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Second Circuit Reverses Decision to Deny Back and Front-Pay

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Bergerson v. Office of Mental Health, No. 10-1040, 2011 U.S. App. LEXIS 14853 (2d Cir. July 21, 2011)

On July 21, 2011, the Second Circuit reminded judges and advocates that under Title VII, compensatory damages are an entirely separate form of relief from "make-whole" back and front-pay.

The plaintiff was exposed to multiple instances of sexual and racial insults during her probationary period at Central NY Psychiatric Center. At the end of this period she was terminated for multiple "unacceptable" reviews on her performance evaluations. Plaintiff subsequently sued for violations of Title VII and the NY Human Rights Law.

The jury found for the plaintiff and awarded her $580,000 in compensatory damages for emotional distress, pain and suffering, and harm to her reputation. The Judge reduced the compensatory damages to the $300,000 federal statutory cap and refused to award any lost back or front-pay because the jury's "substantial damages award satisfie[d]" the objectives of Title VII's make-whole policy.

On appeal, the Second Circuit reversed the lower court's decision. Writing for the court, Judge Minor held:

> *While a primary purpose of backpay is indeed to return a victim of discrimination to the position she would have found herself in had the violations never occurred, we have never held that an award of backpay is encompassed within a jury's award of compensatory damages. … Rather, an award of backpay includes "what the employee himself would have earned had he not been discharged." … An award of backpay is a separate inquiry and requires a district court to make additional factual findings.*

Ultimately, the Court remanded the case for further considerations of back and front-pay, and warned the lower court that if it decides against awarding back-pay then they must "carefully articulate its reasons not to."

View the full decision here.

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