

EXPERT REPORT OF MARY DUNN BAKER, Ph.D.

SATCHELL, et al., v. FEDEX EXPRESS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. C 03-2659; C 03-2878 SI

**ERS GROUP
Tallahassee, Florida
January 10, 2007**

I. INTRODUCTION

Counsel for FedEx Express (FedEx or the Company) asked me to review and evaluate Dr. Richard Drogin's December 20, 2006 (12/06) report that he prepared for this case.¹ This report contains my comments about and responses to Dr. Drogin's analyses and opinions as of this date.²

Because Dr. Drogin's analyses are not properly structured and/or his models omit important factors, the disparities that his studies reveal are often exaggerated. Furthermore, as the numbers of observations included in the analyses are very large, the studies produce differences that are highly statistically significant, even though, as a practical matter, the differences are small.³

In summary, my opinion is that:

- Dr. Drogin's conclusion that minority employees are overly concentrated in the lower paying jobs is misleading. Relative to relevant external labor market availability rates, FedEx's Western Region employs an extraordinarily large number of African-American employees at every level. By the end of the study period, FedEx employed Latinos in numbers consistent with their representation at every level.⁴

¹ An outline of my credentials is provided in my December 20, 2006 (12/06) report and is not repeated here. Appendix D provides my current c.v. and a list of cases in which I have given testimony over the period 2002-2006.

² I have not been able to replicate many of Dr. Drogin's analyses or to locate in the electronic files that he provided the programs and procedures necessary to fully understand how he conducted his analyses. Therefore, I may amend or supplement this report at a later date.

³ See Section III of my 12/06 report.

⁴ As discussed in my 12/06 report, Census 2000 data are not sufficiently refined to make a complete assessment of how the FedEx Western Region workforce compares to the ethnic composition of the relevant external labor markets. As my analyses of promotion and pay indicate that, in general, Latinos were promoted in numbers consistent with their representation among JCATS applicants and in proxy

- because Dr. Drogin's analyses of disciplinary actions and performance reviews do not account for some of the important factors that influence these outcomes, the disparities that his models reveal are exaggerated. Moreover, the disciplinary action and performance rating disparities detected by the statistical analyses are likely explained by true racial/ethnic differences in performance levels as the significant differences are attributable to decisions made by African-American and Caucasian managers, as well as managers of other races. This assertion is further supported by the FAMIS data which show that minority non-hub employees are late to work and absent from work significantly more often than their Caucasian counterparts.
- some of the significant shortfalls in minority promotions that Dr. Drogin's analyses reveal are attributable to the fact that he completely ignored readily accessible actual applicant data and instead used proxy pool benchmarks. In some cases, the proxy pool availability rates exaggerate the racial/ethnic composition of the individuals qualified for and interested in the relevant jobs. My analyses, which rely upon the actual applicant data (and proxy pool data where necessary), in general, show that Latino employees were selected for promotion in numbers consistent with their representation. The few instances of significant shortfalls for African-Americans that these models reveal are explained by further analysis of the data.
- Dr. Drogin's analyses of racial and ethnic differences in compensation produce misleading results because his compensation models are not properly structured and omit important factors that influence these decisions. Analyses that are appropriately structured and account for some of the factors that Dr. Drogin's studies omit reveal that there are very few instances of significantly negative minority/Caucasian pay rate differences.
- Dr. Drogin contends that his analyses of the JCATS data show that manager discretion created significant disparities in application approval and selections for posted jobs that are adverse to minority employees. However, alternative studies reveal that these results are attributable in part to his flawed assumptions. Furthermore, there are plausible explanations for the negative differences that he does not consider.

pools, and were, in some instances, paid significantly more than similar Caucasians, the shortfalls in Latino representation rates relative to local labor market availability found in the early years of the study period suggest that the Census 2000 data used to prepare the workforce analysis likely overstate Latino availability for Western Region jobs.

II. WORKFORCE DESCRIPTION

At Section D of his 12/06 report, Dr. Drogin presents descriptive statistics regarding the racial and ethnic composition of FedEx's Western Region workforce which show that, with the exception of the racial composition of Operations Managers, African-American and Latino representation rates decline as the pay level of FedEx jobs increases. As I illustrated in my 12/06 report, this trend is not unusual and the fact-finder should not construe these descriptive statistics to mean that FedEx relegates minority employees to the lower rungs of its occupational ladder. To the contrary, as I demonstrated in my 12/06 report, in every year during the period 1999-2006, the Western Region employed many more African-Americans at every level than would be expected given their availability in relevant local labor markets.

In the early years of the study period, the available Census data suggest that fewer Latinos were employed at some levels than the Census 2000 data predict. As I explained in my 12/06 report, Census 2000 data are not sufficiently refined to make a complete assessment of how this workforce compares to Latino representation in the relevant external labor markets. In any event, by the end of the study period, in general, across the Western Region, Latinos were employed at all levels in numbers equal to or greater than their local labor market availability rates predict.

III. DISCIPLINARY ACTION ANALYSES

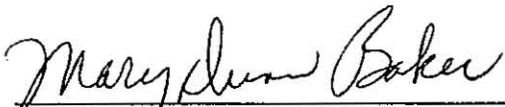
At Section K and Appendices D-25a (D-25b),⁵ Dr. Drogin presents the results of his analyses of the differences between the rates at which African-American (Latino) and Caucasian employees were subject to disciplinary action. He concludes that these

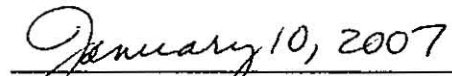
⁵ D-# refers to Tables and Appendices in Dr. Drogin's 12/06 report.

statistically significant. Therefore, in my opinion, these data suggest that the fact that the top ranked candidate is not always the person selected has no adverse impact on African-Americans.

Tab 7L reports the results of the analysis of Latino selections from pools that include applicants (whether approved or not) who were passed-over and selected candidates.⁵² As Tab 7L shows, the number of Latinos selected from these pools in every job group and across all job groups is consistent with the number expected given their representation among these applicants.

Tab 8L reports the results of this analysis that includes approved applicants only. This analysis also shows that the number of Latinos selected for these positions is not significantly different from the statistical expectation. Therefore, the data fail to reveal any evidence that any pass-overs that may have occurred had an adverse impact on Latino employees.


Mary Dunn Baker, Ph.D.


Date

⁵² Tab 7L replaces Appendix Q.L in my 12/06 report and Tab 8L replaces Table 56L.