

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KATHLEEN L. RUSHMORE,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 195754

Wayne Circuit Court

LC No. 94-41718 NZ

MICHIGAN BELL TELEPHONE, a/k/a  
AMERITECH MICHIGAN, and AMERITECH  
SERVICES, INC.,

Defendants-Appellants.

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Before: Cavanagh, P.J., and White and Young, Jr., JJ.

WHITE, J. (concurring in part and dissenting in part).

I concur in Section I of the majority opinion.

I respectfully dissent from Section II of the opinion. I do not agree that the trial court abused its discretion in admitting the videotape of Goetz' statement. Goetz was a vice-president and a Tier A manager. Tier A managers were not responsible only for Tier B, C and D managers below them; they and the president of Network Services comprised a business unit leadership team responsible for implementing the Breakthrough process through all levels of Network Services. The jury could reasonably conclude that Goetz' statement, made during one of the leadership team's regular bi-weekly videotaped tele-conferences, albeit to his division, was a statement of company policy coming from a manager who participated in, was familiar with, and was responsible for communicating and implementing company policy regarding the restructuring. Further, articulation by a high-level manager of company policy -- "we want to get back and start bringing in some folks that are under forty-five years old" -- can be seen as evidence of a pattern,<sup>1</sup> although the manager articulating the policy was not the decision maker. See *Cooley v Carmike Cinemas, Inc.*, 25 F3d 1325 (CA 6, 1994); *Lockhart v Westinghouse Credit Corp.*, 879 F2d 43 (CA 3, 1989), overruled in part on other grounds *Starceski v Westinghouse Electric Corp.*, 54 F3d 1089, 1099 n 10 (CA 3, 1995).

Regarding Section III, I do not agree that plaintiff's statistical evidence and evidence concerning the evaluation process, together with Goetz' statement, which I conclude was admissible, failed to support an inference of age discrimination.

Nor do I agree that defendant showed as a matter of law that age was not a factor in the decision to discharge plaintiff. A plaintiff may establish pretext in any of three ways: (1) by showing that the defendant's legitimate nondiscriminatory reasons for its adverse employment action had no basis in fact; (2) if they have a basis in fact, by showing that they were not the actual factors motivating the decision; or (3) if they were factors, by showing that they were jointly insufficient to justify the decision. *Dubey v Stroh Brewery Co*, 185 Mich App 561, 565-566; 462 NW2d 785 (1990). While the Tier C managers offered explanations for the decisions and did, indeed, choose to hire some employees who were older than plaintiff, plaintiff offered evidence that younger, less qualified and less experienced workers were retained; that the evaluation and scoring procedures were inconsistent, arbitrary, and overly subjective; and that older employees were treated differently from younger ones. Under these circumstances, a reasonable jury could have concluded that the reasons defendants' agents gave for not selecting plaintiff were not the actual factors motivating the decision or that the reasons were jointly insufficient to justify the decision.

The evidence presented at trial was such that reasonable jurors could have drawn the inferences advanced by plaintiff or defendant, and could have found in favor of either. Viewing the evidence in the light most favorable to plaintiff, as this court is obliged to do on appeal, a reasonable jury could have concluded that age was a determining factor in the decision not to offer plaintiff a position in the restructured company and in her discharge.

I would affirm.

/s/ Helene N. White

<sup>1</sup> Goetz said during the same video conference, "It is our expectation, **across the corporation**, that we will be hiring people from the street." Emphasis added. While this statement is age neutral, it can support a reasonable inference that Goetz was speaking for more than himself and his division.