
**Federal Court Report**

**Discrimination Claims Arising from RIF Fail**

5/17/2022

By John W. Simmons – Simmons Law Firm PLLC
*A member of* [*Worklaw® Network*](http://www.worklaw.com)

Management's failure to review all the historical records related to the reasons for selection for termination in a reduction in force (RIF) did not prevent summary judgment dismissing age and race discrimination claims, according to the 6th U.S. Circuit Court of Appeals.

On Feb. 8, 2018, Benteler Automotive Corp. announced it would implement a RIF with job eliminations potentially starting in May 2018. The plaintiff, who was a white U.S. citizen, was 58 years old at the time he was terminated on May 4, 2018. Benteler considered several factors in selecting employees for termination, including "performance review[s], attendance, safety records [and] quality records." However, Benteler did not review all the historical data for employees considered, and Benteler represented the records reviewed were up-to-date only as of 2017.

Benteler selected the plaintiff because he had two negative attendance points as of May 4, 2018, and his performance appraisal indicated that while "he works hard to hit his line goals[,]" he was also told "to stay on his line" and "not to wander[.]"

The plaintiff claimed he was selected for termination because of his age, his race and national origin in violation of federal and state law.

There was no direct proof of discrimination. As to circumstantial proof for the age claim, the plaintiff argued that initially he was on the list to be retained but that he was taken off and a 38-year-old employee was added. The court rejected this argument as there was no proof Benteler compared these two employees to each other. In a RIF, simply retaining a younger employee does not establish age discrimination.

The court also rejected the plaintiff's age discrimination argument that, on average, those terminated were 7.09 years older than those considered and retained, finding such statistics were insufficient to eliminate the nondiscriminatory reasons in a RIF setting because there was no expert analysis offered to explain the statistical significance of the data.

Similarly, the race discrimination claim, which the plaintiff combined with a national origin claim, failed. The plaintiff claimed that for employees of Burmese national origin who were considered for the RIF, one of 27 was terminated compared to 38 terminations for the 170 non-Burmese employees who were considered.

In rejecting this argument, the court noted that the plaintiff did not show Benteler was the unusual employer who discriminated against majority employees (white) or that Benteler treated similarly situated Burmese employees differently. The court also observed it was difficult to determine if the demographic data on national origin was accurate and that "it was not apparent" from Benteler's database whether someone was Burmese. Finally, the court noted that Benteler did not review all the historical data when making the selection decision for the RIF.

The plaintiff also failed to overcome Benteler's nondiscriminatory reason for selecting him for termination because a reasonable decision-maker could reach the same conclusion when comparing the plaintiff's performance and attendance to those retained.

*Pio v. Benteler Auto Corp.*, 6th Cir., No. 21-1231 (Feb. 7, 2022).

*​***Takeaway:** Management should expect that its rationale for selections in a reduction in force (RIF) will be closely scrutinized, so all appropriate documentation should be reviewed and the reasons for selections should be applied consistently to all employees who are being considered. There is often deference to management's decisions in a RIF; however, when statistical data shows a disparity, management will want to have an explanation for how this arose in a nondiscriminatory manner.

*John W. Simmons is an attorney with* [*Simmons Law Firm PLLC*](https://worklaw.com/firms/simmons-law-firm-pllc)*, the Worklaw® Network member firm in Memphis, Tenn.*