

# Firing An Employee? Wait, The Rules Have Changed

**Robert W. Schupp, J.D.**  
Associate Professor  
University of North Florida

**J**ust when human resource managers thought they understood the rules—the rules changed! Roger Reeves, a 57-year-old supervisor, was fired after a company investigation concluded he made numerous timekeeping errors and intentional misrepresentations. His work was characterized as “shoddy record keeping” by two of his supervisors. All this took place less than three years after an earlier review of his performance revealed that he had run “a very lax assembly line” for which he had been placed on three months probation. This time no probation was offered; the decision was to fire him. The human resource manager felt confident. There were 1) a history of problems, 2) an investigation of the latest incidents and 3) a recommendation to discharge the employee made by a committee of administrators.<sup>1</sup>

Was the decision the correct one? Would it stand the scrutiny of the legal system? These questions were answered by a recent U.S. Supreme Court decision that surprised the employer and established a new challenge for human resource departments. The Court’s decision had the effect of shifting the burden of proving discrimination from the employee to proving non-discrimination by the employer. While the impact may to first glance appear negligible, it is momentous. Millions of dollars will be spent documenting the employee evaluation process and supervisory decisions will be second guessed at every level.

As human resource departments study and review articles on the ever-changing process of managing personnel, this decision will become a cornerstone of the decision-making process. Its implications are far reaching in both cost and administration. The history of the U.S. Supreme Court reflects its broad

and continuing interest in assuring that fair and neutral employment decisions are made. Since the enactment of the Civil Rights Act of 1964, the Court has on numerous occasions demonstrated its interest in providing a framework within which the Act’s objectives may be reached and on which business may rely. This article provides an explanation of that continuing process and is but another piece of the puzzle of employment discrimination rules and decisions that have evolved from federal and state legislation. This article should be read in conjunction with others to shed more light on the subject of employment discrimination and the requirements of human resource personnel.

Personnel departments of the 1950s have evolved into human resource centers of the new millennium. Federal and state legislation comprises volumes of rules, regulations, and procedures all of which seemingly add requirements for compliance. Daily promulgations from various agencies have become the standard against which decisions to hire, promote, and terminate must be made. Additionally, the human resource manager must maintain a working knowledge of the latest judicial interpretations of those same statutes, rules, and regulations.

In its most recent decision on the subject of employment discrimination, the U.S. Supreme Court modified the requirements placed on both the employer and employee. This article will explore and explain the implications of the decision on the manner in which human resource departments evaluate requests to terminate employees.

Additionally, the case illustrates the amount and type of information that employers must present in order to sustain a discharge. As we will see, the decision represents a significant change

in the standard of proof required by a disgruntled employee to garner a favorable ruling of illegal discrimination and more importantly the support which a company must have in order to win against a claim of employment discrimination. As a result of the decision, HR departments must increase the amount and quality of documentation and carefully review the situation before making the decision to fire an employee.

A review of several prior Supreme Court decisions, such as *McDonnell Douglas v. Green* in 1973 and *St. Mary's Honor Center v. Hicks* in 1993, will provide a foundation upon which to evaluate and to review the Reeves' decision and to provide a perspective with which to peer into the mindset of the high Court.

### **McDonnell Douglas Corp. v. Green**

The 1973 decision in *McDonnell Douglas Corp. v. Green*<sup>2</sup> provided direction to the HR professional in the implementation of Title VII of the Civil Rights Act of 1964. In 1964 the *McDonnell Douglas Corp.*, an aerospace and aircraft manufacturing firm located in St. Louis, Missouri, employed in excess of 30,000 workers, one of who was Percy Green. In that same year, the company began a general reduction in the work force. Green, an African-American, who had been with *McDonnell Douglas* as a mechanic and technician for almost eight years, including 21 months during which he served with the U.S. military, was one of eight employees of the Electronic Equipment Division who lost their jobs as the Gemini simulator program reached its completion. Of the eight employees, Green was the only African-American. Previously, Green had been very active in the civil rights movement and objected to his discharge citing what he believed were racially motivated reasons.

As part of a protest to bring attention to the layoffs, Green and others engaged in several illegal activities. On one occasion, he joined a group of protesters who blocked the access roads to the plant entrances. This was accomplished by driving five cars side by side and at a prearranged signal the drivers

stopped the cars next to each other, turned the engines off, set the emergency brakes, raised the windows, and locked the doors. The maneuver effectively stopped workers entering or exiting the plant. This "stall in" tactic delayed the shift change of 10,000 workers. When the police arrived, Green refused to move his car, and it was towed. He was cited for obstructing traffic to which he pleaded guilty and was fined.

Subsequently, Green was aware of another protest in which a "lock-in" took place. Chains were placed on the front doors of a building to prevent workers from entering or leaving. While Green knew of the activity, it was unclear as to his participation.

Approximately three weeks after the "lock-in", *McDonnell Douglas* began advertising for qualified mechanics. Green possessed the qualifications and promptly applied for reemployment. He was, however, rejected because of his participation in the "stall-in" and "lock-in". Green subsequently filed suit against *McDonnell Douglas* claiming his employer's refusal to rehire him was racially motivated based both on his race and his involvement in civil rights activities. *McDonnell Douglas* reiterated that his participation in illegal activities was the reason for its refusal to rehire him.

The Supreme Court in announcing its decision noted three important criteria, which must be met before an individual can prevail in a Title VII action. First, the individual must demonstrate a prima facie case. This is accomplished by showing that the employee (1) belonged to a protected class, (2) applied for the job, (3) was qualified for the position, (4) was rejected, and (5) the employer continued to seek applicants. In our case, all parties agreed that Green established a prima facie case. By establishing a prima facie case the employee raises a "legal presumption". That is to say the employer is now presumed to have unlawfully discriminated against the discharged employee and the burden of proof to show that it acted legally is shifted to the employer.

Second, the employer is required or at least given the opportunity to explain why the employee was fired. Of course, many legal reasons are possible for firing

unsatisfactory employees. Title VII does not require that an employer retain unqualified, dishonest or violent workers. Employees who violate company policies, rules or regulations may be discharged. Title VII and other federal and state acts, however, prohibit the discharge of an individual for reasons of race, color, age, sex, religion, etc. *McDonnell Douglas* reiterated its reason for refusing to rehire Green was based on his illegal activities. Thus, the employer shifted the burden back to the employee.

Third, the employee must now show that the presumptively valid reasons put forth by *McDonnell Douglas* for rejecting his application were a pretext for a racially discriminatory decision. Green might have shown that white employees who engaged in the same or similar activities were rehired. It could also be relevant to review how the employer treated the employee during prior periods of employment. Was Green penalized for his legitimate civil rights activities? Had there been a pattern of refusal to hire African-American workers?

Certainly *McDonnell Douglas* could refuse to retain or rehire employees who had committed unlawful acts against it, but only if the criterion were applied to members of all races. Green had engaged in activities that seriously disrupted the business of the very entity with which he sought employment. *McDonnell Douglas* was not required to rehire Green so long as the decision was based on his illegal and disruptive acts. In this case, Green was not able to demonstrate an illegal or discriminatory reason for the refusal to rehire him.

Courts are prepared to carefully examine the actions of the employer in hiring and firing policies. If the refusal to hire is a façade for a hidden illegal motive, the employee has the obligation to prove it. Green failed to show that the reasons for the actions of his employer were illegal and thus he failed to carry the burden of proof. *McDonnell Douglas* was successful in defeating the claim of illegal discrimination.

### **St. Mary's Honor Center v. Hicks**

The 1993 decision of *St. Mary's*

Honor Center v. Hicks<sup>3</sup> demonstrates the Court's perspective particularly as it applies to the employee's burden of proof. Melvin Hicks was employed as a correctional officer at a minimum security correctional facility operated by the State of Missouri. After two years, he was promoted to shift commander, a supervisory position. Approximately three years after his promotion an inquiry into the administration of the facility was conducted by the State in response to numerous complaints concerning poor maintenance, inadequate security and other problems. As a result of the investigation, several upper level administrators were dismissed or reduced in rank.

Among the changes were the appointments of Steve Long as the superintendent. John Powell was hired as the Chief of Custody, a position that made him Melvin Hicks' immediate superior. Both Long and Powell are white; Hicks is black. Prior to the shake-up in the administrative staff, Hicks' evaluations had been satisfactory. He was consistently rated "competent" during his six years of employment, both as a correctional officer and subsequently as a supervisor. He had not been suspended, written up or otherwise disciplined.

During a four-month period beginning shortly after the personnel changes had taken place, Hicks was involved in several incidents. In March of 1984 while Hicks was on duty, several officers observed several rule infractions. The officers who violated the rules were under the direct supervision of Hicks at the time of the violation. In response to the observations, a disciplinary board met to consider the appropriate action and as a result recommended that Hicks, the shift commander, be suspended for five days. No other officers, including those directly responsible, were punished. Powell, Hicks' supervisor, indicated he believed the individual in charge was the one who should be held responsible.

Approximately two weeks later, Hicks permitted two subordinates to use a state vehicle. Rules required that the vehicle be logged out, however neither of the two officers who utilized the vehicle or the control center officer on duty followed the required procedures.

Again Powell took action against Hicks.

Two days after the incident with the car, but prior to the meeting of the disciplinary board, another incident occurred. Two inmates got into a fight during which one of the inmates was injured and needed emergency medical treatment. Hicks notified Powell in writing of the incident including the injury. Additionally, Hicks ordered the correctional officer who escorted the injured inmate to the hospital to submit a full report of the incident. Three days after the fight, Powell reported to the superintendent that Hicks had failed to investigate it, and he gave Hicks a letter of reprimand for his failure to follow orders.

At the hearing conducted by the disciplinary board for the vehicle incident, Powell voted to fire Hicks, but the board voted to demote him for failing to ensure the car had been logged out. Neither of the two officers who used the car nor the control officer on duty was disciplined in any way. At the time of the notification of his demotion, Hicks was upset and requested the day off. As Hicks was leaving, Powell followed him and ordered him to open his locker and to return his shift commander manual. Hicks refused and the men engaged in an argument. After Hicks indicated his willingness to "step outside" with Powell, Powell warned him that his statements could be perceived as a threat. In reviewing the events immediately following Hicks' discharge, one court noted that Powell provoked Hicks into acting irrationally. Powell then requested the disciplinary board meet again based on the threat, which Hicks had made. Although the disciplinary board recommended a three-day suspension, the Superintendent overruled the board and recommended Hicks' discharge based upon the severity of the violations. Hicks was subsequently terminated.

The record reflected that the treatment of Hicks was substantially different than that of other employees. During the same period Hicks was having his problems, he had reported problems of a similar nature. The resolution of those reported incidents demonstrated a different set of standards applied to others. For example, after a subordinate cussed him, Hicks filed a

report recommending the officer be disciplined for insubordination, but no action was taken. Powell concluded that the subordinate was "merely venting justifiable frustration." During the same period in which Hicks had been disciplined, reports of violations by other employees were ignored. Violations such as allowing a civilian to bring a gun into the facility, leaving the front desk unattended, leaving doors that should have been secured unlocked, and violations of other regulations went unpunished. In one instance an inmate escaped due to the negligence of a correctional officer. The officer received only a reprimand and the supervisor was not disciplined.

Again in this case as in the last, the employee was required to prove a prima case and he did so. The burden of proof then shifted to the employer who responded that the reasons for the discharge were twofold: 1) the severity of the violations and 2) the accumulation of the violations. Finally, the employee had the burden of proving the employer intentionally discriminated against him.

The District Court determined that the reasons the employer gave for the employee's demotion and discharge were flawed. It found the employee was the only supervisor disciplined for violations committed by his subordinates, similar and even more serious violations committed by Hicks' co-workers were either disregarded or treated more leniently, and Powell manufactured the final verbal confrontation in order to provoke Hicks into threatening him.<sup>4</sup>

It nonetheless held that the employee had failed to carry the ultimate burden of proving his race was the determining factor in the employer's decision first to demote and then to dismiss him. In short, the District Court concluded, "although [the employee] has proven the existence of a crusade to terminate him, he has not proven the crusade was racially, rather than personally, motivated."

The Court noted, "We have no authority to impose liability upon the employer for alleged discriminatory employment practices unless an appropriate fact finder determines ... the employer has unlawfully discriminated." It went on to state it was impermissible

to substitute the finding the employer had lied about the reasons for the discharge with the requirement the employer discriminated. It is not enough, in other words, to disbelieve the employer, “the (court) must believe (Hicks’) explanation of intentional discrimination.”

The Supreme Court in making its decision emphatically reiterated the concept the worker has the ultimate responsibility to prove the employer discriminated. Even though the employer lied as to its reasons for the firing, it remains an obligation of the employee to prove illegal discrimination. The employee has the opportunity to demonstrate the proffered reason was not the true reason for employment decision and RACE was. Unless the employee convinces the jury the firing was illegal, the fact the employer lied concerning its reasons for the discharge is not pertinent. The jury is not permitted to infer illegal discrimination from the fact the employer lied. The burden of proving the illegal discrimination remains on the employee—a burden, which is very difficult to carry.

### **Reeves v. Sanderson Plumbing Products, Inc.**

In 2000, the Court once again had an opportunity to address the issue of illegal discrimination in the case of *Reeves v. Sanderson Plumbing Products, Inc.*<sup>5</sup> Roger Reeves worked virtually his entire adult life for Sanderson, a company that manufactured toilet seats and covers. Over his 40 years of employment, he had attained one of the two supervisory positions in a department known as the “Hinge Room.” A 35-year-old held the remaining supervisory position. Both reported to the department manager, 45-year-old Russell Caldwell.

With one exception, Reeves’ long work history was unblemished. In 1993, almost three years prior to his discharge, his supervisory ability came under scrutiny. Powe Chesnut, the director of the Department of Quality Control, conducted a review of the operating procedures in the Hinge Room. The study revealed a “very lax assembly line operation,” which in Chesnut’s opinion resulted in productivity problems. The line supervisor was Roger Reeves. As a

result of the study, Reeves was placed on a 90-day probation for unsatisfactory work performance. At the expiration of the 90 days, the probationary status was removed. As we will see, the paths of Reeves and Chesnut will cross again.

As part of his duties, Reeves was required to keep daily, weekly and monthly records of attendance and tardiness of the employees under his supervision. The reports were given to Reeves’ superior. During this period the employees were governed by a union negotiated contract that provided very specific penalties for absenteeism. For example, an employee who was absent from his work in excess of five percent of his scheduled hours or who was late twice in a month was subject to disciplinary action.

During the summer of 1995, Reeves’ supervisor informed Powe Chesnut, now the Director of Manufacturing, “production was down” in the Hinge Room. It is interesting to note that Powe Chesnut was the same person who had earlier placed Reeves on probation. Caldwell attributed the manufacturing problems to the fact employees were permitted to arrive late for work and to leave early. Because the attendance reports did not reflect the absenteeism or the tardiness of the employees, Chesnut ordered an audit of the records maintained by Reeves and others.

According to management, the audit reflected “numerous timekeeping errors and misrepresentations” on the part of Reeves, another manager and their supervisor. After a second investigation confirmed the conclusions of the first, a recommendation was made by Chesnut and investigating committee to fire both Reeves and another supervisor. The president accepted the recommendation and terminated both men. Subsequently Reeves’ position was filled successively by three individuals, all of whom were in their thirties.

Reeves objected to being terminated and claimed that the reason for his termination was not poor performance, but rather it was because of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA). The employer contended that the termination was a result of poor performance including a failure to maintain accurate

attendance records.

Under the ADEA, it is “unlawful for an employer... to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age.” Age must play a substantial part in the decision to terminate an employee to be unlawful. If age is the determinative influence on the decision to hire or fire, it is unlawful.

In earlier decisions the Court set the parameters within which discrimination cases would be decided. First, Reeves was required to prove 1) he was a member of the class protected by the ADEA which is comprised of individuals who are at least 40 years of age, 2) he was qualified to hold the position, 3) he was discharged by his employer, 4) and the employer hired a replacement who was under the age of 40. Actually, the employer filled the position successively with three men in their thirties. These four requirements are referred to as a *prima facie* case.

In our case, the parties agreed that Reeves had demonstrated a *prima facie* case. After Reeves met this requirement, the obligation shifted to the employer to demonstrate the employee was terminated for a legitimate non-discriminatory reason. Let’s review the employer’s perspective of Reeves’ tenure as a manager as the company maintained that Reeves had been terminated for lawful reasons unrelated to his age.

Specifically, the company put forth four reasons for the discharge:

1) **Shoddy record keeping** – After reports surfaced of problems in the Hinge Room, Chesnut ordered an investigation. Chesnut stated the investigation revealed Reeves had failed to accurately record the absences and hours of several workers. He added that the investigation had discovered violations by 12 employees under Reeves’ supervision.

2) **Failure to discipline workers** – Chesnut stated the 12 workers whose records were incorrectly documented should have been disciplined pursuant to the union contract. He indicated it was extremely important when dealing with a union to discipline workers. Chesnut stated inconsistent enforcement of the contract could lead to a multiplicity of

problems including “grievance and arbitration cases, which are costly, all the time.”

3) **Financial losses due to overpayments** – Chesnut stated by failing to maintain accurate time records of work, Reeves’ errors cost the company wages that were paid for time not worked.

4) **Intentionally falsifying records** – Sanderson, Chesnut’s wife and president of the company, stated she had accepted the recommendation to fire Reeves because he had “intentionally falsified company pay records.”

In response to the first allegation (*shoddy record keeping*) made by the company, Reeves contended he maintained accurate attendance records. He pointed out most of the “errors” cited by Chesnut involved employees who were not marked late, but who were marked as having arrived at the plant at 7 a.m. for the 7 a.m. shift. The company responded that workers who arrived at the plant at 7 a.m. could not have been at their work stations at 7 a.m. and must have been late. Both Reeves and the other line supervisor agreed the company’s time clock system was often broken so it failed to record the arrival time of the employees on their time cards. When the clock failed, Reeves simply checked the workstations and recorded the presence or absence of the employees at the beginning of the shift. Both supervisors stated if an employee arrived on time, but whose timesheet had no arrival time, they would write 7 a.m. as the employee’s arrival time even though the worker had gotten to the plant earlier. Additionally, Reeves stated if employees arrived before the shift began or stayed late, he would assign them additional work so they would not be paid for simply being at the plant.

As to the second reason (*failure to discipline workers*), Reeves related his responsibilities were limited to reviewing the daily and weekly attendance records. Disciplinary action was based on monthly reports that were the responsibility of Reeves’ supervisor, not Reeves. The company president acknowledged Reeves was not responsible for citing employees for violations of the company’s attendance policies and it was the responsibility of another supervisor. Additionally, Chesnut conceded no union grievance or com-

plaint had ever been filed based on Reeves’ record keeping.

In response to statements made concerning the third reason (*financial losses due to overpayments* by the company which were supposedly caused by Reeves’ errors), the company admitted no calculation of the overpayments had been made and therefore no one knew what amount, if any, had been lost by the company for work paid but not performed. Reeves claimed when errors in time keeping were made, the company simply adjusted the subsequent paychecks to correctly reflect the hours worked.

As to the fourth reason (*intentionally falsifying records*), Reeves testified he had never intentionally submitted incorrect records. The company was unable to provide any documentary information to support the allegation he had.

In this case, the employee introduced additional facts to support his contention the employer’s decision was based on his age. Reeves stated on the day of his firing Chesnut told him the reason for his discharge was his failure to correctly document the absence of one employee during a two-day period in September 1995. Reeves explained he was hospitalized during that period, and it was therefore his supervisor’s responsibility to verify employee attendance.

Additionally, Reeves claimed Chesnut had told him he “was so old (he) must have come over on the Mayflower.” On another occasion, Chesnut remarked Reeves “was too damn old to do (his) job.” Other employees corroborated the fact Chesnut treated the two supervisors of the Hinge Room, Reeves and 35-year-old Oswald, differently. Oswald stated while he and Chesnut had their differences, his treatment was much better than that of Reeves. Oswald characterized his treatment by Chesnut as tolerant even though he defied Chesnut frequently. Chesnut, on the other hand, treated Reeves as a child in need of discipline.

Although at the time of the earlier investigation of problems on the Hinge Room assembly line, Reeves’ rate of productivity was nearly the same as Oswald’s, Chesnut ordered an efficiency study only of Reeves’ line and subsequently placed only Reeves on probation.

At first, Chesnut denied having made the recommendation to place Reeves on probation, but later admitted it.

Reeves continued his assault on the purported reasons for his dismissal by the company by demonstrating Chesnut, his old foe, was the true decision-maker behind his firing. While the company president, Sanderson, claimed under oath she had fired Reeves in part because “he had intentionally falsified company pay records,” she was never able to produce any intentional falsifications. As the husband of the president, Chesnut had on numerous occasions exercised power in excess of his position. Several years earlier he had engaged in caustic criticism of the other company directors who were supposedly his equals in the corporate structure. Information from other managerial personnel indicated Chesnut exercised “absolute power” within the company.

Until this decision, the Court repeatedly emphasized the burden of proving illegal discrimination was squarely on the shoulders of the discharged employee. It was not enough to disbelieve the reasons put forth by the employer; the Court must be convinced the employer acted illegally. In this case the Court changed the landscape of discrimination litigation. In deciding *Reeves v. Sanderson Plumbing Products, Inc.*, the Court imposed a new and substantially different standard on which discrimination matters would be decided. While the Court attempted to explain the decision was consistent with earlier ones, it is markedly different. The Court has taken a huge and potentially costly step in favor of employees and by this decision encouraged employees to initiate legal action in cases where it might have been virtually impossible to win before this decision.

In reaching its decision for the employee, the Supreme Court concluded it was permissible for the jury to infer illegal discrimination occurred based on the fact it found the reasons stated by the employer for the discharge were not credible. The employee may win if he can show the employer lied. “The fact finder’s disbelief of the reasons put forward by the defendant (employer) may together with the elements of the prima facie case, suffice to show intentional discrimination. Thus,

rejection of the defendant's (employer's) proffered reasons will *permit* the trier of fact to infer the ultimate fact of discrimination." The Court established the employee must now prove a prima facie case and cast doubt on the stated reasons of the employer.

The Supreme Court decided if an employee can demonstrate the reasons put forth by the employer for the termination are not credible, an employee may prevail based on illegal discrimination. In other words, the employee no longer must prove he has been discriminated against, but rather the employer's reasons are not believable. Prior rulings placed the burden to prove discrimination upon the employee who made the allegations. After the decision, the burden falls on the employer to prove it has not discriminated.

The Court stated, "In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation the employer is dissembling to cover up a discriminatory purpose ... the fact finder is entitled to consider a party's dishonesty about a material fact as AFFIRMATIVE EVIDENCE OF GUILT."<sup>6</sup>

The Court realized placing the responsibility of proving the illegal discrimination of the employee was neither logical nor practical. Normally the employee lacks the resources to adequately sift through the corporate records. Often the investment in time and financial support for a lengthy legal proceeding is not within the employee's means. By effectively shifting the burden to justify the discharge to the employer, the Court took a pragmatic approach. The decision may have been based on the idea of whom better to explain the actions of the business than the business itself.

The Court recognized numerous reasons exist for an employer to discharge an employee. Employees may lack the ability or the motivation to succeed in the assigned job. Employees may commit criminal acts or violate

regulations. No one believes all employees should be retained or promoted. Employers can and do legally discharge employees every day. Terminating an employee is permissible and even necessary to run a successful operation. Terminating an employee because of his/her race, age or sex is not.

## Conclusion

Presumably companies have safeguards in place to ensure honest and fair personnel decisions are made. Policies and procedures protect employers and assure laws designed to protect workers are enforced. Firing a worker can be devastating to the worker and disruptive to the work force. This is especially true if the remaining workers do not understand the reasons for the discharge.

This decision requires the employer to state the reasons for the discharge. The decision makes it clear should the employer lie about the reasons for the discharge, the jury may infer the false reasons were designed to obfuscate an illegal motive. The most important aspect of the decision is the employer must be forthcoming and honest concerning the reasons for the discharge. Failure to do so will mean in most cases the employer will be held liable for illegal discrimination. No longer will it be possible for the employer to place a smoke screen and then hope the employee will be unable to discern the actual reason for the employer's actions. Should the employer respond in a nebulous manner or simply lie as to the true reasons for the discharge, juries may and will believe the failure to be forthcoming has a reason. The most plausible reason is the employer is hiding the real reason and it was illegal. Once the employer's justification for its actions have been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to explain the reasons for its decision.

While the possibility exists a jury

may not conclude illegal discrimination took place in a situation in which the employer fails to disclose the truth, a company cannot leave that possibility open. Today more than ever it is incumbent upon human resource managers to instruct supervisory personnel on the limits of their ability to affect change by discharging or demoting employees. Clearly, it is not enough the discharges not originate because of race or age. The initiating supervisor now must affirmatively document the real reasons. Poor record keeping, evaluations which damn with faint praise and undocumented incidents, may come back to haunt the employer.

While at first glance this decision may not appear to be significant, I believe it will dramatically alter the number of cases initiated by employees. The obligation on the employee has substantially decreased and the same time the difficulty in defending these cases has increased.

The game has changed. Employers who cannot demonstrate valid reasons for discharging an employee may no longer rely on the premise the employee cannot prove the company discriminated. The work of the human resource department continues to grow.

## Footnotes

1. Roger Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000).
2. McDonnell Douglas Corp. v. Green, 93 S.Ct. 1817 (1973).
3. St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742 (1993).
4. Hicks v. St. Mary's Honor Center, 756 F. Sup. 1244, 1250-1251 (E.D. Mo. 1991).
5. Roger Reeves v. Sanderson Plumbing Products, Inc., 120 S.Ct. 2097 (2000).
6. Wright v. West, 112 S.Ct. 2482 (1992).