

## MAN TRIES TO PROVE DISCRIMINATION BY CLAIMING OTHERS DEFRAUDED FEDEX, JUST AS HE HAD DONE



A former Managing Director for FedEx Air Ground and Freight Services (AGFS) South filed a lawsuit, alleging racial discrimination in the decision to fire him. The case seemed to turn on a notable but rather bizarre point – how much fraud that he and other Managing Directors had allowed under their supervision. The man, who is black, was terminated for, as stated by FedEx, the allowance of fraud under his chain of command and his failure as a leader. He, on the other hand, alleged a violation of Title VII of the Civil Rights Act and 42 U.S. Code § 1981, the latter which protects equal rights. One requirement in establishing a prima facie case for racial discrimination – one that can move to trial – is showing how similarly-situated employees were treated more favorably. The plaintiff named two such FedEx employees, two men working as Managing Directors and both of whom are white. And how were they similar as employees? Fraud had been committed by workers supervised by each of the Managing Directors. The difference, however, between the plaintiff and the other two men is the amount of money defrauded from the company. The plaintiff's subordinates stole approximately \$180,000 by falsifying mileage reimbursement claims. One of the other Managing Directors had allowed a little more than \$18,000 in fraud, which the VP of AGFS South testified was "not as egregious as hundreds of thousands of dollars." Additionally, the plaintiff had delegated mileage reimbursement approval to his administrative assistant, whereas the other employee had provided his password for approval on only a single occasion. The other Managing Director cited by the plaintiff supervised a worker who'd falsified check requests and pilfered just a bit over \$288. Another significant distinction between the plaintiff and the other two employees is that, while there was nothing to implicate the other men, one of the plaintiff's subordinates claimed that he was not only aware of the fraud but also approved of it. The plaintiff likewise tried to prove pretext for his termination by citing testimony from the former FedEx VP, who said that the current Senior VP had referred to African-Americans in a derogatory manner. But the deposition was nearly 15 years prior, and judges could not see a connection between that and the plaintiff losing his job. Finally, he cited three pieces of circumstantial evidence: a management meeting in which the VP told management to vote for John McCain in lieu of Barack Obama; an HR rep stating that the VP wanted to fire the plaintiff upon hearing of his subordinate's fraud; and the same rep claiming that others had complained of the VP's racial comments. But the alleged preference for McCain did not specify a racist sentiment. Furthermore, the HR rep's claim of other complaints was too vague – no one was identified as a complainant – and even if the VP had decided to fire the plaintiff for allegations against his subordinate, it would not have been a violation of Title VII. As the plaintiff was unable to show that his termination was due to racial discrimination, the district court dismissed the case. Appellate judges later affirmed the decision.