

Gannett Escapes White Workers' Suit Over Diversity Policy

By **Patrick Hoff**

Law360 (August 21, 2024, 3:26 PM EDT) -- Gannett dodged a proposed class action alleging its diversity policies favored minority employees and job applicants over white journalists, with a Virginia federal judge ruling the workers leading the suit failed to show the newspaper publisher took action against them because of their race.



A Virginia federal judge found that workers who alleged that Gannett favored nonwhite applicants and employees over its white staff could not show that the company's practices were motivated by racial bias, tossing the suit but leaving room to amend. (AP Photo/Jacquelyn Martin, File)

U.S. District Judge Rossie D. Alston Jr. on Tuesday **granted** Gannett Co. Inc.'s motion to dismiss the workers' claims of race discrimination under Section 1981 of the Civil Rights Act, saying the allegations weren't detailed enough to move forward but giving them a chance to amend their complaint. The judge also struck the class allegations from the complaint, finding the proposed class was too broad and the claims too reliant on individual employment decisions.

"Each of the named plaintiffs' claims of discrimination must be dismissed for failure to state a claim and that the class allegations should be stricken from the amended complaint based on their failure to facially establish the ascertainability of the proposed class or the commonality of issues," Judge Alston wrote.

Five former Gannett employees working at various newspapers across the country sued the media giant in

August 2023, alleging that it instituted a policy that created a "caste system" showing preference to minorities in hiring and promotion. According to the complaint, Gannett committed to publishing demographic information about its workforce annually, and leadership at the company received certain bonuses and benefits if they increased the racial and ethnic diversity of their newsrooms.

One of the employees leading the suit, Steven Bradley, said he worked for Gannett for over two decades, but he was terminated from the Democrat and Chronicle in Rochester, New York, in 2020, with his boss telling him he was chosen for termination over an Asian employee because he's white. According to Bradley, he applied for an executive editor position at a different newspaper in January 2021 and was assured that he was a top candidate, but the job was instead given to a Black woman.

Meanwhile, Stephen Crane, who worked as an editor at an Indiana newspaper, alleged that he was told to rescind a job offer to a white candidate and was forced to resign after receiving poor performance reviews he said he didn't deserve. And Barbara Augsdorfer, a former education reporter at the Savannah Morning News in Georgia, said that after the company brought on a Black executive editor, she was transferred to a new beat against her will, given a poor performance rating and ultimately fired.

Judge Alston said Tuesday, however, that Bradley can't challenge his termination because his separation agreement bars him from doing so, and while he claimed to be more qualified than the person hired as executive editor, he failed to demonstrate that he was turned down because of his race.

As for Crane, the court found that he didn't establish that he'd worked in an intolerable environment or that any action was taken against him based on his performance evaluation, and Judge Alston said Augsdorfer admitted that she'd been warned about her performance before being terminated.

The judge said the other two ex-employees, who respectively alleged that they were paid less than a colleague and denied a promotion, also failed to provide enough details to sustain their claims.

Although the workers leading the suit already amended their complaint after Gannett filed an initial dismissal bid **in November**, Judge Alston said that amendment was made without the benefit of the court's input.

"Accordingly, the court will provide plaintiffs with a final opportunity to file a complaint that is capable of stating a claim," the judge wrote.

Polly Grunfeld Sack, Gannett's chief legal officer, told Law360 in a statement that the company "will always vigorously defend our practice of ensuring equal opportunities for all our valued employees."

"We are pleased with the court's decision finding that Gannett's employment decisions concerning the named plaintiffs were not discriminatory," Sack said. "Gannett always seeks to recruit and retain the most qualified individuals for all roles within the company."

Representatives of the workers did not immediately respond to requests for comment Wednesday.

The workers are represented by Philip J. Harvey of Harvey Law Offices PLLC and J. Nelson Thomas and Adam T. Sanderson of Thomas & Solomon PLLC.

Gannett is represented by Laurin H. Mills of Werther & Mills LLC, Robert C. Weissflach of Harter Secrest & Emery LLP and Mark W. Batten of Proskauer Rose LLP.

The case is Bradley et al. v. Gannett Co. Inc., case number 1:23-cv-01100, in the U.S. District Court for the Eastern District of Virginia.

--Additional reporting by Emmy Freedman. Editing by Emma Brauer.