

LAYOFFS AT CBS AFFILIATE LEAD TO LAWSUIT CLAIMING AGE, GENDER DISCRIMINATION



Two news reporters for CBS San Francisco affiliate KPIX-TV were laid off after the company decided to cut its budget. Both men, 66 and 47 years of age, alleged that the network and TV station had violated California law by discriminating against them based on their age and gender. The men were award-winning reporters and were performing well when a directive from the CBS headquarters in New York required that each affiliate reduce its budget by 10 percent. The KPIX-TV President/GM and the VP/New Director, who were both responsible for hiring and firing, decided on how to make the cuts in March 2008. The plaintiffs in this case were two of five members of the on-air news team who lost their jobs, the other three all males in their fifties. The President and VP later described a decision-making model that they had followed. None of the news anchors would be laid off as they were the station's "face" for the public, and KPIX-TV wanted the reduction-in-force to be "invisible" to its viewing audience. General assignment reporters were chosen for layoffs, depending upon impending contract expirations, and specialty reporters were excluded because they were promoting the station. The reporters responded to their layoffs by filing a lawsuit against CBS and KPIX-TV. An expert statistician testified on their behalf, and his conclusion noted a "significant" disparity – in terms of age – between the group of people who were laid off and those who retained their jobs. The expert on the defendants' side countered by asserting that the statistician's report had failed to take into account the decision-making process that the President and VP had followed. The district court granted summary judgment in favor of CBS and KPIX-TV, citing that the plaintiffs could not make a case for their argument – pointing out specifically that the statistical evidence neglected the nondiscriminatory reasons for the layoffs and could not show a pattern of discrimination.



Appellate judges disagreed with the district court that the statistical report was an inadequate means of making a case in court. They accepted the analysis from the statistician, but once the defendants had stated their legitimate reason for the layoffs, it was up to the plaintiffs to show pretext – and it was here where the former reporters failed. The plaintiffs noted a general assignment reporter who retained his job and had an earlier contract expiration date, as well as an anchor and two specialty reporters – who would be exempt according to the decision-making model used – who were laid off. These were each disputed, but the appeals court noted that, even viewing these most favorably for the plaintiffs, the defendants were still entitled to the "same-actor inference." Because the President and VP handled both the firing and hiring of reporters, it would be inferred that the reason for layoffs is nondiscriminatory. As the plaintiffs could not establish any pretext for the loss of their jobs, the appeals court affirmed the district court's decision.