time, his white classmate's card evidenced about fifteen days of training on the same subjects. From those facts, Rahman concludes his supervisors were biased, didn't properly train him, and "intentionally failed" him "due to his race."

The district court disagreed on summary judgment. The district court found Rahman couldn't show his alleged inadequate training amounted to an adverse employment action, that Exxon's staff discriminated against him in the walkthrough, or that he was qualified for the operator position. The district court ruled in Exxon's favor, so Rahman filed a motion for

reconsideration. Again, the district court ruled against Rahman, holding he "waived" any inadequate training argument. So, Rahman appeals and raises two issues. He contends that, first, the district court ignored genuine factual disputes and, second, erroneously ruled that he waived his inadequate training theory.

II

We review the district court's grant of summary judgment *de novo* and resolve all genuine doubts in Rahman's favor. *In re La. Crawfish Producers*, 852 F.3d 456, 462 (5th Cir. 2017). Summary judgment is only appropriate if a party "shows that there is no genuine dispute as to any material fact and [it] is entitled to judgment as a matter of law." *Id.* (quoting FED. R. CIV. P. 56(a)). On appeal, we can affirm "on any ground supported by the record and presented to the district court." *Amerisure Mut. Ins. Co. v. Arch Specialty Ins. Co.*, 784 F.3d 270, 273 (5th Cir. 2015) (citation omitted).

Rahman alleges Exxon discriminated against him in violation of Title VII of the Civil Rights Acts of 1964 and 42 U.S.C. § 1981. Rahman doesn't rely on any direct evidence of discrimination, so his claim must satisfy the familiar *McDonnell Douglas* burden-shifting framework. 411 U.S. 792, 802–05 (1973); *Morris v. Town of Independence*, 827 F.3d 396, 400 (5th Cir. 2016). To prove a prima facie case of race discrimination under the framework, a plaintiff must show he "(1) is a member of a protected group; (2) was qualified for the position at issue; (3) was discharged or suffered some adverse employment action by the employer; and (4) was replaced by someone outside his protected group or was treated less favorably than other similarly situated employees outside the protected group." *Morris*, 827 F.3d at 400-01 (quoting *Willis v. Cleco Corp.*, 749 F.3d 314, 319–20 (5th Cir. 2014)).

A

As an initial matter, we find Rahman didn't waive his inadequate training claim. "[A]n argument is not waived on appeal if the argument on the issue before the district court was sufficient to permit the district court to rule on it." *Bradley v. Allstate Ins. Co.*, 620 F.3d 509, 519 n.5 (5th Cir. 2010) (quoting *In re Liljeberg Enters., Inc.*, 304 F.3d 410, 428 n.29 (5th Cir. 2002)). Here, the district court, in a section titled "Inadequate Training," found Rahman's alleged "[i]nadequate training simply does not fall into the category of 'ultimate employment decision[s]'" under *McDonnell Douglas*. So, the district court granted summary judgment "in Defendant's favor regarding Plaintiff's inadequate training claim." Considering the district court's ruling, Rahman's argument isn't waived.

B

As for substance, Rahman raises two errors. First, he argues the district court incorrectly found he couldn't rely on an inadequate training theory to satisfy the adverse action prong of *McDonnell Douglas*. Second, Rahman insists several genuinely disputed facts preclude summary judgment. We agree on the first charge, but not on the latter.

To satisfy *McDonnell Douglas*, Rahman must show, among other things, that he "suffered some adverse employment action." *Welsh v. Fort Bend Indep. Sch. Dist.*, 941 F.3d 818, 823 (5th Cir. 2019). That usually applies "only [to] ultimate employment decisions such as hiring, granting leave, discharging, promoting, or compensating." *Id.* at 824 (quotations and citation omitted). As a rule of thumb, if the decision "does not affect job duties, compensation, or benefits," then it "is not an adverse employment action." *Id.* (quotations and citation omitted).

Here, the district court concluded "[i]nadequate training simply does not fall into the category of 'ultimate employment decision[s]' recognized by

the Fifth Circuit." Exxon echoes that sentiment on appeal, arguing "this Court's historic position" on the type of adverse actions that satisfy *McDonnell Douglas* leaves no room for Rahman's present theory. Citing our decision in *McCoy v. City of Shreveport*, 492 F.3d 551 (5th Cir. 2007), Exxon insists Rahman's proffered cases only accept the "wholesale denial of training," not his allegedly inadequate training.

In response, Rahman argues inadequate training may constitute an adverse employment action if it is "directly tied to [the] decision to terminate." In other words, Rahman contends his theory may satisfy *McDonnell Douglas* if there is a strong causal connection between the decision and the training. Here, Rahman couldn't "stay employed if he did not pass the final walkthrough," but he couldn't pass "unless he was properly trained." With that reasoning, Rahman argues the connection couldn't be more direct: get trained or get fired. We agree with Rahman, and so does our precedent.

We've suggested that a training decision—particularly a failure to train—may constitute an adverse action if it has some effect on an employee's "status or benefits." *Shackelford v. Deloitte & Touche, LLP*, 190 F.3d 398, 406-07 (5th Cir. 1999). Admittedly, we haven't clearly delineated this standard at times. *See Hollimon v. Potter*, 365 F. App'x 546, 549 (5th Cir. 2010) ("As the district court found, a refusal to train is not an adverse employment action under Title VII."). But, we've been consistently clear that an employment decision, even if not apparently "ultimate," may still satisfy *McDonnell Douglas* if it is "so significant and material that it rises to the level of an adverse employment action." *See Thompson v. City of Waco*, 764 F.3d 500, 504 (5th Cir. 2014); *Welsh*, 941 F.3d at 823 (echoing familiar standard that if a decision "does not affect job duties, compensation, or benefits," then it "is not an adverse employment action" (quotations and citation omitted)). Despite any ambiguity, the clear throughline in our

training-related precedent is the need for a strong, direct connection between the plaintiff's training and his job. *See Brooks v. Firestone Polymers, L.L.C.*, 640 F. App'x 393, 397 (5th Cir. 2016) ("In similar cases involving only *tangential* evidence of a potential effect on compensation, we have held that a failure to train does not constitute an ultimate employment decision or an adverse employment action." (emphasis added)). So, considering our precedent, we plainly hold now that an inadequate training theory *can* satisfy the adverse action prong of *McDonnell Douglas* if the training is directly tied to the worker's job duties, compensation, or benefits.

Exxon doesn't necessarily disagree. In its briefing, Exxon argues "Rahman confuses his alleged inadequate training . . . with the wholesale denial of training opportunities," implying claims of the latter type are valid. Instead, as its defense, Exxon suggests we "historic[ally]" haven't allowed claims like Rahman's, namely inadequate training arguments. For support, Exxon turns to *McCoy*. But, our decision in *McCoy* simply charted the steady course we still maintain today: "only ultimate employment decisions" constitute an adverse action under *McDonnell Douglas*. 492 F.3d at 559. Our decision does not change that—it flows logically from the proposition that an "ultimate employment decision" is an action that "affect[s] job duties, compensation, or benefits." *Welsh*, 941 F.3d at 823.

Here, the connection to Rahman's job was clear: "to remain employed," you "must . . . pass a final walkthrough." So, the question then becomes *what* was Exxon required to give Rahman. In the past, we found training-related claims were appropriate only in the context of an outright denial of training. *See Shackelford*, 190 F.3d at 406-07; *Brooks*, 640 F. App'x at 397. Considering the reasoning behind those rulings, we hold now that an inadequate training claim must be based on, *in essence*, a failure to provide comparable training. So, offering a plaintiff an *equal opportunity* to *access* the necessary components of the training program is enough to defeat an

inadequate training allegation. Of course, "equality" shouldn't be taken literally. We aren't in the business of evaluating trainers, and training programs may vary in inconsequential ways between trainees. Instead, we ask whether there was a *roughly similar* opportunity to *access* the *necessary* parts of the training program.

Turning to the undisputed facts of this case, Rahman cannot rely on an inadequate training theory. Exxon provided Rahman with a handbook detailing the polypropylene unit's processes and equipment, and scheduled time each workweek for him to study. Exxon also assigned him a trainer, an operator with twenty years of experience, who went over the handbook in detail with him. Together, Rahman and his trainer "would go through [a] process in the book, and [they] would go out to the field, look at the process, point out the different pieces of machinery that the book referred to" and talk about it. Rahman's trainer even highlighted the things Rahman "need[ed] to know to pass [the] walkthrough." But, Rahman wasn't limited to just his trainer. Rahman learned from at least five other operators in the polypropylene unit. And, for four months, Rahman shadowed them "every time they went out." When Rahman's walkthrough was drawing near, Exxon let him work overtime to finish studying his handbook and pushed his test back. And, when he failed, Exxon gave him two more weeks to study and prepare for a *second final* walkthrough. Despite these facts, Rahman points us to his qualification card and a white classmate who passed his walkthrough. But, Rahman admitted that he went through the "same training" as his white classmate. So, because his training—and more importantly, his opportunities—paralleled his classmate's, his program necessarily couldn't be inadequate. And, his concerns about the qualification card aren't convincing. Rahman admitted to receiving—as detailed above—four months of extensive training regardless of Exxon's alleged shortcomings on paper.

In short, Rahman's claim isn't based on a failure to train. Instead, it relies on an insufficient training theory. But, his claim doesn't meet the inadequate training standard—Exxon gave him access to the "same" robust training as his classmate. Per the standard, providing people with a similar *opportunity* to *access* a training program cannot be discrimination. So, intentionally "giv[ing] one race X amount of training and another race only half that"—and other instances of dissimilar or unequal training—remains actionable. But, because we cannot say Rahman wasn't given a similar opportunity to train or that Exxon never gave him a chance, we cannot hold that his inadequate training claim passes muster. So, we find the district court properly dismissed Rahman's claims, although for different reasons.

C

Considering our above ruling, it is unnecessary to address Rahman's remaining arguments. That being said, we quickly note that Exxon's position on the qualification prong of *McDonnell Douglas*—that Rahman wasn't qualified to be an operator—is flawed. Rahman was fired from an operator-in-training position, so to find he wasn't qualified to be an operator would eviscerate these kinds of actions. Without proper training, no terminated trainee is qualified for the position he was *training* for. Rahman satisfied his burden to show he was qualified for the position of operator trainee, the position he was fired from.

III

In summary, although we recognize such arguments, Rahman's inadequate training theory fails under the weight of the undisputed facts. Per the record, Rahman received ample training opportunities—which he took—while at Exxon's chemical plant. Therefore, Rahman cannot genuinely allege Exxon failed to train him, so he cannot satisfy the *McDonnell Douglas* framework. We AFFIRM.

HAYNES, *Circuit Judge*, dissenting:

For the better part of two decades, our precedent has suggested that inadequate training might qualify as a viable Title VII discrimination theory. Today, the majority opinion rightly clarifies that inadequate training can satisfy the adverse employment action prong of a Title VII claim if (1) the training is directly tied to the worker's job duties, compensation, or benefits, and (2) the employer failed to provide "an *equal opportunity* to *access*" the "*necessary* parts of the training" program. I agree with this standard. Proper application of the standard to the facts of this case, however, requires reversal. For this reason, I respectfully dissent.

Exxon requires prospective employees to take and pass a custom training program—the skills it teaches cannot be acquired elsewhere, and self-guided instruction will not suffice. The training spans several months and culminates in an exam which tests the skills gleaned. Failure results in termination. Rahman asserts that he was unable to pass this qualifying exam because he was inadequately trained. In support of this argument, he proffers the qualification cards used to track the progress of Exxon trainees. Rahman's qualification card demonstrates he was given "only two days[] worth of training" to cover 150 categories, which would usually take two weeks to complete. In contrast, the alleged Caucasian comparator's card indicates he was trained "over the course of fifteen [] days" on the same 150 categories. As a result, according to Rahman, the Caucasian comparator who received the "required proper, hands-on instruction" passed the exam while Rahman did not.

The majority opinion holds that this alleged discrepancy is of no moment because Rahman's opportunities to train "paralleled" that of the comparator. To support this conclusion, the majority opinion points to generalizations about Rahman's training, including that Rahman received the

opportunity to review a training handbook with his trainer, shadowed five other operators, and utilized additional time to study for a second final walkthrough. But these broad observations obscure the specific point Rahman makes. According to him, hands-on instruction (not self-study) in the 150 categories was *necessary* to pass the final walkthrough, and he was not provided an *equal opportunity* to *access* adequate training because he was given a mere two days while others were given more than two weeks.[1]

As one might expect, Exxon takes issue with this characterization of the qualification cards, contending that there are other explanations for the disparities and that Rahman actually received more training than required. But this back-and-forth demonstrates a quintessential fact issue under the inadequate training standard embraced by the majority opinion. Because Rahman has raised a genuine dispute of material fact as to whether he was provided the requisite equal access to necessary training, I would reverse the district court's grant of summary judgment.

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[1] The majority opinion overlooks this problem by relying on Rahman's purported admissions about his training. But as the record demonstrates, Rahman made the alleged admission that he went through the "same training" as his Caucasian classmate, well before the case proceeded to discovery. It was at that point that Rahman received his classmate's qualification card and other pertinent evidence showing that his statement was inaccurate. Because there is nothing demonstrating that Rahman knew that his classmate received up to *two weeks* more training than he did on 150 categories, I disagree that this pre-discovery statement amounted to an admission on this point.