

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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: MICHAEL TOWNSEND,  
: Plaintiff,  
: v. CIVIL NO. 3:97CV02599(AWT)  
: CLAIROL, INC.,  
: Defendant.  
: -----X

**MEMORANDUM OPINION**

Plaintiff Michael Townsend ("Townsend") claims that he was unlawfully discriminated against on the basis of his race when defendant Clairol, Inc. ("Clairol") terminated his employment. He filed suit against Clairol pursuant to 18 U.S.C. § 1981 and 42 U.S.C. §§ 2000e et seq. ("Title VII"), seeking, inter alia, monetary damages and injunctive relief. After a bench trial, the court makes the following findings of fact and conclusions of law.

**I. Facts**

In September 1996, the plaintiff, who is African-American, submitted a resume to Clairol after learning through a friend who was a Clairol employee that there were positions available at the company. Carol Kennedy ("Kennedy"), a human resources manager at Clairol, reviewed Townsend's resume and decided to

interview him. There were many openings at that time for the position of Associate Cell Leader ("ACL"), and after Kennedy interviewed Townsend, she passed Townsend's resume on to managers who had openings. As a consequence, Townsend was invited to interview with two managers who had openings. One of these managers was Richard Thompson ("Thompson"), the cell leader of the Fixatives Cell.

There were three ACL positions in the Fixatives Cell, one of which had been vacant for a few months. Thompson had interviewed at least a half-dozen candidates for the opening. Following his interview with Townsend, Thompson decided he wanted Clairol to make an offer to Townsend for the vacant ACL position in the Fixatives Cell. Thompson sought out the other manager who had interviewed Townsend and determined that the other manager would not object if an offer were made to Townsend for a position in the Fixatives Cell. Thompson then recommended that Clairol hire Townsend as an ACL in his cell. As a result of Thompson's recommendation, Kennedy offered Townsend the job. Townsend received an offer letter from Kennedy dated September 13, 1996.

On or about September 18, 1996, Townsend began working at Clairol. Although the offer letter had not specifically mentioned this fact, the first ninety days of Townsend's employment as an ACL were, in accordance with Clairol's standard policy, a probationary period. Townsend was informed

of this fact.

As an ACL in the Fixatives Cell, Townsend's major responsibilities were business planning, vendor planning/materials replenishment and operations support. Townsend worked the first shift along with one of the other ACLs who worked for Thompson in the Fixatives Cell at that time; the third ACL in the Fixatives Cell worked the second shift.

By October, both Thompson and Kennedy had independently developed concerns about Townsend's performance. On October 8, Kennedy met with Thompson to discuss Townsend's first few weeks at Clairol. Her concerns were based on both her own observations and feedback she had received from Townsend's co-workers. Townsend was giving the impression that he was more concerned about relatively minor matters than he was about learning how to perform his job. Also, in meetings where new ACLs were receiving training, Townsend made comments that caused Kennedy to conclude that he did not understand the nature of the managerial role of an ACL. Kennedy's concerns were validated by Thompson, who informed her that the other first shift ACL in the Fixatives Cell had voiced concerns about Townsend to Thompson. Thompson agreed to speak with Townsend and also to observe him and give him feedback on his performance.

On October 18, 1996, Thompson met with Townsend for a

"one-month review." Thompson advised Townsend that he was not adequately performing his job. He told Townsend that he felt Townsend was having a difficult time fitting into the role of an ACL and that Townsend's pace of learning and assumption of responsibility and accountability for some planning functions was too slow. Thompson discussed his personal observation that Townsend tended to come up with his own ideas as to how things should be done differently without first understanding the reasons behind Clairol's processes and procedures; this observation was consistent with one made by Kennedy, based on her interactions with Townsend at the training sessions for new ACLs. Thompson advised Townsend to "be a sponge," soaking up information whenever possible, so that he could learn more about how Clairol did things.

Thompson also discussed with Townsend his role as an ACL. When Townsend was asked to define that role, his response was vague. Thompson then reviewed Townsend's role with him, and Townsend stated that he then had a clearer understanding. Finally, Thompson assigned Townsend the task of preparing a set of goals and objectives for himself, which he was to then review with Thompson.

On October 31, 1996, Kennedy met with Townsend to discuss issues and concerns she had about his behavior, again based both on her personal observations and feedback she had received from his co-workers. Kennedy discussed with Townsend his

behavior at the training sessions, which had been viewed unfavorably by Kennedy and others. She also discussed the fact that Townsend had slept during the training sessions and had been late to other meetings and appeared to lack interest or focus. Townsend conceded that he had trouble focusing.

Then, on November 8, Thompson conducted Townsend's "two-month review" prior to the passage of two months because of his continuing concerns about Townsend's performance. At this meeting, Thompson asked Townsend to prepare a four-week "action plan" to guide and measure his performance. Thompson had previously required other Clairol employees, including the other ACL on the first shift in the Fixatives Cell, to prepare similar action plans. Also, Thompson discussed with Townsend the fact that the ACL position required him to strike a balance between planning for the production of products and supervision of the production process, and the fact that Thompson did not believe Townsend had exhibited the ability to do so.

On November 13, Thompson followed up with Townsend on the assigned action plan, and found that the proposed plan Townsend had prepared was inadequate. Thompson gave Townsend further direction on this task and set up a follow-up meeting. On November 15, Townsend and Thompson met again to discuss the action plan. Although Townsend had incorporated some of the verbiage Thompson had used in their previous meeting, he had still failed to produce an adequate plan. Neither the format

nor the substance was satisfactory.

On November 26, Thompson had another meeting with Townsend, this time in the form of a second "weekly review." Thompson had instructed Townsend to work the night shift for a week, so Townsend could learn the operation of the production floor when there were fewer distractions. This meeting was their first after that assignment. Townsend had worked the night shift the week of November 8, but the night shift manager had reported to Thompson that Townsend had spent no more than one hour on the production floor all week, and that Townsend had declined several offers from night shift personnel to spend time with him on the production floor and teach him the system. At this meeting, they discussed Townsend's performance on the night shift, as well as other areas of Townsend's responsibilities. Thompson concluded that Townsend either did not understand that the ACL position requires striking a balance between planning and supervising, or did not care to do both. Thompson informed Townsend that he was disappointed with his progress, and Townsend told Thompson that the method of training being used was not good for him. The four-hour meeting ended with Thompson noting that things were not working out and Townsend responding that the poor methodology for training and Thompson's lack of direction were the cause of Townsend not meeting Thompson's expectations.

On November 27, Townsend invited Thompson into his office

to discuss the previous day's meeting. Townsend opined that Thompson was evaluating him unfairly, and that the training program was deficient. Their conversation lasted for about two hours. A few hours after this meeting, Townsend went to see Kennedy, but she was gone for the day. Instead, he spoke with the director of human resources, David Roche ("Roche"). The plaintiff told Roche that he felt Thompson had not given him enough direction, and that Thompson was unfairly asking him to learn the system on his own. Townsend said that he felt Thompson was overly critical of him and a poor communicator, and that he did not know at that point whether it was "a black/white thing." Townsend contended that he had been with Clairol almost 90 days and knew the culture pretty well and that what Thompson was describing as the way Clairol did things was Thompson's personal view and not Clairol's. Roche advised Townsend that he believed that Thompson was correct in terms of his explanation as to how things worked at Clairol. Townsend and Roche also discussed Townsend's objectives in terms of his performance, and Roche was left with the impression that Townsend was unclear as to what he should be focusing on.

On December 3, Thompson met with Townsend and asked him to do a "carton analysis," a task which was an elemental part of the responsibilities of the ACL position and involved determining how much of certain supplies was required to be ordered for Clairol to complete a particular job. Thompson

gave Townsend this assignment so he could evaluate Townsend's abilities.

Thompson received written comments from the other ACL on the first shift in the Fixatives Cell, dated December 3 and 4, expressing her concern that Townsend did not appear to understand the responsibilities of an ACL. After his December 3 meeting with Thompson, Townsend had gone to his fellow ACL for assistance in completing the carton analysis, and his questions led her to believe that he lacked even a basic understanding of the task.

On December 5, Townsend's co-worker sent an email to Thompson indicating her concern about Townsend's performance. One of the production lines for which Townsend was responsible had stopped running that day, and while his fellow ACL worked to resolve the problem, Townsend, who was around at the time but talking with an ACL from another cell, failed to offer to assist her or even inquire as to what the commotion on the production floor was about.

The third ACL in the Fixatives Cell, who regularly worked the second shift, had also expressed to Thompson concerns about Townsend's performance. This third ACL had been motivated to contact Thompson, at least in part, because of feedback the third ACL had received from personnel on the production floor.

Based on these events, Thompson recommended that Townsend's employment at Clairol be terminated. Although he



believed that Townsend was able to perform satisfactorily some of the tasks associated with the position of an ACL, he had concluded that Townsend's performance overall was unsatisfactory. Clairol's policy required that Thompson's recommendation be approved by the holders of a number of other positions, and all the required approvals were given. Accordingly, based on Thompson's recommendation that the plaintiff's employment at Clairol be terminated, Kennedy and Thompson met with Townsend on December 12, 1996, which was prior to the end of Townsend's probationary period, and terminated his employment effective that day.

Throughout Townsend's employment, Thompson made a diligent effort to help Townsend develop the skills he needed to succeed in the position of an ACL. Thompson prepared written summaries of his meetings with Townsend. Those summaries, and his testimony at trial as to Townsend's capabilities, seemed fair and balanced. He gave Townsend credit where credit was due and gave what appeared to be constructive criticism concerning the deficiencies in Townsend's performance.

Townsend contended at trial that the summaries prepared by Thompson of his meetings with him, as well as similar summaries prepared by Kennedy and Roche, were all fabricated. He contends that many of the meetings never occurred and that as to those which did occur, the summaries contain material falsehoods. There is no basis for Townsend's contentions.

Townsend also contended at trial that Clairol violated its own procedures and policies in the course of terminating his employment. However, Clairol's employees followed the applicable procedures at all times in their dealings with Townsend.

On December 13, the day after Townsend was fired, Thompson received additional confirmation that Townsend had not been able to perform the ACL function properly. The plant unexpectedly ran out of a particular cap that was needed on a production line for which Townsend had been responsible. Townsend had requested that Clairol's vendor deliver a new supply of those caps earlier than the original deadline and then ignored three messages from the vendor that it could not meet the earlier deadline. Townsend had not informed anyone at Clairol that the supply of caps was in jeopardy. Moreover, his input into the inventory tracking system reflected, inaccurately, that the new supply would arrive by the earlier deadline he had requested even though he had been informed three times by the vendor that that deadline was not achievable.

## **II. Discussion**

### **A. Title VII**

The plaintiff produced no direct evidence that anyone at Clairol discriminated against him. "Direct evidence of

discrimination is evidence which, if believed, would prove the existence of a fact (i.e., unlawful discrimination) without any inferences or presumptions." Bodenheimer v. PPG Indus., Inc., 5 F.3d 955, 958 (5th Cir. 1993).

Because there is no direct evidence of discrimination, Townsend has the burden of proving his case by indirect proof. The analytical framework for evaluating claims of discrimination based on indirect proof is set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-04 (1973) and Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 257 (1981). See also Fisher v. Vassar College, 114 F.3d 1332, 1335 (2d Cir. 1997); Viola v. Phillips Medical Sys., 42 F.3d 712, 715-16 (2d Cir. 1994)(both interpreting McDonnell Douglas and Burdine standard). The plaintiff has the burden of establishing a prima facie case by showing that: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he was subjected to an adverse employment decision; and (4) the decision occurred under circumstances giving rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802-04; Fisher, 114 F.3d at 1335.

If a plaintiff is able to establish a prima facie case, the burden shifts to the employer to proffer a legitimate, nondiscriminatory business rationale for its actions. Woroski v. Nashua Corp., 31 F.3d 105, 108 (2d. Cir. 1994). If the employer offers admissible evidence sufficient for the trier of

fact to conclude that the plaintiff's employment was terminated for nondiscriminatory reasons, the burden then shifts back to the plaintiff to prove, by a preponderance of the evidence, that the reasons offered by the employer were mere pretext and the actual reason for the adverse employment action he suffered was unlawful discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507-508 (1981); Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2106 (2000). "[O]nce the employer has proffered a reason for its action, all presumptions and special rules drop away; a case under Title VII becomes like any other case in that the plaintiff, in order to prevail, must have evidence from which the factfinder can reasonably find the essential elements of the claim." James v. New York Racing Association, 233 F.3d 149, 154 (2d Cir. 2000). "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated remains at all times with the plaintiff." Id. (internal quotation marks omitted) (quoting St. Mary's, 509 U.S. at 507).

Here, Clairol articulated a legitimate, nondiscriminatory reason for terminating Townsend's employment, namely, his poor performance. Consequently, Townsend has the burden of showing that the reason proffered by Clairol is mere pretext and that the real reason was racial discrimination. Townsend fails to meet this burden because the evidence in this case shows conclusively that Townsend was not qualified for the position

in question and that Clairol's proffered reason was true. Nor is there any credible evidence that he was the victim of racial discrimination.

To establish that he was qualified to remain in the position for which he was hired, a plaintiff must show that he met his employer's particular standards. Thornley v. Penton Publishing, 104 F.3d 26, 29-30 (2d Cir. 1997). Townsend's supervisor counseled him repeatedly about how to learn his job functions better and develop an ability to strike a balance between planning for the production of products and supervision of the production process. The plaintiff not only failed to develop an ability to strike a balance between these two competing areas, but also demonstrated a lack of ability or interest in each area. As to planning for the production of products, he was the cause of the plant unexpectedly running out of a necessary component. As to the supervision of the production process, he failed to spend sufficient time on the production floor to learn the operation of the production floor, and when his production line stopped on December 5, he failed to notice and to assume responsibility. However, Townsend not only failed to learn how to perform his job in the manner outlined by his supervisor, but also conveyed to people in Clairol's management the impression that, notwithstanding Townsend's own shortcomings, he knew better than they did how the training program for ACLs should be structured and what

Clairol's culture was. Thus, it was not likely that he would successfully adapt to Clairol's way of doing things and improve his performance.

Townsend established at trial that he was able to perform proficiently some of the tasks assigned to him. However, the fact that a person can perform some parts of a job does not mean that he is qualified for that job. Thus, the court concludes that Clairol's proffered reason for terminating the plaintiff's employment, i.e. poor performance, was not pretextual.

The court concludes for several reasons that the plaintiff has failed to produce any credible evidence that he was the victim of racial discrimination. First, for the reasons discussed above, the plaintiff was not qualified for the position. Second, Thompson recommended that Clairol hire Townsend and then recommended only three months later that Clairol fire Townsend. Therefore, a strong inference exists that Clairol did not discriminate against Townsend because of his race. See Grady v. Affiliated Central, Inc., 130 F.3d 553, 560 (2d Cir. 1997); Carlton v. Mystic Transportation, Inc., 202 F.3d 129, 137 (2d Cir. 2000); Schnabel v. Abramson, 232 F.3d 83, 91 (2d. Cir. 2000). This is particularly the case where, as here, the individual accused of discrimination aggressively pursued hiring the plaintiff.

Third, Thompson made a diligent effort to help the

plaintiff learn how to perform the functions of an ACL in the Fixatives Cell. Thompson became aware of the fact that Townsend was not learning the functions of his position quickly enough and that there were concerns about Townsend's performance. As a result, Thompson addressed these concerns at Townsend's one-month review, and then followed up repeatedly with a series of meetings, reviews and assignments calculated to help the plaintiff learn the role or, failing that, make it clear that he was not capable of learning the role. In addition, both Thompson and Kennedy discussed with the plaintiff their concerns about inappropriate behavior on his part. Only after all these efforts failed, did Thompson recommend that Townsend's employment be terminated. All of this occurred in less than three months.

Fourth, Thompson was the decision-maker here, and the plaintiff makes certain claims as to him, as discussed below. However, Thompson was not alone in having concerns about the plaintiff and his job performance. Kennedy shared her concerns about the plaintiff with Thompson. Both of the other ACLs in the Fixatives Cell expressed concerns to Thompson. In addition, the night shift manager gave Thompson negative feedback regarding Townsend's week on the second shift. Even Roche, who had the meeting with Townsend, came away with the impression that Townsend was unclear about the objectives in terms of his performance. Townsend makes no claims as to any

of these other individuals other than to imply that they conspired against him.

Finally, except in two instances, the court allowed the pro se plaintiff wide latitude in pursuing his theory that Thompson was biased against him based on the plaintiff's race; those two instances involved comments allegedly made by Thompson that were remote in time and unrelated to the plaintiff. The witness through whom Townsend sought to introduce the alleged comments was asked by the court whether he had any evidence as to why Thompson decided to fire Townsend, and he responded that he did not. Moreover, although the plaintiff called as witnesses over a dozen employees and former employees of Clairol and testified himself, he produced no credible evidence to support his claim of discrimination.

**B. 42 U.S.C. § 1981**

The plaintiff also argues that Clairol violated 42 U.S.C. § 1981, which reads in relevant part as follows:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens . . . . For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

42 U.S.C. § 1981. The right to make and enforce employment contracts is protected by this section, which was intended to



"ensure that all Americans may not be harassed, fired, or otherwise discriminated against in contracts because of their race." Lauture v. Int'l Bus. Machines Corp., 216 F.3d 258, 260 (2d Cir. 2000) (quoting House of Representatives report on 1991 amendments to § 1981).

To prevail on a claim under § 1981, a plaintiff must prove the following facts: (1) the plaintiff is a member of a racial minority; (2) the defendant intentionally discriminated against the plaintiff on the basis of race; and (3) the discrimination involved one of the section's enumerated activities. See Brown v. City of Oneonta, 221 F.3d 329, 339 (2d Cir. 2000); Mian v. Donaldson, Lufkin & Jenrette Sec. Corp., 7 F.3d 1085, 1087 (2d Cir. 1993)(per curiam).

For the reasons discussed above, the plaintiff failed to show that Clairol discriminated against him on the basis of his race when it terminated his employment. Accordingly, because a claim pursuant to § 1981 requires the plaintiff to establish intentional discrimination by the defendant, the plaintiff's § 1981 claim fails.

**III. Conclusion**

For the reasons set forth above, the court finds for the defendant, Clairol, Inc., as to all claims. Accordingly, judgment shall enter in favor of the defendant.

It is so ordered.

Dated this \_\_\_\_\_ day of February 2001, at Hartford, Connecticut.

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Alvin W. Thompson  
United States District Judge