



Griggs v. Duke Power Co. 401 U.S. 424 (1971)

Until the day Title VII became effective, it was the policy of Duke Power Co. that blacks be employed in only one of its five departments: the Labor Department. The highest-paid black employee in the Labor Department made less than the lowest-paid white employee in any other department. Blacks could not transfer out of the Labor Department into any other department. The day Title VII became effective, Duke instituted a policy requiring new hires to have a high school diploma and passing scores on two general intelligence tests in order to be placed in any department other than Labor and a high school diploma to transfer to other departments from Labor. Two months later, Duke required that transferees from the Labor or Coal Handling Departments who had no high school diploma pass two general intelligence tests. White employees already in other departments were grandfathered in under the new policy and the high school diploma and intelligence test requirements did not apply to them. Black employees brought this action under Title VII of the Civil Rights Act of 1964, challenging the employer's requirement of a high school diploma and the passing of intelligence tests as a condition of employment in or transfer to jobs at the power plant. They alleged the requirements are not job related and have the effect of disqualifying blacks from employment or transfer at a higher rate than whites. The U.S. Supreme Court held that the act dictated that job requirements which have a disproportionate impact on groups protected by Title VII be shown to be job related.

Burger, J.

We granted the writ in this case to resolve the question of whether an employer is prohibited by Title VII of the Civil Rights Act of 1964 from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.

What is required by Congress [under Title VII] is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications.

The act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

On the record before us, neither the high school completion requirement nor the general intelligence test is

shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted without meaningful study of their relationship to job performance ability.

The evidence shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used.

Good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in head winds" for minority groups and are unrelated to measuring job capability.

The facts of this case demonstrate the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as general measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress has mandated the commonsense proposition that they are not to become masters of reality.

Nothing in the act precludes the use of testing or measuring procedures; obviously they are useful. What

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Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be measured or preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract. REVERSED.

Case Questions

1. Does this case make sense to you? Why? Why not?
2. The Court said the employer's intent does not matter here. Should it? Explain.
3. What would be your biggest concern as an employer who read this decision?