United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-7031 **September Term, 2006**

Filed On: December 14, 2006

[1011093]

01cv00582

Anthony Mastrangelo,

Appellant

v.

National Railroad Passenger Corporation,

Appellee

Appeal from the United States District Court
for the District of Columbia

BEFORE: Henderson, Randolph and Garland, Circuit Judges

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs by counsel. It is

ORDERED that the judgment from which this appeal has been taken be affirmed. Anthony Mastrangelo appeals the district court's grant of summary judgment to National Railroad Passenger Corporation (Amtrak) with respect to Mastrangelo's claim of wrongful discharge under District of Columbia common law. *See, e.g., Carl v. Children's Hosp.*, 702 A.2d 159, 160 (D.C. 1997). "Summary judgment is appropriate if 'there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law;'" a genuine issue exists "only if 'a reasonable jury could return a verdict for the nonmoving party.'" *Taylor v. Small*, 350 F.3d 1286, 1290 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (alteration in original)). In this case, the district court correctly

entered summary judgment after concluding that Mastrangelo offered insufficient evidence that he was "terminated solely, or even substantially, for engaging in [protected] conduct." *See Mastrangelo v. Nat'l R.R. Passenger Corp.*, No. 01-0582 (D.D.C. Feb. 22, 2006), *reprinted in* Joint Appendix (JA) at 1144, at 1153; *Wallace v. Skadden, Arps, Slate, Meagher & Flom, et al.*, 715 A.2d 873, 886 (D.C. 1999). Mastrangelo contends this judgment should be reversed because he provided evidence that (1) his supervisor, Henry Weller, knew of Mastrangelo's cooperation with an Inspector General (IG) investigation and (2) Weller manipulated an employee evaluation system to ensure his termination. These arguments fail for the following reasons.

First, the proffered evidence does not establish Weller's knowledge that Mastrangelo was providing damaging information to the IG's office. Although Weller identified Mastrangelo as the likely source of information upon learning the nature of an IG investigation into his office during a meeting with an IG investigator in February 2000, this meeting occurred well after the November 1999 performance evaluation that subjected Mastrangelo to termination. JA 452–52, 176. Indeed, as evidence of knowledge at the time of evaluation, Mastrangelo only provides a personal "Note to file" regarding a conversation with Weller on October 27, 1999. JA 846. This note merely establishes that Mastrangelo informed Weller that the IG's office had initiated contact with Mastrangelo, but fails to directly illustrate Weller's conclusion that Mastrangelo disclosed damaging information. *Id*. Instead, Mastrangelo speculates from Weller's vague statements that the investigators "are on a witch-hunt" and "do not know what they are looking at," *id.*, speculation that may not be used to create a genuine issue of material fact. *Cf. Exxon Corp. v. FTC*, 663 F.2d 120, 128 (D.C. Cir. 1980) ("It is not the intent of Rule 56 to preserve purely speculative issues of fact for trial.").

Second, Mastrangelo fails to illustrate that Weller manipulated, or was capable of manipulating, the employee evaluation system under which Mastrangelo was discharged. Because the evaluation system rated employees relative to other employees, with only the bottom ten percent subject to termination, Weller could only ensure Mastrangelo's termination either by giving him an overall rating in the lowest two scoring blocks or knowing the scores that other supervisors were awarding to the remaining 271 managers relative to whom Mastrangelo would ultimately be compared. JA 132. Yet Weller rated Mastrangelo in the middle of the scoring scale, JA 331–32, consistent with his historic performance evaluations, *see, e.g.*, JA 563, 574, 581, and

Mastrangelo adduced no evidence that Weller possessed the level of knowledge required to intentionally place Mastrangelo in the bottom ten percent of his management category.

Moreover, there is no evidence that Weller misapplied the evaluation guidelines in order to give Mastrangelo artificially low performance scores. As part of the evaluation, each employee set a series of base performance goals as a way to measure everyday performance along with "stretch goals" by which the employee could establish exceptional performance. JA 216–17. Because he met his "stretch goals," Mastrangelo alleges that Weller was obligated to provide an above average rating. Yet the guidelines do not mandate such above average scores, but rather prohibit supervisors from awarding high scores unless the employee meets their "stretch goals" *and* those goals exceeded the employee's basic goals by twenty percent. *See* JA 334. Here, Mastrangelo did not define his "stretch goals" this highly, *see* JA 334, and thus, Weller was neither obligated nor permitted to give Mastrangelo above average ratings and the performance scores Mastrangelo received did not violate the evaluation system's guidelines.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk