

Discussion Questions – Monday, September 8

Background

In *Swierkiewicz*, the plaintiff alleged that his employer, a French-owned company with its headquarters in New York, wrongfully fired him on account of his country of national origin (he was from Hungary). He alleged that being fired violated his rights under Title VII, a federal statute. Most jobs in the United States are “at-will employment,” a concept that means that an employer can fire most employees for pretty much any reason. One big exception, however, is that an employer can’t take an adverse employment action—such as firing, refusing to hire, demoting, or refusing to promote—for a reason that is illegal under the law. Title VII is one such law. It prohibits adverse employment actions if the action is based on an employee’s race, color, religion, sex, or national origin. The statute also gives employees a private right of action to sue, meaning that an employee can bring a civil lawsuit if the employer discriminates against them based on one of these protected categories. And that was the first claim that the plaintiff made in *Swierkiewicz*: that he was terminated on account of his national origin, in violation of Title VII. The other claim that the plaintiff made was that he was also terminated on account of his age. Age isn’t a protected category under Title VII but is under another federal statute, the Age Discrimination in Employment Act.

After it was sued, the employer argued that the plaintiff’s allegations supporting his two claims were insufficient under Rule 8 and it moved to dismiss them under Federal Rule of Civil Procedure 12(b)(6). The federal trial judge agreed, dismissing the case. The plaintiff appealed that dismissal to the Second Circuit, which affirmed the trial judge’s decision. In the Second Circuit’s view, to adequately allege that he was fired for a discriminatory reason, he had to plead a *prima facie* case of discrimination. The appellate court then concluded that he had not done so because he had not alleged circumstances that would support an inference of discrimination. The Second Circuit wrote: “With respect to national origin, the only circumstances Swierkiewicz pled are that he is Hungarian, others at Sorema are French, and the conclusory allegation that his termination was motivated by national origin discrimination. We agree with the district court that these allegations are insufficient as a matter of law to raise an inference of discrimination.” As to the age discrimination allegation, the appellate court wrote: “The only circumstance that Swierkiewicz alleges gives rise to an inference of age discrimination is Chavel’s comment in 1995 that Chavel wanted to “energize” the underwriting department. We agree with the district court that this allegation is insufficient as a matter of law to raise an inference of discrimination.”

Questions

1. In reversing the Second Circuit, the Supreme Court said the appellate court had incorrectly used an evidentiary standard to judge the sufficiency of the plaintiff’s allegations. Try to articulate the Court’s reasoning.
2. The Court also said that imposing a heightened pleading standard in employment discrimination cases conflicts with Rule 8(a)(2). Once again, try to articulate the Court’s reasoning. As part of your discussion, try to explain what the Court meant when it said, in

a footnote that appears on page 52 of the Course Materials, that courts are required to “accept as true all of the factual allegations contained in the complaint.”

3. Applying what it described as the correct pleading standard, the Court found the plaintiff’s allegations to be sufficient under Rule 8(a). Try to articulate the Court’s reasoning.
4. As you reflect on this case, do you think the Second Circuit’s or the Supreme Court’s approach seems more workable to use as a pleading standard in employment discrimination cases? Why?