

WOMAN ALLEGES SHE WAS FIRED FOR ETHNICITY AND "THICK ACCENT"



A former employee of Burlington Coat Factory sued the company, claiming that she had been fired because of her national origin. The district court granted summary judgment against her, but did appellate judges agree? The woman, a U.S. citizen and raised in Nigeria, was promoted from store manager to regional loss-prevention manager. Her duties included investigating thefts and auditing stores for losses related to thefts or misplaced goods. When she received her promotion, another employee's congratulations were seemingly patronizing – praising her accomplishment while noting both her African nationality and accent. This same employee was later promoted to a position to which the woman reported, effectively becoming her supervisor. While working with her, he made several mentions of her "thick African accent" and her "African ethnicity and ancestry." Less than a year after being promoted, the employee was terminated. During a meeting – with the supervisor, another regional manager and an HR rep – the woman was told that she was "not cut for the job." Allegedly, the manager cited her accent as the greatest concern, asserting that people could not understand her, and the HR rep alluded to an inability to "speak more like an American." In court, however, the three proffered conflicting reasons for the termination, including lack of communication and courtesy, inaccuracies in her reports and offending managers and employees during investigations of issues at stores. The woman's lawsuit charged that she had been discriminated based on her national origin. She alleged a violation of 42 U.S. Code § 1981 – denial of equal protection – as well as violations of Title VII of the Civil Rights Act, specifically national-origin and gender discrimination, harassment and retaliation. She also made Georgia state-law claims, including intentional infliction of emotional distress, as well as negligent supervision and retention – which would hold the company responsible for the supervisor's behavior and for not removing him from that position. The district court granted summary judgment in favor of the



company on all federal claims. The company believed that the woman had waived her "national-origin theory" when responding to the motion for summary judgment, but appellate judges did not see it that way. They asserted that she was waiving an argument for national origin with regard to a failure-to-promote claim – not a wrongful-termination claim. Accordingly, the plaintiff had to provide enough evidence to show a case that could be tried, which the appeals court believed she had successfully done. Judges noted the woman's claims of numerous derogatory comments regarding her accent and African ethnicity. This testimony, coupled with additional circumstantial evidence, seemed to outweigh the reasons that the company cited for her firing. The appeals court asserted that these reasons were "unworthy of credence" – particularly in light of evidence that two managerial employees had told the woman she was losing her job because of her accent. Such comments suggest a national-origin discrimination and present a strong case for pretext for the plaintiff's firing. The appeals court reversed the Title VII wrongful-termination claim and remanded for further proceedings. The other federal claims included in the summary judgment were affirmed.