

## ALLEGATIONS OF RACIAL DISCRIMINATION, BREACH OF EMPLOYMENT CONTRACT



A man claimed that his former bosses violated Title VII of the Civil Rights Act with wage discrimination and his termination being based on his race and national origin. His employment contract, he alleged, was equally violated. The courts disagreed. The Cuban-born plaintiff began working at W.W. Grainger, Inc., which sells maintenance products for facilities, in 1994. He was promoted to branch manager for the company's branch in St. Paul, MN, in 2003. His pay was initially bumped to a little more than the employee, a non-Hispanic, who previously held the position. Salary was based on "levels" assigned to each branch, the highest level a 3. The St. Paul branch was, according to a supervisor, a high level 1 or low level 2, such that the plaintiff was given a salary on the "low end" for a level 2 manager. The supervisor noted four other branches in Minnesota that were comparable to the St. Paul branch. From 2003-2005, the plaintiff was paid more than some of the managers of other branches and less than others. From 2006-2009, he was paid almost the same as the manager of the branch in St. Cloud and more than the other three cited by the supervisor. None of the managers in the other branches were Hispanic. The plaintiff's annual performance reviews completed by the supervisor steadily mentioned "communication" and "leadership" as areas for improvement. In 2009, while the plaintiff was on vacation, the supervisor inquired about customers awaiting service, and an employee said that he was not yet scheduled to work. This began an investigation into overtime hours and the employees' work environment at the St. Paul branch. There were no formal complaints, but workers noted that the plaintiff was loud and cursed and was moreover "demeaning, volatile, and intimidating." The plaintiff was informed of the employees' opinions and asked for specific examples, one of which was an incident in which his apparently "brutal" and "belittling" behavior towards a



worker occurred while the employee was on the phone with a customer. The supervisor and the HR specialist decided to fire the plaintiff due to his reported conduct and that he did not seem to be taking the issue seriously. His ensuing lawsuit alleged "disparate treatment" with regard to his pay and termination. He claims that his race and national origin were the reasons that he was paid a lower salary and lost his job. A district court dismissed all three claims, also including a claim of breach of employment contract, and granted summary judgment in favor of the company. The appeals court agreed with the ruling. It noted that the plaintiff was "unsure" how he had responded to a need for change, so that the supervisor's belief that he would not "take ownership" of the reputed problems could not be disputed or argued as pretextual. The plaintiff's allegation that other branch managers were not terminated despite abrasive conduct was likewise disregarded, since their behavior was "less problematic" and they were receptive to making improvements. The lack of a formal employment contract, or any evidence proving an exception was marginalized by the company, led the court to also dismiss the breach of contract claim. The racial discrimination claim was predicated on the breach of contract, its dismissal negating the claim of discrimination.