# Judge Drops Age Lawsuit Against Boeing, Spirit

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WICHITA, Kan. (AP) -- A federal judge has tossed out an age discrimination lawsuit against The Boeing Co. and Spirit AeroSystems filed in the wake of Boeing's 2005 sale of commercial airplane operations in Kansas and Oklahoma.

U.S. District Judge Eric Melgren summarily ruled Wednesday in favor of the aerospace giants. He found the evidence was insufficient to establish a pattern of discrimination during the divestiture.

"Noticeably lacking from plaintiff's proof is evidence showing that defendants had an age bias corporate culture or that a corporate policy of discrimination had been adopted. The absence of such evidence in this case proves to be fatal," Melgren wrote in a 44-page order.

Ninety former Boeing workers had sued in December 2005 claiming they lost their jobs because of their age. Their lawsuit was granted conditional class-action status a year later under the Age Discrimination in Employment Act.

Spirit AeroSystems said it hopes to now put the issue behind it.

"The court validated what we have said all along -- Spirit did not discriminate in its hiring process when the company was created 5 years ago. Spirit is an equal opportunity employer and we take it very seriously," the company said in statement e-mailed to The Associated Press.

Messages left with Boeing and the workers' attorney, Lawrence Williamson, were not immediately returned.

The aircraft makers had contended in seeking the lawsuit's dismissal that the workers could not prove any intent to prevent older workers from attaining pension benefits. They also argued there were legitimate reasons for Spirit to not hire all the former Boeing workers.

Their lawsuit cited statements by Jeff Turner, a former Boeing manager and current CEO of Spirit acknowledging the aerospace giant had concerns about the age of its work force when it was trying to sell those facilities.

Turner told a manager within a year of the divestiture that "Boeing's work force was getting older and that the managers needed to find ways to do something about it."

But Melgren wrote that when Turner's comment is viewed "in the correct context, it is clear that it is benign."

The judge said it is clear that Turner and other upper-level managers were

concerned about workers' ages because they were afraid that a large percentage of their employees would retire within a few years of each other and leave Boeing with an inexperienced work force.

Workers also cited e-mails sent between Spirit and its consultants during negotiations with the machinists union discussing how much the average age of its work force would have to drop in order for Spirit to avoid having to pay a higher rate into the pension fund.

The lawsuit also alleged the two companies tracked the age of employees during a selective rehiring process, saying this supported a claim of discrimination.

They cited a 2004 investment memorandum prepared by Onex Corp., which bought Boeing's commercial aircraft operations in Wichita and Tulsa and McAlester, Okla., listing the average age of employees belonging to the eight unions that operated at Boeing. Another listed prepared by Boeing stated how many people over age 55 had been recommended for hire, and notes taken by someone during the Tulsa selection process also listed the ages of employees.

Melgren ruled that evidence did not prove discrimination because it did not show the decision makers had this information when making hiring decisions. He said the notes taken at the Tulsa site at best supported an inference that isolated discriminatory acts occurred.

The judge also disagreed with workers' claim that Spirit's failure to act after an internal report showed that the workers over age 40 were adversely impacted proved discrimination. The judge sided with the company's contention that the results did not show discrimination because multiple decision makers were involved in the hiring.

The lawsuit was initially filed by 90 former workers, a number that has grown by more than 700 additional ex-workers who have since asked to join the suit. Wednesday's decision makes moot the class-action status sought by workers.

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