

STATE OF MICHIGAN
COURT OF APPEALS

JOHN MORALEZ,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY BOARD OF
TRUSTEES,

Defendant-Appellee.

UNPUBLISHED

September 10, 2009

No. 279792

Ingham Circuit Court

LC No. 06-000793-CD

JOHN MORALEZ,

Plaintiff-Appellant,

v

MICHIGAN STATE UNIVERSITY BOARD OF
TRUSTEES,

Defendant-Appellee.

No. 281440

Court of Claims

LC No. 07-000067-MM

Before: Meter, P.J., and Murray and Beckering, JJ.

BECKERING, J. (*concurring*).

I concur in the outcome rendered by the majority, but write separately because I do not agree with part of the majority's analysis.

One of the issues before us is whether plaintiff John Moralez has presented sufficient evidence of defendant Michigan State University's alleged violation of the Elliot-Larson Civil Rights Act ("CRA"), MCL 37.2101 *et seq.*, to overcome a motion for summary disposition under MCR 2.116(C)(10). In his complaint, plaintiff alleges that defendant violated MCL 37.2202(1) by discriminating against him on the basis of race and national origin when it laid him off as a television producer and on-air host with defendant's public television station, WKAR-TV, and failed to recall him in accordance with the terms of a collective bargaining agreement (CBA) when he sought three other positions.

In order to establish a prima facie case of discrimination, entitling a plaintiff to a presumption of discrimination, the plaintiff must prove that he was: “(1) a member of a protected class, (2) subject to an adverse employment action, (3) qualified for the position, and that (4) others, similarly situated and outside the protected class, were unaffected by the employer’s adverse conduct.” *Town v Michigan Bell Tele Co*, 455 Mich 688, 695; 568 NW2d 64 (1997).¹

Of significance in this case is whether plaintiff was qualified for the positions he sought after being laid off as a television producer and on-air host. The trial court found, and the majority agrees, that there is no genuine issue of material fact that plaintiff was not qualified for the positions he sought. I respectfully disagree. Although defendant produced ample evidence supporting its contention that plaintiff was not truly qualified for the positions, plaintiff produced sufficient evidence regarding his education and prior experience to create a material question of fact. Plaintiff produced evidence of his B.A. in journalism from defendant’s university and his experience in television hosting and production, television news anchoring, management of a television newsroom, public relations and business marketing, radio reporting, newspaper reporting, editing, script writing, and research. At face value, his qualifications are not strikingly dissimilar to defendant’s posted job descriptions, which contained “required” and “desired” applicant qualifications. I would hold that plaintiff has produced sufficient evidence to at least create a genuine issue of material fact regarding whether he was qualified for the positions he sought.²

In order to overcome the presumption of discrimination created after a plaintiff has established a prima facie case, the defendant must produce evidence of a legitimate, nondiscriminatory reason for the adverse employment action, whereafter the presumption evaporates. *Id.* In this case, I agree with the trial court that defendant has produced evidence of legitimate, nondiscriminatory reasons for plaintiff’s layoff and its decision not to hire him for the other positions he sought. Defendant produced evidence of its budgetary problems, plaintiff’s poor interview performance, his insufficient or outdated experience in certain areas particularly critical to the positions he sought, and other problems associated with his presentation as a job candidate.³

¹ “The purpose of the prima facie test is to 1) remove the most common nondiscriminatory reasons for the employer’s action, such as poor employee performance and 2) to force the employer to articulate a nondiscriminatory reason for the discharge.” *Town, supra* (citations omitted).

² If plaintiff’s qualifications are measured according to the terms of the CBA, plaintiff created a genuine issue of material fact regarding whether he met the minimum requirements of one or more of the positions he sought and could have performed the duties of the position within a 90-day evaluation period.

³ Defendant also contends that plaintiff possesses poor writing skills as exemplified in writing samples he provided and a performance writing test he completed, but such samples and tests were not found in the record.

“Once the presumption drops out of the case, the plaintiff retains the ultimate burden of proving discrimination” by providing sufficient evidence “to permit a reasonable factfinder to conclude that the discrimination was defendant’s true motive in making the adverse employment decision.” *Id.* at 696 (citations omitted). I agree with the trial court that plaintiff failed to carry his ultimate burden of proving that defendant’s stated reasons for its hiring decisions were a mere pretext for discrimination. There is simply no record evidence that defendant’s motives had anything to do with plaintiff’s race or national origin. Because plaintiff failed to produce evidence sufficient to permit a reasonable factfinder to conclude that discrimination was defendant’s true motive in making its employment decisions, the trial court properly dismissed plaintiff’s discrimination claim.

/s/ Jane M. Beckering