

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Argued April 23, 2024

Decided May 7, 2024

Before

FRANK H. EASTERBROOK, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 23-3038

MANAL SUGHAYER,
Plaintiff-Appellant,

v.

FIFTH THIRD BANK, N.A.,
Defendant-Appellee.

Appeal from the United States District
Court for the Northern District of
Illinois, Eastern Division.

No. 1:20-cv-06327

John Robert Blakey,
Judge.

ORDER

Manal Sughayer sued Fifth Third Bank, her former employer, asserting that it discriminated against her based on her race, color, religion, and national origin by promoting two other employees instead of her. The district court entered summary judgment for Fifth Third. Because Sughayer failed to offer any proof that would allow reasonable jurors to find discrimination, we affirm.

Sughayer—who identifies as brown, Palestinian, and Muslim—began working in 2012 as branch manager for MB Financial Bank (which Fifth Third later bought). She started managing two branches in 2013.

Sughayer’s job duties included sales, and her performance on that front was mixed. (“Sales” here means retaining or increasing deposits and accounts at her branches.) In a sales contest among all branch managers held at the end of 2017, Sughayer came in second to another manager, Tera Nerko. But in 2018 Sughayer’s performance worsened, so her supervisor, Farah Huber, began coaching her. Records of their meetings show that in the first half of 2018, Sughayer was behind on her annual goals for retaining or growing certain kinds of deposits and accounts.

That September, Huber recommended the promotion of two other branch managers, Nerko and Teri Bornack, who are both white, based on their performance, tenure with the bank, and other achievements. The bank’s executives approved the promotions, which were announced on October 1.

Afterwards, Sughayer’s performance improved. She won a sales contest in October 2018, and her branches had the highest business deposits at the end of the year. But in late 2019 she abruptly resigned, citing an “intolerable work atmosphere, ongoing harassment, and discrimination.”

In 2020 she sued Fifth Third in Illinois state court under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and the Illinois Human Rights Act, 775 ILCS 5/2-102, asserting that by failing to promote her the bank had discriminated against her based on her race, religion, color, and national origin. Fifth Third removed the lawsuit to federal court, then moved for summary judgment on both claims.

The district court granted the motion because Sughayer was proceeding on both the federal and state claims under the framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and reasonable jurors could not find that she had shown one element of the *McDonnell Douglas* prima facie case—that Nerko and Bornack were not the better qualified candidates. The bank tended to promote managers who were top performers, had long been with the bank, or both. Huber attested, and Sughayer conceded, that Nerko was the top branch manager from 2014 to 2016, Bornack was in 2017, and both were consistently top performers. Sughayer, by contrast, had never been the top branch manager and—just before the promotion—had been performing poorly. As for tenure, Bornack had been with the bank nearly a decade longer than Sughayer. And Nerko and Sughayer both joined the bank in 2012, but Nerko’s qualifications

trumped Sughayer's. Nerko won the 2017 contest and another all-manager sales contest in August 2018, was selected for an elite group of managers, was the region's "go-to" person for other managers, filled in when Huber was on vacation, had volunteered her branch to test new systems, had managed a marketing program, managed two branches before the bank closed one, retained most of the customers from the closed branch, and managed Fifth Third's traveling bankers.

We review the grant of summary judgment de novo, construing the record in the light most favorable to Sughayer. *Bagwe v. Sedgwick Claims Mgmt. Servs., Inc.*, 811 F.3d 866, 879 (7th Cir. 2016). Like the district court, we review Sughayer's federal and state claims together because the same analysis applies to both. *See id.* at 879 & n.39.

To avoid summary judgment, Sughayer needed evidence allowing a reasonable inference of intentional discrimination. *See David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216, 224 (7th Cir. 2017). She may carry that burden under the *McDonnell Douglas* framework, and making out its prima facie case required her to show that the promoted employees, Nerko and Bornack, were similarly or less qualified than she was. *See Kinney v. St. Mary's Health, Inc.*, 76 F.4th 635, 646 (7th Cir. 2023). And to do that, she had to show that they were directly comparable in all material respects. *See Johnson v. Advoc. Health & Hosps. Corp.*, 892 F.3d 887, 895, 897 (7th Cir. 2018).

The district court correctly ruled that reasonable jurors could not find that Sughayer was at least as qualified as Nerko or Bornack. Sughayer offers three reasons why they were directly comparable, but none is persuasive. First, she says that she must have been performing well in September 2018—when Huber made her recommendations—because she was performing well in October. But that is speculation, which is not evidence for purposes of summary judgment. *Est. of Biegert v. Molitor*, 968 F.3d 693, 701 (7th Cir. 2020). Second, she points out that she managed two branches and the traveling bankers. But as the district court noted, Nerko did the same and had several additional achievements: As the district court recounted, Nerko was the top branch manager for three of the four years before the promotion, won the 2017 and 2018 sales contests, filled in for Huber, helped other managers in the region, was selected for the elite manager group, volunteered her branch to test new systems, had managed two branches, had retained almost all the closed branch's customers, and managed the traveling bankers. Third, Sughayer says that she—unlike Nerko and Bornack—reported "deceptive pricing practices" by a Fifth Third subsidiary, saving the bank from a "possible" class action lawsuit and "possibly" millions of dollars in legal

fees and damages. But that too is speculation and has nothing to do with performance or tenure, the undisputed considerations for the promotion.

Finally, Sughayer says that shortly before the promotion Fifth Third's head of business banking made a derogatory remark about her in an email. But she cites no evidence that he played any role in the promotion decision here.

AFFIRMED