

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Dennis Daniels, et al.

Plaintiffs,

v

Federal Reserve Bank

Defendant

No. 98C 1186

Judge William Hibbler

Magistrate Levin

DOCKETED

AUG 21 2003

**PLAINTIFF GERARD BRICE'S ANSWER TO DEFENDANT'S LOCAL RULE 56.1
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local General Rule 56.1 of the United States District Court for the Northern District of Illinois, **Gerard Brice's**, (hereinafter known as the "plaintiff") by and through his attorneys, **THE BOYD LAW FIRM, P.C.**, hereby respectfully submits her answer to the defendant's Statement of Undisputed Material Facts.

I. THE PARTIES

1. The Federal Reserve Bank of Chicago is one of twelve Reserve Banks across the United States created by the Federal Reserve Act of 1913 that together with the Board of Governors in Washington, D.C. serves as our nation's central bank (Ciesielski Affidavit 3; 12 U.S.C. §§ 222 (appendix) and 225). As one of the twelve Reserve Banks, the Federal Reserve Bank of Chicago is responsible for helping to formulate monetary policy, supervising and regulating banks and bank holding companies and providing financial services such as check

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clearing and electronic payment processing to banks and the U.S. government (Ciesielski Aff. ¶3).

ANSWER: Plaintiff admits to the allegations in paragraph one.

2. The Reserve Bank is headquartered in Chicago, Illinois and maintains a branch office in Detroit, Michigan (Ciesielski Aff. ¶4; 12 U.S.C. § 222 (appendix)). It also operates check processing offices in Peoria, Illinois, Des Moines, Iowa, Indianapolis, Indiana and Milwaukee, Wisconsin (Ciesielski Aff. ¶4; 12 U.S.C. § 222 (appendix)).

ANSWER: Plaintiff admits to the allegations in paragraph two.

3. At all relevant times, the Chicago Office of the Reserve Bank has employed between approximately 1,800 and 1,450 individuals (Ciesielski Aff. ¶5).

ANSWER: Plaintiff admits to the allegations in paragraph three.

4. Brice, an African-American, was hired by the Reserve Bank in April 1995 as a full-time Processor, grade 7, in the Customer Inquiry Unit of the Accounting Services Department (Brice Dep. 18,22).

ANSWER: Plaintiff admits to the allegations in paragraph four.

5. This position was the first full-time employment Brice, at age 23, had ever held (Brice Dep. 1154, 154).

ANSWER: Plaintiff admits to the allegations in paragraph five.

Prior to ascertaining employment with the Reserve Bank, Plaintiff maintained continuous and substantial part-time employment. Plaintiff's employment was very analytical in nature; and was relevant to his business degree. Defendant's (white, male) employee Van Nest maintained employment which included Customer Service and related banking related positions, working on mayoral campaigns and teaching high school students math. (Exhibits 1-1.1)

6. Prior to working at the Reserve Bank and while he was still in college, Brice worked part-time from January 1990 through April 1994 at MARS Environmental Systems as a Budget Analyst and worked for five months in 1991 as a part-time paralegal intern at Waste Management, Inc. (Brice Dep. II, 15 and Ex. 2).

ANSWER: Plaintiff admits to the allegations in paragraph six.

Plaintiff received a full academic scholarship from Waste Management, Inc and was on the Dean's List during his matriculation. Plaintiff honed relevant skills [to FRB industry] during his internship and employment (Exhibit 1)

7. Brice received his Bachelor of Science degree in Business Management from Chicago State University in June 1993 (Brice Dep. 18).

ANSWER: Plaintiff admits to the allegations in paragraph seven.

Defendant's (white, male employee) Van Nest received a Bachelors degree in Economics and Political Science. (Exhibit 1.1)

female) Mary Sherburne who interned in 1985 making \$7.75 per hour, subsequently hired in 1986 and made an AVP by 1996 with a starting salary of \$86,500 (Exhibits 5.2 and 5.1) Defendant has shown a consistent pattern of promotion. More recently, with Plaintiff's counterparts, (white males) Michael Van Nest and Chris Barfels defendant has allowed their promotions to occur in lieu of better qualified applicants. (Exhibit 7-p.77, 13-15 and Exhibit 13.1-p. 48, 14-17).

11. In October 1997, Brice was promoted to the position of Accountant B, grade 9 in the General Ledger Unit of the Accounting Services Department and received a salary increase (Brice Dep. 112-13; Brice Dep. 1139-41,99).

ANSWER: Plaintiff admits to the allegations in paragraph eleven.

However, Defendant's record indicates inequitable pay scales for employees and related problems. (Exhibits 5-5.5 and Exhibit 8)

12. At some point between February and July 1996, Chris Barfels became Supervisor of the Interdistrict Accounting group of the Accounting Department, a newly created position that was not posted and for which Brice did not apply (Brice Dep. II 74, 76-80).

ANSWER: Plaintiff admits to the allegations in paragraph twelve.

As stated the position was not posted and therefore it was improbable that Plaintiff would apply. Plaintiff is aware Assistant Manager Mark Taylor created the position. (Exhibit 7-p. 79, 1-9). Plaintiff is also aware he was in Customer Inquiry Unit 8-12 months prior to (white, male) Barfels and that he trained Barfels (Exhibit 7-p.77, 13-15) prior to his promotion.

13. Brice knows nothing about Barfels' educational background, qualifications, work experience, work performance, grade levels or salary (Brice Dep. II 74, 78, 140).

ANSWER: Plaintiff admits to the allegations in paragraph thirteen.

The record indicates Barfels was an intern and hired at a higher rate than Plaintiff. (see Exhibit 5.3) The record further indicates Barfels was possibly a graduate student intern, just a few classes away from receiving an MBA. (Exhibit 7.2-p. 49, 5-9)

B. Research Department

14. In August 1998, Brice applied for a Senior Analyst C position in the statistical and finance reporting area of the Research Department (Brice Dep. 113).

ANSWER: Plaintiff admits to the allegations in paragraph fourteen.

Record indicates, in 1999 (white, male) Michael Van Nest had a Sr. Analyst B position earning \$51,500 with no MBA (see Exhibit 5.1). Plaintiff received an MBA in 1998 (see Exhibit 1)

15. In September 1998, Brice received this promotion to Senior Analyst C, grade 11 (Brice Dep. 113-14; Brice Dep. 1124-27,99).

ANSWER: Plaintiff admits to the allegations in paragraph fifteen.

Although Plaintiff received a promotion, Defendant's pay scales remained inequitable and according to Defendant's HR reports minorities felt threatened and inconsequential. (see Exhibits 8 and 5-5.5). Plaintiff complained to manager regarding scanning cards despite having an MBA in Finance (Exhibit 8.1-p. 81, 6-8 and 10-12).

16. As a result of this promotion, which included a jump *from* grade 9 to grade 11, Brice received a salary increase of over \$4,000 (Brice Dep. 1125).

ANSWER: Plaintiff admits to the allegations in paragraph sixteen.

However, Defendant's history of inequitable pay and promotions activities persisted (see Exhibits 8 and 9).

17. As Senior Analyst C, Brice reported to Manager Carol Gross (Caucasian), who in turn reported to Vice President Angie Robinson (African American), who reported to Senior Vice President Curt Hunter (African American) (Brice Dep. 11 27-28).

ANSWER: Plaintiff admits to the allegations in paragraph seventeen.

The record indicates a disparity in the overall promotions habits of Defendant (see Exhibit 9)

18. As a new employee to the area, Brice was cross-trained for the first two to three months by working with and learning from various analysts in the department, whose primal goals were to analyze bank holding company reports for all holding companies within the district (Brice Dep. II 28-29). After his cross-training, Brice was assigned analyst responsibility for a specific panel of small bank holding companies (*i.e.* bank holding companies with less than \$150 million consolidated assets) (Brice Dep. II 29, 33-34).

ANSWER: Plaintiff admits to the allegations in paragraph eighteen.

Plaintiff expressed concern over not having a mentor (Exhibit 10, p. 195, 22-24. Unlike his white, male and white female counterparts Michael Van Nest and Chris Cullem he was not invited to career enriching training (Exhibit 10, p. 196, 22-24); he experienced lack of career development assistance (Exhibit 10-p. 198, 21-24 and 199, 1-24) and was encouraged by his (white, male) Asst. Manager, Mark Taylor, to seek outside opportunities versus having opportunity created for him as Mr. Taylor had done for (white, male) Chris Barfels (see Exhibit 7). Michael Van Nest acknowledged having been mentored (Exhibit 11-p.27, 1-9) and receiving

posted, consequently preventing Plaintiff [yet again] from applying. (Exhibit 13-p. 37, 4-12). Plaintiff knew he possessed the adequate knowledge for the position (Exhibit 13.1-p.48, 14-17), and was familiar with Van Nest's qualifications (Exhibit 13.2-p.38, 2-5).

21. In approximately February 2003, Brice was promoted to Statistical Senior Analyst B, grade 12, the position he holds at present (Brice Dep. II 118-119). As a Statistical Senior Analyst B, Brice is primarily responsible for reviewing and analyzing a bank holding company's regulatory financial statement reports, identifying problematic issues that arise regarding the reports, and then resolving such issues by communicating with various management personnel at the bank for which he is analyzing reports (Brice Dep. 11122-123).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-one. Record indicates Defendant has a long standing history of disparities over salary (see Exhibit 5-5.5), opportunity (see Exhibits 10, 13 and 7) and general adverse situation with morale of minorities (see Exhibit 8) and maintaining company mandated Equal Opportunity Standards (see Exhibit 9-cover letter from Defendant's President).

22. Brice believes that since he was promoted into the Research Department in September 1998, he has not experienced any race discrimination (Brice Dep. II 123; see, generally, Brice Dep. 25-123).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-two. However, Plaintiff is aware of the imbalanced treatment previously received. (see Exhibits 10 and 13) Furthermore, the record indicates Defendant's inequities beyond 1998 and before 1995 when Plaintiff was first hired. (see Exhibit 5.2)

23. Brice knows of no one else with a comparable background who received as many promotions as Brice did (5) in just eight years (Brice Dep. H 139-140).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-three.
Defendant's record indicate instances of accelerated promotions (see Exhibits 5.1-5.5, 8 and 9)

III. AUDITOR POSITION BRICE APPLIED FOR IN 1997

24. Sometime in August or September of 1997, Brice applied for and was interviewed for one of four or so posted Auditor positions available in the Audit Department (Brice Dep. I 86; Brice Dep. II 87-89).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-four.

25. Brice interviewed with Bob Casey, Patricia Caldwell, Nancy Czarnecki, and Joe Green (Brice Dep. 186-89), but was ultimately not selected for the position (Brice Dep. 1187, 93).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-five.
Management changed the scope of the position and never notified Plaintiff (Exhibit 14-p. 91, 14-24). Plaintiff was told "he didn't fit in" (Exhibit 14-p. 92, 1-6) upon requesting HR's intervention. Management did not provide a final answer to HR (Exhibit 14-p. 93, 2-10).

26. The individuals who received the Auditor positions at our about the time that Brice interviewed for such a position were Caucasians Brian Cahoon, Nicole Steiner, Alice or

Alicia Mortorano, Allison or Alice Leytze, and/or Mike Seeward (Brice Dep. 194-95).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-six.

Plaintiff knew whites were hired for position (Exhibit 14-p.94, 6-8) and at least one (white male) Cahoon, earned in two years what Plaintiff earned having worked eight (see Exhibit 5.4) after receiving an MBA in Finance.

27. Brice knows nothing about these individuals' educational background, qualifications, work experience or work performance (Brice Dep. II 90-91).

ANSWER: Plaintiff denies the allegations in paragraph twenty-seven.

Plaintiff is aware of what Defendant's records indicate (see Exhibit 5.4)

28. Adriane McCoy (African-American), an employee who worked in the Auditing Department, told Brice that the decision had been made to pull back the original posting for the Auditor positions and make them entry level positions and that the successful candidates were all "fresh out of college" (Brice Dep. II 90-92, 94).

ANSWER: Plaintiff admits to the allegations in paragraph twenty-eight.

However, Plaintiff is aware prior to the change in level of position, he was qualified (Exhibit 14)

29. Brice applied for a grade 10 Auditor position, but he has no knowledge as to what job grade(s) were given to the individuals ultimately selected for the Auditor positions, although

he concedes they were hired at a lower job grade than Brice had at the time (Brice Dep. II 91-92, 126).

ANSWER: Plaintiff denies the allegations in paragraph twenty-nine.

Plaintiff is aware of all who were selected. All of whom were white males and white females. (Exhibit 14-p.94, 18-24.

30. When Brice inquired of Michelle Brown, a Human Resources employee, regarding the status of the Auditor position, Brown told Brice that Bob Casey had said that Brice "did not fit in," and that she "[did not] really know what he means" (Brice Dep. 1195-96).

ANSWER: Plaintiff admits to the allegations in paragraph thirty.

Plaintiff sought to find answers by approaching HR (see Exhibit 14).

IV. MICHAEL VAN NEST

A. Educational Background

31. Michael Van Nest earned a Bachelor of Science degree in 1991 from the University of Illinois at Chicago with a dual major in Economics and Political Science (VanNest Dep. 6).

ANSWER: Plaintiff admits to the allegations in paragraph thirty.

Plaintiff is aware of inequitable promotions by Defendant (see Exhibits 7 and 13).

32. In 1999, Van Nest began a part-time Masters of Business Administration degree

program at DePaul University with a major of management accounting (VanNest Dep. 6, 8).

ANSWER: Plaintiff admits to the allegations in paragraph thirty-two.

However, at the time of commencement of the program, Van Nest was earning a higher salary than Plaintiff who had received an MBA a year earlier (see Exhibits 1 and 5.1)

B. Work Experience Prior to 1995

33. From 1982 through 1990 (approximately four years part-time, four years full-time), Van Nest worked for Second Federal Savings and Loan first in the Customer Service Department explaining products and services to customers and then as a teller responsible for processing various deposits, withdrawals, mortgage payments and other transactions (VanNest Dep. 18).

ANSWER: Plaintiff admits to the allegations in paragraph thirty-three.

However, Plaintiff had more analytical experience and was consistently employed gaining greater analytical and FRB [industry] related experience. (see Exhibit 1)

34. From December 1990 through June 1992, Van Nest worked for the Mayor's Office in the City of Chicago both full- and part-time as a student intern (Van Nest Dep. 12-13 and Ex. 1).

ANSWER: Plaintiff admits to the allegations in paragraph thirty-four.

35. From June 1992 to November 1992, Van Nest was a student teacher at Morgan Park Academy in Chicago teaching algebra and geometry (Van Nest Dep. 7 and Ex. 1).

ANSWER: Plaintiff admits to the allegations in paragraph thirty-five.

However, Plaintiff had more analytical experience and was consistently employed gaining greater analytical and FRB [industry] related experience. (see Exhibit 1)

36. From November 1992 through March 1993, VariNest worked full-time at Goldbaltt's Department store as Head Cashier responsible for retrieving cash from 12 cashiers' work stations, balancing each cashier's drawer, and creating bank deposits for the cash receipts (VanNestDep. 14-16 and Ex. 1).

ANSWER: Plaintiff admits the allegations in paragraph thirty-six.

However, Plaintiff had more analytical experience and was consistently employed gaining greater analytical and FRB [industry] related experience. (see Exhibit 1)

37. From March 1993 until approximately February 1995, VanNest was employed full-time at First of America Bank as an Adjustments Coordinator, where he had been responsible for researching out-of-balance conditions in customer checking accounts; supervising six employees who did the same type of work; and reconciling general ledger accounts (VanNest Dep. 16-17 and Ex. 1).

ANSWER: Plaintiff admits the allegations in paragraph thirty-seven.

Plaintiff had a solid length of experience and was continuing to gain greater analytical skills (see Exhibit 1)

C. Selected Work History at Federal Reserve Bank

38. In February or March 1995, Van Nest was hired at the age of approximately 31 for the exempt Accountant C position in the general ledger unit of the Accounting Department (VanNest Dep. 21; Brice Dep. 1138-39).

ANSWER: Plaintiff admits the allegations in paragraph thirty-eight.

Van Nest continued to earn a higher salary than Plaintiff who had received an MBA a year earlier (see Exhibits 1 and 5.1)

39. Due to a restructuring in the Accounting Department in either January or February of 1996 [per Brice's testimony in March 2001] or June 1996 [per Brice's testimony in December 1998], VanNest became a supervisor over two units within the Accounting Department (Brice Dep. II 37,45; Brice Dep. 171).

ANSWER: Plaintiff admits to the allegations in paragraph thirty-nine.

Plaintiff had greater knowledge than Van Nest (see Exhibit 15) and Van Nest considered Plaintiff supervisor material (see Exhibit)

40. This supervisor position was not posted, and Brice, who was then either still a grade 7 Processor [per Brice's testimony in March 2001] or who had just been promoted two months earlier [per Brice's testimony of December 1998] did not apply for it (Brice Dep. 1137, 64; Brice Dep. I 74).

ANSWER: Plaintiff admits to the allegations in paragraph forty.

41. Brice believed that "background and knowledge of both areas [that the supervisor position would oversee]" were "obvious" criteria for selection of this supervisor position, but he was never told that these were the only criteria, he never saw a document setting forth such criteria, and he does not otherwise know what all of the criteria were that were being used for purposes of selecting the individual to fill this supervisor position (Brice Dep. I 76-77).

ANSWER: Plaintiff admits to the allegations in paragraph forty-one.

42. Three non-African-American employees who were accountants and /or performing accounting work in the Accounting Department —Steve (last name unknown),

Corrine (last name unknown) and Alex Balkan— did not receive the supervisor position ultimately awarded to VanNest (Brice Dep. II 63-70).

ANSWER: Plaintiff admits to the allegations in paragraph-two.

As position was not posted these employees could not have posted for the position.

43. In May 1999, VanNest applied for and received a promotion to a non-supervisory Budget Analyst position in the Budget Department (VanNest Dep. 23).

ANSWER: Plaintiff admits to the allegations in paragraph forty-three.

44. As of May 2001, VanNest was a grade 12 Budget Analyst (VanNest Dep. 24).

ANSWER: Plaintiff admits to the allegations in paragraph forty-four.

45. Brice has no knowledge of Van Nest's salary (Brice Dep. H 124, 140).

ANSWER: Plaintiff admits to the allegations in paragraph forty-five.

Defendant's record indicates salary (see Exhibit 5.1)

V. BRICE'S EEOC CHARGE AND COMPLAINT

46. On February 20, 1998, Brice filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), alleging that he was consistently denied promotions, paid less than Caucasian employees, denied training and excluded from meetings on the basis of his race (Amend. Compl. Ex. A, Docket #7).

ANSWER: Plaintiff admits to the allegations in paragraph forty-six.

47. On February 25, 1998, Brice, along with 7 other current and former African-American employees of the Reserve Bank, filed this lawsuit alleging that the Reserve Bank discriminated against him on the basis of his race (Compl. Docket #1),

ANSWER: Plaintiff admits to the allegations in paragraph forty-seven.

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