

NONPRECEDENTIAL DISPOSITION

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United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Argued December 14, 2022

Decided January 30, 2023

BeforeDIANE S. SYKES, *Chief Judge*MICHAEL Y. SCUDDER, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*

No. 22-1479

DANIEL CARROLL,
*Plaintiff-Appellant,**v.*HORIZON BANK,
*Defendant-Appellee.*Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:19-CV-1089-JD

Jon E. DeGuilio,
*Chief Judge.***ORDER**

Daniel Carroll worked as the senior commercial credit officer at Horizon Bank. In May 2017 he advocated for a pay increase for a female subordinate. He later recommended her for a promotion along with two male employees; he told bank executives that they would need to increase her pay postpromotion because the men earned more than she. In the months that followed, several of Carroll's subordinates complained about his managerial and communication shortcomings, and he was warned about the need for improvement. Soon after, his boss heard him use aggressive and demeaning language during a conference call and met with him afterward to

discuss the unprofessional behavior. He was fired a few months later for ineffective management and insufficient commitment to improve.

Carroll sued Horizon alleging that he was fired in retaliation for recommending a pay increase for his female subordinate. The district judge entered summary judgment for Horizon, holding that Carroll failed to present evidence of a causal link between his advocacy for pay equity and the bank's decision to fire him. We agree and affirm.

I. Background

Carroll began working as a loan officer at Horizon Bank in 2001. He left in 2011 for a job at LaPorte Savings Bank and returned in 2016 when Horizon acquired LaPorte. Six months after the acquisition, he was promoted to vice president and senior commercial credit officer, reporting directly to Thomas Edwards, Horizon's president.

In the spring of 2017, Edwards asked Carroll to develop a proposal to restructure the credit department. Carroll's reorganization plan included a proposal to promote three subordinates—Allyson Oesterle-Kleine and two male employees—to newly created regional manager positions. In May 2017 Carroll asked Horizon to boost Oesterle-Kleine's salary. The request was unrelated to the proposed restructuring, which was still in the planning stages, and Carroll did not mention any equal-pay concerns. He reasoned that she was productive, would soon be promoted, and a competitor might poach her. Horizon's CEO tabled the recommendation because he wished to find out more about the proposed reorganization.

Carroll submitted his reorganization plan later in May and discussed it in a June strategy session with Edwards and other Horizon executives. Among other things, he told them that if the bank promoted Oesterle-Kleine as he recommended, it would need to raise her salary because she made \$30,000 less than each of the two men slated for a similar promotion. Dennis Kuhn, the bank's executive vice president (who later succeeded Edwards as president), attended this meeting.

The executives agreed that the restructuring plan was a good idea, but the parties dispute whether they approved it there and then. Carroll thought he had a green light for the reorganization, so he increased Oesterle-Kleine's responsibilities and told her that Horizon was reviewing her salary. Horizon maintains that several administrative steps were necessary before it could finally approve the reorganization, which would not occur until the spring of the next year. Carroll followed up with the human-

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resources department several times in the fall to see why the bank had not approved a salary increase for Oesterle-Kleine. He was told that the CEO still had not approved the increase.

In the meantime, Oesterle-Kleine's frustrations grew. She was upset that her salary did not match the new responsibilities that Carroll had given her. And in her year-end review, she intimated that she had not received a raise because she is a woman. Oesterle-Kleine also learned that Carroll had written in her performance review that she needed time to "adjust her mindset" after her maternity leave—a comment she found "insulting and unsubstantiated." She transferred to a different role at the bank in January 2018 and later turned down the promotion to the managerial position once Horizon formally approved the reorganization.

In November 2017 several of Carroll's other subordinates complained about his managerial shortcomings. They reported that he overworked them, ignored their messages, and did not understand their roles or appreciate them. Edwards discussed these complaints with Carroll in late 2017; Cindy Pressinell, the vice president of human resources, attended this meeting. In February 2018 Pressinell and Kuhn—now the bank's president following Edwards's retirement at the end of 2017—met with Carroll a second time to discuss the complaints. They urged him to improve his availability and communication. For example, they suggested that Carroll schedule regular meetings with one subordinate, which he did. Kuhn and Pressinell also mentioned Oesterle-Kleine's complaint about her salary, and they criticized Carroll for informing her of a promotion and raise that the bank had not yet approved.

The warnings did not resolve the problems. During a conference call in April 2018, Kuhn heard Carroll use "aggressive, unprofessional, and demeaning language" toward other participants, although Kuhn no longer recalls Carroll's precise words. Kuhn says that he met with Carroll after the call to criticize his unprofessional behavior and then reported the incident to Pressinell. Carroll denies that Kuhn criticized his professionalism, remembering instead that Kuhn merely disagreed with a position that Carroll had taken about a loan.

Kuhn fired Carroll on May 30, 2018, a little over a month after the problematic conference call. He testified in his deposition that he fired Carroll for "ineffective management" and "a lack of significant commitment ... to improve." Pressinell likewise told Carroll that Kuhn had fired him because he had not sufficiently improved on the issues they had raised earlier in the year. In firing Carroll, Kuhn did not follow the

bank's discretionary discipline policy, which would have involved several more warnings.

On June 4 Pressinell wrote three memos to Carroll's personnel file reflecting the conversations and meetings leading to the firing. She backdated the memos to February 28, March 7, and April 13. She says that she crafted these memos by relying on notes that she had written at the time of the events. One memo says that Carroll had put the bank at "significant risk" by commenting in a negative way on Oesterle-Kleine's maternity leave and promising her a promotion and raise that the bank had not yet approved. This memo also discusses Carroll's management and communication problems with his team. The last memo concerns his use of unprofessional language during the conference call.

Carroll sued Horizon raising a retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). He alleged that the bank fired him for advocating for pay equity for Oesterle-Kleine. The district judge entered summary judgment for Horizon, ruling that Carroll failed to present evidence suggesting that Kuhn fired him because of that advocacy. The judge also rejected Carroll's contention that Kuhn's reason for firing him—poor management—was pretextual.

II. Discussion

Carroll maintains that a reasonable jury could find in his favor. We review a summary judgment *de novo*, considering all facts and drawing all reasonable inferences in favor of Carroll as the nonmoving party. *See Rozumalski v. W.F. Baird & Assocs.*, 937 F.3d 919, 924 (7th Cir. 2019).

An employer violates Title VII's antiretaliation provision by taking an adverse action against an employee "because he has opposed any practice made an unlawful employment practice by this subchapter." § 2000e-3(a). To survive summary judgment, Carroll had to present evidence from which a reasonable jury could find that (1) he engaged in a protected activity; (2) he suffered an adverse employment action; and (3) a causal connection exists between the two. *See Rozumalski*, 937 F.3d at 924. Horizon concedes the first two elements, so we consider only whether a reasonable jury could conclude that the bank fired Carroll because of his purported protected activity.

Carroll argues that Kuhn fired him because Kuhn feared a pay-discrimination suit from Oesterle-Kleine and wanted to silence anyone who had opposed the pay

disparity. For support he points to the following facts: (1) Kuhn attended the June 2017 meeting at which he had urged the bank to avoid any postpromotion gap in Oesterle-Kleine's pay; (2) Pressinell informed Kuhn in February 2018 of Oesterle-Kleine's salary complaint; (3) Kuhn fired Carroll about three months after finding out about Oesterle-Kleine's complaint; and (4) during this time, Pressinell worried that Carroll's behavior toward Oesterle-Kleine put the company at legal risk.

Although these events relate to a possible discriminatory pay gap and preceded Carroll's discharge, they do not show, in isolation or together, that Horizon fired Carroll *because* he urged the bank to avoid a pay disparity. The first two facts support an inference that Kuhn was aware of Carroll's advice to raise Oesterle-Kleine's pay after the proposed promotion and that Oesterle-Kleine later complained about her salary. That knowledge, however, is not enough to show causation. "A valid retaliation claim requires that the decisionmaker know of the protected activity, but that does not mean one can infer retaliation from the decisionmaker's knowledge alone." *Kotaska v. Fed. Express Corp.*, 966 F.3d 624, 633 (7th Cir. 2020) (citation omitted). The problem for Carroll is that no evidence suggests that Kuhn (or anyone at the bank) opposed increasing Oesterle-Kleine's pay if Horizon promoted her. To the contrary, bank executives thought that Carroll's plan to promote her was a good idea, and nothing indicates that her pay would have stayed below her male colleagues if they all moved to similar positions after the restructuring was approved.

The third and fourth facts likewise do not establish a causal link between Carroll's discharge and his advocacy for Oesterle-Kleine. The third relates to the timing of his discharge. He acknowledges that his advice about a pay increase for Oesterle-Kleine at the June 2017 meeting was far too distant from his termination a year later to support an inference of causation. But the three-month gap—from February 2018 when Kuhn became aware of Oesterle-Kleine's salary complaint to May 2018 when he made the decision to fire Carroll—is also too long. For a jury to draw an inference of causation from suspicious timing alone, the adverse action must come days, not months, after the protected activity. *See Igasaki v. Ill. Dep't of Fin. & Pro. Regul.*, 988 F.3d 948, 959 (7th Cir. 2021).

Carroll has offered little else to support causation. His only remaining evidence is the language in Pressinell's memo warning that his behavior toward Oesterle-Kleine had exposed the company to legal risk. But the memo did not criticize Carroll for urging Horizon to erase a pay disparity. Rather, it faulted him for making what Oesterle-Kleine believed was an insulting comment about her maternity leave and for

telling her that Horizon planned to promote her and raise her pay when it had not yet approved either action. Carroll's evidence thus fails to establish that Horizon fired him because he opposed a possible discriminatory pay gap.

Carroll also argues that a jury could infer retaliation because Kuhn's proffered reason for firing him—ineffective management—was pretextual. To show pretext, Carroll needs evidence from which a jury could infer that Kuhn was lying, *see Robertson v. Dep't of Health Servs.*, 949 F.3d 371, 378 (7th Cir. 2020), or that his reason was too implausible or inconsistent for a jury to find that he sincerely believed it, *see Marnocha v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 986 F.3d 711, 721 (7th Cir. 2021). Carroll admits that his subordinates complained about his management and that Kuhn discussed the complaints with him. Nonetheless, Carroll insists that Kuhn lied about firing him because of these managerial shortcomings. He argues that if Kuhn cared about the complaints, he would have met with him sooner, investigated whether he took steps to improve, and followed Horizon's discipline policy. Two additional facts, Carroll continues, help to show that Kuhn's reason was pretextual: he received a satisfactory performance review the year before his discharge and Pressinell drafted the memos describing his performance problems only *after* he was fired.

These arguments are unavailing. To start, the timing and manner of Kuhn's response to the complaints from Carroll's subordinates do not suggest that he did not take the complaints seriously. First, there was no delay. It's undisputed that Kuhn was on medical leave when the complaints arrived and did not become Carroll's immediate supervisor until he succeeded Edwards as president in early 2018. Edwards and Pressinell met with Carroll toward the end of 2017 to discuss the complaints; Kuhn and Pressinell followed up in February 2018.

Second, not long after Kuhn warned Carroll to improve his communication with his subordinates, Kuhn heard Carroll make demeaning and unprofessional remarks on a conference call. So even without a full-fledged investigation into whether Carroll had improved after the earlier complaints, Kuhn had firsthand knowledge that Carroll had not improved. Finally, Kuhn's decision to fire Carroll without written warnings comported with Horizon's disciplinary policy. Progressive warnings were discretionary; the policy empowered Kuhn to "administer discipline in any manner" that he saw fit. *See Hague v. Thompson Distrib. Co.*, 436 F.3d 816, 828 (7th Cir. 2006) (explaining that an employer's failure to follow its discretionary discipline policy is not evidence of pretext).

Nor does Carroll's satisfactory performance review for 2017 suggest that Kuhn's reasons for discharging him the following year later were disingenuous. After considering what had transpired since Carroll's previous review—especially the two warnings a few months apart about his managerial and communication problems and his unprofessional language on the conference call—Kuhn concluded that he had not improved. *See Igasaki*, 988 F.3d at 959 (explaining that past positive performance reviews are largely irrelevant because what matters is the employee's performance at the time of termination); *Zayas v. Rockford Mem'l Hosp.*, 740 F.3d 1154, 1158 (7th Cir. 2014) (explaining that the plaintiff must meet the employer's legitimate expectations around the time of firing).

That leaves Pressinell's memos, which also fail to establish pretext. Carroll argues that the backdating shows that Horizon concocted concerns about his managerial deficiencies. But nothing contradicts Pressinell's testimony that she based the memos on her contemporaneous notes. In fact, the record corroborates the memos: Kuhn and Pressinell discussed the complaints with Carroll, told him to improve, and Kuhn again met with Carroll after the problem phone call.

Carroll insists that the memos describe events that never happened—i.e., a second meeting with Pressinell and a meeting in which Kuhn criticized his lack of professionalism on the conference call. The memos, however, stated that Pressinell spoke to Carroll a second time in 2018, not that the two met a second time. As for the meeting with Kuhn about the phone call, the fact that Carroll does not recall Kuhn criticizing his professionalism does not mean that Kuhn lied about believing that Carroll had used inappropriate language during the call and otherwise poorly managed his subordinates. *See Bagwe v. Sedgwick Claims Mgmt. Servs., Inc.*, 811 F.3d 866, 882 (7th Cir. 2016) (explaining that if an employer provides a consistent rationale for a firing, "differing recollections" over conversations "do not raise a reasonable inference of discrimination" (quotation marks omitted)). A reasonable jury thus could not conclude that Kuhn's reasons for firing Carroll were pretextual.

AFFIRMED