

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
LEWIS T. BABCOCK, JUDGE

Civil Case No. 10-cv-02201-LTB-KMT

MARVIN GREEN,

Plaintiff,

v.

PATRICK R. DONAHOE, Postmaster General, United States Postal Service,

Defendant.

ORDER

This matter is before me on Plaintiff Marvin Green's Objection and Appeal of Magistrate Judge's Order Dated November 20, 2012 (Doc. 91) [**Doc #94**], and Plaintiff's Motion for Sanctions Based on Court's Order Dated November 20, 2012 (Doc. 91) [**Doc #97**]. Oral arguments on both were held on January 24, 2013. For the reasons stated on the record at oral arguments, IT IS ORDERED THAT:

- 1) The Magistrate Judge's Order dated November 20, 2012 [**Doc #91**], is REVERSED as clearly erroneous. The proper sanction is a jury instruction that Ms. Ehrenshaft's destruction of Mr. Price's records is evidence of pretext of unlawful discrimination, and the jury will be so instructed. The Magistrate Judge's order is modified and amended accordingly. Furthermore, the court will consider Ms. Ehrenshaft's conduct as evidence of pretext when considering Defendant's pending motion for summary judgment.

- 2) Additionally, Plaintiff's motion for sanctions is GRANTED. Consequently, the jury will be instructed that Ms. Ehrenshaft's destruction of Mr. Soo and Mr. Maes's records is evidence of pretext of unlawful discrimination. The Court will likewise consider that conduct evidence of pretext when considering Defendant's pending motion for summary judgment.

Date: January 24, 2013, in Denver, Colorado.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, JUDGE