

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MONICA L. WILLIAMS, §
§
Plaintiff §
§
v. § CIVIL ACTION NO. 1:05cv841
§
MEXICAN RESTAURANTS, INC., § MAGISTRATE JUDGE HINES
§
Defendant §

**PLAINTIFF'S OBJECTIONS TO THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE (DOC. 54)**

TO THE HONORABLE COURT:

Plaintiff respectfully objects to the thoughtful Report and Recommendation of the United States Magistrate Judge (Doc. 54) ("Recommendation") for the following reasons:

I

Introduction

Plaintiff Monica Williams is an African American woman who asked for reassignment from her manager position to a waitressing position at Defendant Mexican Restaurant, Inc. ("MRI")'s Casa Ole restaurant in Jasper, Texas. Williams had been aware of a white employee obtaining a similar reassignment. Instead of simply indicating whether Williams could reassign, MRI fired her and had the police escort her out of the restaurant. Williams complains she was treated differently than white employees because of her race in violation of Title VII. The matter was subject to mandatory arbitration.

MRI shamelessly proffered (and then, in the face of conflicting evidence, abandoned) a series of inconsistent and evolving explanations for its treatment of Williams, including claiming that Williams was *not* fired but had resigned, that she was fired for different alleged performance problems, and that various formulations of MRI's claimed (but unwritten) no-step-down policy prohibited reassignment. The arbitrator accepted MRI's final explanation (that "borders on the preposterous") and entered an arbitrator's award in favor of MRI without requiring even an explanation for the shifting proffered reasons.¹

Plaintiff Williams filed a Motion to Vacate the Arbitrator's Award (Doc. 32) on the grounds that the arbitrator's award represents a manifest disregard of the law and violates public policy. Magistrate Judge Hines considered those standards, and the statutory standards at 9 U.S.C. § 10(a)(3) ("misbehavior") and (4) ("so imperfectly executed [the arbitrator's] powers"). Magistrate Judge Hines recognized problems with the award, but recommends that the Court deny Plaintiff's Motion (Doc. 54). Plaintiff Williams now objects to the Recommendation. 28 U.S.C. § 636(b).

¹ MRI's counsel now uses this result for marketing purposes, taking credit for helping MRI to require that all employees "consent" to mandatory arbitration, to ensure that "an Arbitrator would decide the case and not a panel of 12 [sic] jurors." See *Attachment 1*, Monty Partners' advertisement

II

Summary of Arguments

Plaintiff respectfully objects to the Recommendation for the reasons stated in her Motion (Doc. 32), incorporated herein by this reference, that the arbitrator manifestly disregarded the pretext theory of proving discrimination, ultimately accepted an explanation from the employer that lacked credibility and did not explain the termination at issue, and that the arbitrator simply permitted MRI to discriminate with impunity in violation of public policy.

III

The Report and Recommendation

Magistrate Judge Hines correctly noted that MRI has given an “embarrassingly long string of evolving reasons” for its treatment of Williams, reasons that “everyone tasked with evaluating Williams’ claim”, including the arbitrator, has rejected. Recommendation at p. 10. He also correctly noted that, under the accepted pretext theory, when an employer gives a false reason to explain its termination of an employee protected by Title VII, the falsity of the explanation supports the likely inference that the employer is dissembling to cover a discriminatory purpose and the false reason is a pretext for discrimination. *Id.* at p. 20, citing Reeves v. Sanderson Plumbing Products, 830 U.S. 133, 147 (2000). Thus, Magistrate Judge Hines describes as “astonishing” the

arbitrator's acceptance of MRI's final explanation (of at least nine explanations), without a finding of pretext, and the award in favor of MRI, noting that "[l]ogic and common sense would propel anyone to distrust the hypothesis that MRI waited to reveal its true and innocent explanation until first exhausting a host of phony reasons." *Id.* Magistrate Judge Hines also notes that MRI's final reason, accepted by the arbitrator, "borders on the preposterous", regardless of the host of prior phony reasons, because it suggests the ADA and FMLA would require reassignment of a pregnant employee with a back injury to a more strenuous and demanding job. *Id.* Finally, Magistrate Judge Hines aptly characterizes the arbitrator's award as "astonishing, eye-popping and, perhaps, soft-witted." *Id.* at p. 22.

Plaintiff acknowledges the exceedingly deferential and narrow standard of judicial review of an arbitrator's award, as described in her Motion (Doc. 32) and the Report and Recommendation. It is not difficult to see how an arbitrator might think he could with impunity disregard facts and take the law into his own hands in order to shield a company from liability for race discrimination. Add in the dearth of court decisions upholding judicial rejection of arbitration awards and it is certainly understandable that the Magistrate Judge would not recommend that the Court swim against the current and grant a motion to vacate in any case, even an outlier like this one. However, given the undisputed

circumstances of this case and the arbitrator's award as fairly characterized by Magistrate Judge Hines, if the manifest disregard of the law, public policy, or statutory standards permit any substantive review at all, this arbitrator's award pushes beyond any tolerable limits and cries out for *vacatur*.

The Recommendation avoids *vacatur* by characterizing the award's irrational result as a manifest disregard of fact, not law. Recommendation at p. 22. That characterization merely avoids the issue. Hypothetically, if the arbitrator was supposed to add 1 + 1 and came up with the sum of 206, would the answer be wrong because he disregarded the "laws" of addition or because he disregarded the quantitative properties ("fact") of the numbers involved? When the result is so far removed from reason, it does not seem necessary to split this hair (law vs. fact); manifestly disregarding reality manifestly disregards law as well as fact. Characterizing the arbitrator's break with reality as a fact problem, not a law problem, would be a concession that there really is no judicial review at all.

The Supreme Court has repeatedly stated in its cases regarding binding arbitration that, even in instances where the parties have bargained for arbitration, they do not forego their substantive rights. See, for instance, Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985). The analysis and Recommendation urged by the Magistrate Judge does just that,

foregoes Williams' substantive right to be free from race discrimination.

IV

MRI's Final Proffered Explanation, the One Accepted by the Arbitrator, Not Only "borders on the preposterous", But Does Not Meet MRI's Burden to Explain Williams' Termination, Entitling Williams to Judgment as a Matter of Law

As Williams has complained in her Motion, MRI's final explanation, if one could reasonably suspend all skepticism and believe it, might explain why Williams was not allowed to step down, but does nothing to explain why she was not allowed to simply keep her old job. Motion at pp. 2, 13 and 16. Once an employee makes out a *prima facie* case for discrimination, an employer must present admissible evidence of non-discriminatory reasons for its treatment of the employee, or judgment must be entered for the Plaintiff. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 509-10 fn. 3 (1993). Here, MRI's final reason fails to in any manner explain Williams' termination so that judgment must be entered in her favor.

Respectfully submitted,

By: /s/ Timothy B. Garrigan
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CERTIFICATE OF SERVICE

I hereby certify that I have served all parties of record in this case including the following with a true and correct copy of the foregoing Plaintiff's Objections to the Report and Recommendation of the United States Magistrate Judge (Doc. 54) by sending same via FAX/United States Postal Service/electronically to:

Jacob M. Monty / Daniel N. Ramirez
Monty Partners
150 W. Parker Rd., Third Floor
Houston TX 77076

on this the 10th day of March, 2009.

/s/ Timothy B. Garrigan
Timothy B. Garrigan