Legal and Ethical Analysis - U.S. Supreme Court Case:

Burlington Northern & Santa Fe Railroad Company v. Sheila White

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This paper provides an ethical and legal analysis of the 2006 Supreme Court case regarding retaliation for reporting workplace discrimination- Burlington Northern & Santa Fe Railroad Company v. Sheila White.

**Background**

Sheila White worked as the only female in Burlington Northern’s track maintenance department. There, she experienced gender-based discrimination in the form of changes in assignments as well as hearing disparaging comments from her supervisor. She reported these problems - her supervisor was suspended for 10 days and required to attend sexual harassment training. (Newman) At the same time as her supervisor’s suspension, another supervisor changed her duties to something more physical and dirtier. The new assignment was described as ‘‘[i]n essence, . . . a demotion.’’ and the action was determined to be retaliatory behavior by the Court of Appeals (Burlington Northern v. White)

After filing a complaint with the Equal Employment Opportunity Commission (EEOC) for the change in duties, she was determined to be insubordinate in another matter and suspended without pay for 37 days. Burlington Northern investigated the matter, determined she had not been in subordinate, and restored her to her position with back pay for the 37 days. (Newman) A District Court determined that she had suffered damages beyond the need for back pay. She was awarded $43,000 in damages. (Burlington Northern v. White)

**Legal and Ethical Facts**

* The Court of Appeals found that Sheila White had been subjected to discriminatory practices, in violation of Section 703 of Title VII of the Civil Rights Act of 1964 (42 U.S.C.S. § 2000e-2(a)). (Burlington Northern v. White)
* The Court of Appeals found the suspension and change in duties to be retaliatory acts, in violation of Section 704 of Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e-3(a). (Burlington Northern v. White)
* Burlington Northern does not dispute that Sheila’s change in duties at the time of her complaint about her supervisor as well as her subsequent 37-day suspension were retaliatory acts, in violation of 42 U.S.C.S. § 2000e-3(a). (Burlington Northern v. White)
* Burlington Northern compensated Sheila White with back pay for the 37-day suspension as a result of their internal review. (Burlington Northern v. White)
* A District Court awarded Sheila damages of $43,000 in excess of the 37 days of back pay she had already received. (Burlington Northern v. White)
* When Burlington Northern appealed the decision to the Sixth District Court of Appeals, the judges there affirmed the damages but were divided on whether 42 U.S.C.S. § 2000e-3(a) applied to damages above and beyond the directly employment-related damages described in 42 U.S.C.S. § 2000e-2(a). (Newman)

**Key Legal Issues**

 The key legal issue is whether Section 704 of Title VII of the Civil Rights Act of 1964 was intended to be limited to employment-related retaliation, consistent with Section 703 of Title VII, or if it could be applied more broadly. Specifically, the Supreme Court considered whether Sheila White could be awarded damages for medical treatments and other hardship endured as a result of retaliatory practices.

**Applicable Legal Rules and Observations**

 Sheila White was protected from discriminatory practices, such as the remarks from her supervisor, by 42 U.S.C.S. § 2000e-2(a), which protects employees from discriminatory practices. She was also protected from retaliation by her employer for reporting such practices to the EEOC under 42 U.S.C.S. § 2000e-3(a). Retaliatory acts in this case included a demotion-like change in her duties and a 37-day suspension without pay.

At question was the inclusion of damages above and beyond directly employment-related damages. Sheila White was awarded damages in addition to her back pay for distress during her 37-day suspension. Damages during this time included stress-induced medical conditions, as documented by $3,250 of medical expenses. (Burlington Northern v. White) Section 706 of the Act explicitly allows compensation for additional damages (42 U.S.C.S. § 2000e-5(g)(1)):

*“If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may … order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay … or any other equitable relief as the court deems appropriate” (EEOC)*.

**Legal Conclusion**

The broader application of 42 U.S.C.S. § 2000e-3(a) to include damages for non-employment items not included in 42 U.S.C.S. § 2000e-2(a) is valid. There is no text in the Civil Rights Act to suggest that such a limitation should be made. There is also no precedent that suggests such a limitation should be made. The act does contain text in Section 706 that states that a court has discretion to not make such a limitation.

**Key Ethical Issues**

 One of the key ethical issues is the use of compensatory justice regarding the violation of Sheila White’s legal rights under Title VII of the Civil Rights Act of 1964. Related to this is a utilitarian issue regarding Burlington Northern is that the broad and nearly open-ended interpretation of the types of retaliatory practices forbidden under Title VII. (Velasquez & Mallor)

**Support for Ethical Issues**

***Rights and Compensatory Justices***

 Under the Civil Rights Act of 1964, Sheila White has legal rights – both the right to protection from discriminatory practices in the work place as well as the right to protection from retaliatory action by her employer should she report discriminatory practices to the EEOC. Both of her legal rights were violated by the actions of Burlington Northern. The case of Burlington Northern v. White dealt with compensatory justice. Under the theory of compensatory justice, the compensation she was awarded from Burlington Northern should be equal to her loss. (Velasquez) In this case, she had already been given back pay for her 37-day suspension; however, that back pay did not represent the extent of her damages. Her damages also included emotional and financial distress during her unpaid suspension. (Burlington Northern v. White)

***Utilitarianism and Profit Maximization***

Under utilitarianism, the benefits of compensatory justice must be weighed against the potential societal harm of the precedent that is set. Limiting the scope of damages from retaliation would be consistent with a utilitarian view that the benefit to an individual outweighs the cost to society. If firms are open to damages from discriminatory acts and retribution beyond the job-related damages, then, under the profit maximization theory (Mallor), they will need to invest more heavily in legal counsel to create and help enforce procedures to prevent such actions. They may also seek to outsource work to countries where the legal protection of workers and/or the penalties are less and therefore pose less risk to firm’s profits.

**Ethical Alternatives**

An ethical alternative was addressed in Justice Alito’s opinion. In this case, 42 U.S.C.S. § 2000e-2(a) and 42 U.S.C.S. § 2000e-3(a) should be read together, limiting the scope of the damages for retaliation. One rationale provided is that there is little risk on non-job-related retaliation, since “many forms of retaliation off the job constitute crimes and are therefore especially risky”. (Burlington Northern v. White) This is consistent with a utilitarian view, described above.

**Ethical Conclusions**

The inclusion of additional damages in the judgment against Burlington Northern provided compensatory justice for Sheila White and set an appropriate precedent for future cases. Contrary to Justice Alito’s concern, the damages from retaliation do vary with individual circumstances. Factors such as emotional distress, the burden of indebtedness from lost pay, and personal risk must be accounted for. The compensatory justice allowed by 42 U.S.C.S. § 2000e-5(g)(1) should cover such factors.

 **References**

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