

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALISON RAY,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
AT&T MOBILITY SERVICES,	:	
LLC,	:	No. 18-3303
Defendant.	:	
	:	

MEMORANDUM OPINION

Timothy R. Rice
U.S. Magistrate Judge

February 22, 2022

Trials inevitably involve close calls. In those cases, we empower juries to resolve material factual disputes, arming them with broad discretion to draw reasonable inferences from the evidence and to decide which witnesses to believe. This case featured such a dispute.

Defendant AT&T Mobility Services, which hotly contested plaintiff Alison Ray's age discrimination claim, now seeks to disturb a jury verdict that overwhelmingly rejected AT&T's view of the evidence. If the jury had believed AT&T's witnesses, especially senior managers Judy Cavalieri and Jennifer Van Buskirk, it could have returned a defense verdict. And that verdict would have stood. Instead, the jury rejected AT&T's version and then went a step further. It unanimously found that AT&T's age discrimination not only drove the decision to fire Ray, but that it acted willfully, that is, AT&T knew, or recklessly disregarded whether, firing Ray was unlawful. The jury's verdict constituted a powerful condemnation of AT&T's treatment of Ray, and repudiated AT&T's claim that her firing was a business decision unrelated to age. Since the trial featured no legal error, AT&T now resorts to disputing evidentiary inferences and credibility

determinations that informed the jury’s verdict, along with challenging five discretionary evidentiary rulings. Its motion is meritless.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The underlying facts are well known to both parties and have already been discussed at length. See generally Mem. Op. Denying Summary Judgment (doc. 111). Relevant to AT&T’s motion, the trial focused on AT&T’s selection of Ray, age 49, for surplus and ultimate termination. Ray alleged that AT&T violated the Age Discrimination in Employment Act (“ADEA”) by: (1) placing her on surplus status and terminating her employment because of her age, and (2) failing to comply with the Older Workers Benefit Protection Act (“OWBPA”). See Amend. Compl. (doc. 48). In January of 2020, I denied AT&T’s motion for summary judgment, and the case proceeded to trial in November of 2021.¹

Before trial, AT&T moved to exclude, inter alia, the ADEA Listing for Surplus 17-350. See Motion in Limine (doc. 117). AT&T argued that the ADEA Listing was irrelevant under Fed. R. Evid. 401. Id. I denied AT&T’s motion because the ADEA Listing, which includes statistical information about the positions and ages of the individuals chosen for the Surplus, was “relevant to whether . . . Ray was chosen for the Surplus due to her age. See Sept. 22, 2021 Order (doc. 126), ¶ 1 (citing Abrams v. Lightolier Inc., 50 F.3d 1204, 1217 (3d Cir. 1995)).

Following a final pretrial conference on October 26, 2022, I made additional evidentiary rulings, to include:

- Allowing evidence related to a 2016 reduction-in-force “for the limited purpose of showing that AT&T began a planned effort of eliminating the jobs of older

¹ Ray’s OWBPA claim was resolved, in her favor, prior to trial. See Apr. 28, 2020 Order (doc. 88), ¶ 1.

employees in this reduction-in-force that took place 18 months before the reduction-in-force during which Ms. Ray was selected.” Oct. 28, 2021 Order (doc. 139), ¶ 3 (citing Fed. R. Evid. 404(b)(2); United States v. Green, 617 F.3d 233, 250 (3d Cir. 2010)). I found, under Fed. R. Evid. 403, that “[t]he probative value [was] not substantially outweighed by the risks of unfair prejudice, jury confusion, or waste of time because it is directly related to the allegations in this case.” Id. I also concluded that a limiting jury instruction, jointly prepared by the parties, would mitigate “any arguable risk of prejudice or confusion.” Id. (citing Fed. R. Evid. 105; Green, 617 F.3d at 250). The parties submitted a limiting jury instruction on November 5, 2021. See Proposed Jury Instruction (doc. 141); see also Hearing Tr. Vol. I, 93:2-94:5 (providing limiting instruction to the jury).

- Allowing “[n]on-statistical evidence, including charts, showing the number and ages of the employees involved in the 2017 reduction-in-force,” to the extent that the parties do not “present lay statistical evidence regarding those numbers and ages because such evidence has limited probative value and is substantially outweighed by risks of unfair prejudice, misleading the jury, and wasting time.” Oct. 28, 2021 Order, ¶ 5 (citing Fed. R. Evid. 403; Int’l Bhd. of Teamsters v. United States, 431 U.S. 324, 340 (1977); Gottschall v. Reading Eagle Co., No. 11-4361, 2013 WL 961266, at *5 (E.D. Pa. Mar. 12, 2013)).
- Allowing AT&T to “cross-examine Ms. Ray about her involvement in rating employees during the 2017 reduction-in-force,” but not “the individual ratings she provided.” Oct. 28, 2021 Order, ¶ 6. Pursuant to Fed. R. Evid. 403, I reasoned that

“[a]ny probative value of specific ratings of individuals unrelated to this trial is substantially outweighed by risks of jury confusion and waste of time.” Id.

The jury heard from 9 witnesses: David Carlucci, Judy Cavalieri, Ray, Alyson Woodard, Patricia Slocum, Kyle Mundis, Jennifer Van Buskirk, Tiffany Baehman, and Jeffrey Joss. Ray was hired by AT&T in 1994, Hearing Tr. Vol. II, 165:19-21, and held five different positions in the over 23 years:

- 1994-1996: Business Development Manager, id. at 163:24-164:2;
- 1996-1999: Director of Business Development, id. at 164:2-20;
- 1999-2010: Director of Marketing, id. at 164:21-165:15;
- 2010-2011: Director of Sales Operations, id. at 166:1-2; and
- 2011-2018: Director of Sales, id. at 167:15-19, 200:20-201:2.

Ray was notified of her selection for surplus in November 2017, see id. at 68:6-11, and she was fired in January 2018, a few days shy of her 50th birthday, see Hearing Tr. Vol. III, 74:7-11; 102:7-10; id. at Vol. II, 161:24-25; Mot. 12; Resp. Br. 8.

Van Buskirk, president of the region in which Ray worked since December 2015, hired Cavalieri in the spring of 2016 to supervise a team of Directors of Sales that included Ray. Hearing Tr. Vol. I, 99:22-101:3; id. at Vol. II, 99:16-100:7; id. at Vol. IV, 17:17-19, 18:24-19:14, 32:21-33:4, P-15. In 2016, Van Buskirk published two LinkedIn articles: (1) discussing AT&T as being “old and stodgy” and endorsing a New York Times article addressing AT&T’s “aging” workforce and a need to reinvent itself, see P-71 & 72; and (2) discussing the benefits of being young in the workforce, see P-73. See also Hearing Tr. Vol. IV, 22:18-29:13; 31:7-32:20. Around the same time, Van Buskirk also sent an email to AT&T leaders, including Cavalieri and Carlucci (a “high[] level” human resources officer, see Hearing Tr. Vol. I, 46:20-23), in which she suggested that

changes were necessary to bring “fresh perspective across the business, and re-engage some of our tenured folks in new jobs within [the] AT&T family.” Hearing Tr. Vol. I, 90:15-23 (citing P-13).

The jury also heard testimony that there was a 2016 surplus that led to the termination of the oldest Director of Sales in the region. P-12; P-77, Hearing Tr. Vol. IV, 33:15-17; id. at Vol. I, 105:19-106:1. Another surplus event took place in 2017, following AT&T’s restructuring of the Ohio/Pennsylvania Market, that led to the surplus and termination of Ray. See Hearing Tr. Vol. I, 66:10-68:25; id. at Vol. III, 54:11-16, 130:23-131:9. The Directors of Sales were lumped together into an affected work group and rated and then ranked accordingly. Id. at Vol. I, 67:12-68:10; id. at Vol. III, 55:12-23, 130:23-131:4; D-39. The two oldest Directors of Sales, one of whom was Ray, were selected for surplus. See id. at Vol. I, 105:19-106:1; id. at Vol. IV, 35:17-21, 45:6-10; P-15; D-21. Ray introduced evidence that the surplus ratings and rankings process included inconsistencies and discrepancies. For example, Danny Perez, part of Ray’s affected work group, vacated his position as Director of Sales during the surplus process but before surplus notifications went out. Hearing Tr. Vol. II, 55:11-60:8. He was replaced by Linda Gill, who was in her late twenties and was not part of Ray’s affected work group, despite AT&T policies dictating that, if there was a vacancy, it should have gone to Ray. Id.; see also id. at Vol. I, 80:10-82:17, 83:9-17; id. at Vol. II, 57:20-58:6; P-77; D-21; D-39.

On November 19, 2021, following four days of trial, the jury returned a verdict in favor of Ray. Verdict Slip (doc. 156). The jury found by a preponderance of the evidence that: (1) Ray’s age was a determinative factor in AT&T’s decision to select her during its reduction in force/surplus and terminate her employment, and (2) AT&T either knew or showed reckless disregard for whether its selection of Ray during the reduction in force/surplus and termination of her employment was prohibited by law. Id.

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