

Jury in Eastern District of Va. Awards Nearly \$750k to Plaintiff in Sect. 1981 Retaliation Case

By former Associate Jeffrey Hord

On November 2, 2018, following a 3-day trial in federal court, the jury in Rufo v. Aclara Technologies, LLC (1:18-cv-0037) returned a verdict in favor of the plaintiff on his claim for retaliation in violation of 42 U.S.C. § 1981. Consistent with its verdict, the jury hammered the defendant employer, Aclara Technologies, LLC (“Aclara”), by imposing \$300,000 in compensatory damages, \$35,000 in back pay, and \$400,000 in punitive damages. The Court will now address the question of “front pay,” or future wages and benefits that the plaintiff stood to earn but for the employer’s unlawful conduct, meaning the total quantum of damages could easily wind up exceeding \$1 million. Aclara’s costly mistake should serve as a stark reminder to all employers regarding the potentially devastating consequences of retaliating against employees who complain about issues in the workplace.

The plaintiff, Joseph Rufo (“Rufo”), is a decorated combat veteran who was employed as an Office Coordinator working in Aclara’s Department of Organization Effectiveness and Administration. As part of his duties, Rufo was tasked with preparing and maintaining a spreadsheet of disciplinary actions taken against Aclara employees. On his own initiative, Rufo chose to analyze this disciplinary data in relation to employees’ racial characteristics; he concluded that Aclara disciplined its black and multi-racial employees “far more often” than white employees.

Rufo submitted his report to his supervisors and to the company’s Senior Director of Human Resources, suggesting the company investigate further. In response, his immediate supervisor told Rufo he “may have put the company at risk”; just 3 days later, Aclara placed Rufo on a performance improvement plan (PIP) for “performing job duties not requested of him.” While Rufo successfully worked through and was removed from the PIP four months later, he subsequently received an “unfairly critical” end-of-year performance appraisal and was told that he was not going to receive a merit salary increase that year. On January 9, 2018, Rufo filed his lawsuit in U.S. District Court, alleging that Aclara had illegally retaliated against him for engaging in protected activity by investigating and reporting the disparate impact that Aclara’s disciplinary policies were having upon minority employees. Less than five months later, Aclara terminated Rufo’s employment, ostensibly because “his position was eliminated.”

In its defense, Aclara argued that Rufo’s act of presenting his findings to his supervisors and to HR did not constitute “protected activity” under 42 U.S.C. § 1981 (“Section 1981”). Aclara asserted that Rufo could not have formed a reasonable belief that the disparate treatment uncovered by his report was the result of intentional discrimination, as even Rufo acknowledged he “lack[ed] sufficient amounts of data to give this [report] relevancy.” Aclara further argued that Rufo did not “stand in opposition” to the alleged discriminatory activity, which is a prerequisite for obtaining retaliatory protection under Section 1981. Finally, Aclara claimed that even if Rufo had engaged in protected activity sufficient to cloak him in Section 1981 protection, there was no “causal connection” between his actions and the company’s decision to (a) place him on the PIP, (b) withhold his merit salary increase, and/or (c) terminate his employment in June 2018.

Clearly, the jury in this case did not buy Aclara’s arguments, and instead sided with Rufo on all counts. The fact-finder concluded that all of the adverse actions Rufo suffered during the final 12 months of his employment were purely retaliatory, initiated in reaction to his protected activity. Accordingly, Rufo was awarded not only compensatory damages and back pay, but also a huge sum of punitive damages intended to punish the company for its unlawful conduct and deter other employers from behaving in a similar fashion.

Employers can draw several lessons from this outcome. First, this case is a reminder of how prevalent retaliation claims have become; in 2018, for example, nearly 50% of all private-sector charges filed with the EEOC included a retaliation claim, and retaliation remains the most common discrimination finding in federal-sector cases. Second, this verdict illustrates why Section 1981 claims are so popular among

plaintiffs and their attorneys: there is no requirement for an employee to first file a charge with an administrative agency, the statute of limitations is much more relaxed and, most importantly, Section 1981 does not have any cap on damages! Third, the company's actions in this case are a perfect example of what not to do; Rufo never should have been placed on a PIP simply for identifying trends and correlations beyond the scope of his original assignment, and he certainly should not have been disciplined (much less, terminated) without cause while his lawsuit was still pending. Now, even if there turns out to be no evidence of the apparent discrimination Rufo believed he'd uncovered, the company has still "lost the war" as a result of its foolish choice to retaliate against the whistleblower.