

Patterson v. McLean Credit Union (1989)

491 U.S. 164

Brenda Patterson, a black woman, was employed by the McLean Credit Union as a teller and file coordinator for ten years until she was laid off in 1982. Thereafter, she brought suit in U.S. District Court under 42 U.S.C Section 1981, relying on Runyon v. McCrary, 427 U.S. 160 (1976) and alleging that the credit union had harassed her, failed to promote her to accounting clerk, and then discharged her, all because of her race. The district court determined that a claim for racial harassment is not actionable under Section 1981 and declined to submit that part of the case to the jury. The court instructed the jury that, in order to prevail in her promotion-discrimination claim, Patterson had to prove that she was better qualified than the white employee who received the promotion. The jury found for the credit union on this claim, as well as on Patterson's discriminatory-discharge claim. The Court of Appeals for the Fourth Circuit affirmed the district court's judgment, and the Supreme Court granted certiorari.

Opinion of the Court: Kennedy, O'Connor, Rehnquist, Scalia, White.

Concurring in the judgement and dissenting in part: Brennan, Blackmun, Marshall, Stevens; Stevens.

MR. JUSTICE KENNEDY delivered the opinion of the Court.

In this case, we consider important issues respecting the meaning and coverage of one of our oldest civil rights statutes, 42 U.S.C. § 1981....

We granted certiorari to decide whether petitioner's claim of racial harassment in her employment is actionable under § 1981, and whether the jury instruction given by the District Court on petitioner's § 1981 promotion claim was error. 484 U.S. 814 (1987). After oral argument on these issues, we requested the parties to brief and argue an additional question: Whether or not the interpretation of 42 U.S.C. § 1981 adopted by this Court in *Runyon v. McCrary* (1976), should be reconsidered.

We now decline to overrule our decision in *Runyon v. McCrary*.... We hold...that racial harassment relating to the conditions of employment is not actionable under § 1981 because that provision does not apply to conduct which occurs after the formation of a contract and which does not interfere with the right to enforce established contract obligations. Finally, we hold that the District Court erred in instructing the jury regarding petitioner's burden in proving her discriminatory promotion claim....

In *Runyon*, the Court considered whether § 1981 prohibits private schools from excluding children who are qualified for admission, solely on the basis of race. We held that § 1981 did prohibit such conduct, noting that it was already well established in prior decisions that § 1981 "prohibits racial discrimination in the making and enforcement of private contracts." ...The arguments about whether *Runyon* was decided correctly in light of the language and history of the statute were examined and discussed with great care in our decision. It was recognized at the time that a strong case could be made for the view that the statute does not reach private conduct, ...but that view did not prevail. Some Members of this Court believe that *Runyon* was decided incorrectly, and others consider it correct on its own footing, but the question before us is whether it ought now to be overturned. We conclude after re-argument that *Runyon* should not be

overruled, and we now reaffirm that § 1981 prohibits racial discrimination in the making and enforcement of private contracts....

Our precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established.... Nonetheless, we have held that “any departure from the doctrine of *stare decisis* demands special justification.” ... We have said also that the burden borne by the party advocating the abandonment of an established precedent is greater where the Court is asked to overrule a point of statutory construction. Considerations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and Congress remains free to alter what we have done....

Our conclusion that we should adhere to our decision in *Runyon* that § 1981 applies to private conduct is not enough to decide this case. We must decide also whether the conduct of which petitioner complains falls within one of the enumerated rights protected by § 1981....

Section 1981 reads as follows:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. Rev. Stat. § 1977.

The most obvious feature of the provision is the restriction of its scope to forbidding discrimination in the “mak[ing] and enforce[ment]” of contracts alone. Where an alleged act of discrimination does not involve the impairment of one of these specific rights, § 1981 provides no relief. Section 1981 cannot be construed as a general proscription of racial discrimination in all aspects of contract relations, for it expressly prohibits discrimination only in the making and enforcement of contracts....

By its plain terms, the relevant provision in § 1981 protects two rights: “the same right...to make...contracts” and “the same right...to...enforce contracts.” The first of these protections extends only to the formation of a contract, but not to problems that may arise later from the conditions of continuing employment. The statute prohibits, when based on race, the refusal to enter into a contract with someone, as well as the offer to make a contract only on discriminatory terms. But the right to make contracts does not extend, as a matter of either logic or semantics, to conduct by the employer after the contract relation has been established, including breach of the terms of the contract or imposition of discriminatory working conditions. Such post-formation conduct does not involve the right to make a contract, but rather implicates the performance of established contract obligations and the conditions of continuing employment, matters more naturally governed by state contract law and Title VII....

The second of these guarantees, “the same right...to...enforce contracts...as is enjoyed by white citizens,” embraces protection of a legal process, and of a right of access to legal process, that will address and resolve contract-law claims without regard to race. In this respect, it prohibits discrimination that infects the legal process in ways that prevent one from enforcing contract rights, by reason of his or her race, and this is so whether this discrimination is attributed to a statute or simply to existing practices. It also covers wholly *private* efforts to

impede access to the courts or obstruct nonjudicial methods of adjudicating disputes about the force of binding obligations, as well as discrimination by private entities, such as labor unions, in enforcing the terms of a contract.... The right to enforce contracts does not, however, extend beyond conduct by an employer which impairs an employee's ability to enforce through legal process his or her established contract rights....

Applying these principles to the case before us, we agree with the Court of Appeals that petitioner's racial harassment claim is not actionable under § 1981. Petitioner has alleged that during her employment with respondent, she was subjected to various forms of racial harassment from her supervisor. As summarized by the Court of Appeals, petitioner testified that

[her supervisor] periodically stared at her for several minutes at a time; that he gave her too many tasks, causing her to complain that she was under too much pressure; that among the tasks given her were sweeping and dusting, jobs not given to white employees. On one occasion, she testified, [her supervisor] told [her] that blacks are known to work slower than whites. According to [petitioner, her supervisor] also criticized her in staff meetings while not similarly criticizing white employees....

Petitioner also alleges that she was passed over for promotion, not offered training for higher level jobs, and denied wage increases, all because of her race....

This type of conduct, reprehensible though it be if true, is not actionable under § 1981, which covers only conduct at the initial formation of the contract and conduct which impairs the right to enforce contract obligations through legal process. Rather, such conduct is actionable under the more expansive reach of Title VII of the Civil Rights Act of 1964. The latter statute makes it unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment.” ...Racial harassment in the course of employment is actionable under Title VII's prohibition against discrimination in the “terms, conditions, or privileges of employment.” ...

Interpreting § 1981 to cover post-formation conduct unrelated to an employee's right to enforce her contract, such as incidents relating to the conditions of employment, is not only inconsistent with that statute's limitation to the making and enforcement of contracts, but would also undermine the detailed and well-crafted procedures for conciliation and resolution of Title VII claims. In Title VII, Congress set up an elaborate administrative procedure, implemented through the EEOC [Equal Employment Opportunity Commission], that is designed to assist in the investigation of claims of racial discrimination in the workplace and to work towards the resolution of these claims through conciliation rather than litigation.... Only after these procedures have been exhausted, and the plaintiff has obtained a "right to sue" letter from the EEOC, may she bring a Title VII action in court.... Section 1981, by contrast, provides no administrative review or opportunity for conciliation.

Where conduct is covered by both § 1981 and Title VII, the detailed procedures of Title VII are rendered a dead letter, as the plaintiff is free to pursue a claim by bringing suit under § 1981 without resort to those statutory prerequisites.... We should be reluctant, however, to read an earlier statute broadly where the result is to circumvent the detailed remedial scheme constructed in a later statute....

By reading § 1981 not as a general proscription of racial discrimination in all aspects of contract relations, but as limited to the enumerated rights within its express protection,

specifically the right to make and enforce contracts, we may preserve the integrity of Title VII's procedures without sacrificing any significant coverage of the civil rights laws....

Petitioner's claim that respondent violated § 1981 by failing to promote her, because of race, to a position as an intermediate accounting clerk is a different matter. As a preliminary point, we note that the Court of Appeals distinguished between petitioner's claims of racial harassment and discriminatory promotion, stating that although the former did not give rise to a discrete § 1981 claim, "[c]laims of racially discriminatory...promotion go to the very existence and nature of the employment contract and thus fall easily within § 1981's protection." ... We think that somewhat overstates the case. Consistent with what we have said, ...the question whether a promotion claim is actionable under § 1981 depends upon whether the nature of the change in position was such that it involved the opportunity to enter into a new contract with the employer. If so, then the employer's refusal to enter the new contract is actionable under § 1981. In making this determination, a lower court should give a fair and natural reading to the statutory phrase "the same right...to make...contracts," and should not strain in an undue manner the language of § 1981. Only where the promotion rises to the level of an opportunity for a new and distinct relation between the employee and the employer is such a claim actionable under § 1981.... Because respondent has not argued at any stage that petitioner's promotion claim is not cognizable under § 1981, we need not address the issue further here.

This brings us to the question of the District Court's jury instructions on petitioner's promotion claim. We think the District Court erred when it instructed the jury that petitioner had to prove that she was better qualified than the white employee who allegedly received the promotion. In order to prevail under § 1981, a plaintiff must prove purposeful discrimination.... Under our well-established framework, the plaintiff has the initial burden of proving, by the preponderance of the evidence, a prima facie case of discrimination.... The burden is not onerous.

... Here, petitioner need only prove by a preponderance of the evidence that she applied for and was qualified for an available position, that she was rejected, and that after she was rejected respondent either continued to seek applicants for the position, or, as is alleged here, filled the position with a white employee.

Once the plaintiff establishes a prima facie case, an inference of discrimination arises.... In order to rebut this inference, the employer must present evidence that the plaintiff was rejected, or the other applicant was chosen, for a legitimate nondiscriminatory reason.... Here, respondent presented evidence that it gave the job to the white applicant because she was better qualified for the position, and therefore rebutted any presumption of discrimination that petitioner may have established. At this point, as our prior cases make clear, petitioner retains the final burden of persuading the jury of intentional discrimination.

Although petitioner retains the ultimate burden of persuasion, our cases make clear that she must also have the opportunity to demonstrate that respondent's proffered reasons for its decision were not its true reasons.... In doing so, petitioner is not limited to presenting evidence of a certain type. This is where the District Court erred. The evidence which petitioner can present in an attempt to establish that respondent's stated reasons are pretextual may take a variety of forms.... Indeed, she might seek to demonstrate that respondent's claim to have promoted a better-qualified applicant was pretextual by showing that she was in fact better qualified than the person chosen for the position. The District Court erred, however, in instructing the jury that in

order to succeed petitioner was *required* to make such a showing. There are certainly other ways in which petitioner could seek to prove that respondent's reasons were pretextual. Thus, for example, petitioner could seek to persuade the jury that respondent had not offered the true reason for its promotion decision by presenting evidence of respondent's past treatment of petitioner, including the instances of the racial harassment which she alleges and respondent's failure to train her for an accounting position....

While we do not intend to say this evidence necessarily would be sufficient to carry the day, it cannot be denied that it is one of the various ways in which petitioner might seek to prove intentional discrimination on the part of respondent. She may not be forced to pursue any particular means of demonstrating that respondent's stated reasons are pretextual. It was, therefore, error for the District Court to instruct the jury that petitioner could carry her burden of persuasion only by showing that she was in fact better qualified than the white applicant who got the job....

The judgment of the Court of Appeals is therefore vacated insofar as it relates to petitioner's discriminatory promotion claim, and the case is remanded for further proceedings consistent with this opinion.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN and JUSTICE STEVENS join, concurring in the judgment in part and dissenting in part.

What the Court declines to snatch away with one hand, it takes with the other. Though the Court today reaffirms § 1981's applicability to private conduct, it simultaneously gives this landmark civil rights statute a needlessly cramped interpretation. The Court has to strain hard to justify this choice to confine § 1981 within the narrowest possible scope, selecting the most pinched reading of the phrase "same right to make a contract," ignoring powerful historical evidence about the Reconstruction Congress' concerns, and bolstering its parsimonious rendering by reference to a statute enacted nearly a century after § 1981, and plainly not intended to affect its reach. When it comes to deciding whether a civil rights statute should be construed to further our Nation's commitment to the eradication of racial discrimination, the Court adopts a formalistic method of interpretation antithetical to Congress' vision of a society in which contractual opportunities are equal. I dissent from the Court's holding that § 1981 does not encompass Patterson's racial harassment claim....

I turn now to the two issues on which certiorari was originally requested and granted in this case. The first of these is whether a plaintiff may state a cause of action under § 1981 based upon allegations that her employer harassed her because of her race. In my view, she may....

The Court holds that § 1981, insofar as it gives an equal right to make a contract. "covers only conduct at the initial formation of the contract." ... This narrow interpretation is not, as the Court would have us believe, ... the inevitable result of the statutory grant of an equal right "to make contracts." On the contrary, the language of § 1981 is quite naturally read as extending to cover post-formation conduct that demonstrates that the contract was not really made on equal terms at all.

... In my view, harassment is properly actionable under the language of § 1981 mandating that all persons "shall have the same right...to make...contracts...as is enjoyed by white

citizens” if it demonstrates that the employer has in fact imposed discriminatory terms and hence has not allowed blacks to make a contract on an equal basis.

The question in a case in which an employee makes a § 1981 claim alleging racial harassment should be whether the acts constituting harassment were sufficiently severe or pervasive as effectively to belie any claim that the contract was entered into in a racially neutral manner. Where a black employee demonstrates that she has worked in conditions substantially different from those enjoyed by similarly situated white employees, and can show the necessary racial animus, a jury may infer that the black employee has not been afforded the same right to make an employment contract as white employees....

Having reached its decision based upon a supposedly literal reading of § 1981, the Court goes on to suggest that its grudging interpretation of this civil rights statute has the benefit of not undermining Title VII....

The Court's use of Title VII is ... misleading. Section 1981 is a statute of general application, extending not just to employment contracts, but to *all* contracts. Thus we have held that it prohibits a private school from applying a racially discriminatory admissions policy...and a community recreational facility from denying membership based on race.... The Court, however, demonstrates no awareness at all that § 1981 is so much broader in scope than Title VII, instead focusing exclusively upon the claim that its cramped construction of § 1981 “preserve[s] the integrity of Title VII's procedures.” ...Rights as between an employer and employee simply are not involved in many § 1981 cases. and the Court's restrictive interpretation of § 1981, minimizing the overlap with Title VII, may also have the effect of restricting the availability of § 1981 as a remedy for discrimination in a host of contractual situations to which Title VII does not extend.

Applying the standards set forth above, I believe the evidence in this case brings petitioner's harassment claim firmly within the scope of § 1981.