

The ADEA's general prohibitions against age discrimination, are subject to a separate provision, creating exemptions for employer practices. The RFOA exemption is listed alongside one for bona fide occupational qualifications (BFOQ):

... (W)e find it impossible to look at the text and structure of the ADEA and imagine that the RFOA clause works differently from the BFOQ clause next to it. Both exempt otherwise illegal conduct by reference to a further item of proof, thereby creating a defense for which the burden of persuasion falls on the "one who claims its benefits," the "party seeking relief," and here, "the employer."

Whether the outcome should be any different when the burden is properly placed on the employer is best left to that court in the first instance. The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

Case Commentary

The U.S. Supreme Court decided that employers who defend age discrimination suits on RFOA must not only provide evidence of RFOA but also must convince the court of their truth.

Case Questions

1. Do you agree with the Court's decision?
2. Was the criteria used to select those to be laid off ethical?
3. Do you believe it was a coincidence or intentional that 30 out of 31 employees laid off were age 40 or older?

Noreen Kirby v. Payless Shoesource, Inc.

2008 U.S. Dist. LEXIS 89968 (U.S. District Court of Massachusetts)

The issue is whether Payless's discharge of Noreen Kirby was motivated by age or a legitimate justifiable reason.

O'TOOLE, D. J.
By her complaint, Ms. Kirby is challenging the decision to eliminate her position with Payless as part of a company-wide reduction-in-force ("RIF") in 2004. In the alternative, the defendants contend that the plaintiff's damages should be limited because she unreasonably refused an offer of reinstatement several months after the RIF.

Payless is a retail shoe store with operations around the country, including in Massachusetts. Ms. Kirby was hired on October 9, 2000 as an Investigator in the East Division. She later became a Senior Investigator, and she maintained that position until October 22, 2004, when her position was eliminated.

In 2004, as a result of declining sales growth and increasing costs, Payless decided to implement a ten percent reduction in expenses, including a company-wide RIF. Ms. Kirby was notified by Mr. Miele on October 13, 2004 that her position had been eliminated, effective October 22, 2004. At the time she was living in Easton, Massachusetts. She was responsible for 206 stores in Massachusetts. Ms. Kirby was notified that her position was eliminated on October 22, 2004.

with the EEOC and later brings an action in reasonable basis for transferring her. The she to retire.

REPLY

ing much wisdom and are revered. In the ment unless they were executives or politi- se of the ADEA, certain prejudices remain. s. For example, the employee with 24 years performing routine office work could easily . With age often comes seniority, and with d sometimes greater knowledge. Although software development fields, in many other iscount an older worker's skill, knowledge, their talents.

Laboratory (KAPL, INC.)

urt)

discharge on factors other than age and on whom

OUTER DELIVERED THE OPINION OF THE COURT.

ymment Act of 1967 (ADEA) creates an ex ed" by the ADEA but "based on reasonable whether an employer facing a disparate of RFOA must not only produce evidence er of its merit. We hold that the employer

panies to do some of the work maintaining e such contractor is respondent KAPL, Inc. Atomic Power Laboratory, which has a his marines in the 1940s and 1950s. The United fund Knolls's operations, decide what prop- g limits. In recent years, Knolls has been eactors and with training Navy personnel to

anged with the end of the Cold War, and for ts work force. Even after a hundred of 3 buyout offer, Knolls was left with thirty rt) are among those laid off in the resulti ct those for layoff. Knolls told its manage orformance," "flexibility," and "critical skills

Case 16.2

