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2nd Circ. Revives Ex-Police Dept. Worker's Age Bias Suit

By **Adam Lidgett**

Law360 (March 10, 2020, 6:47 PM EDT) -- The Second Circuit on Tuesday breathed new life into a former East Haven Police Department employee's age bias suit, finding there was enough evidence that she felt she had to retire or risk being fired after taking a can of biscuit dough from a communal kitchen area.

A three-judge panel said that a Connecticut federal judge jumped the gun in tossing Dyanna L. Green's Age Discrimination in Employment Act and Connecticut Fair Employment Practices Act suit against the town of East Haven, and kicked the case back to the lower court for further consideration.

The district court found that a worker in Green's shoes couldn't have reasonably thought it was inevitable that she was going to be fired. But the panel said she received advice from various parties — including an EHPD internal affairs officer — that told her she would likely be fired if she had to face a hearing related to her taking one can of Pillsbury buttermilk biscuit dough from a common fridge area.

"If this case were tried, a factfinder, applying the correct legal standard to the issue of constructive discharge, could rationally find that an employee in Green's shoes would have felt compelled to submit her resignation stating that she was retiring, rather than face nearly certain termination," the panel wrote.

Green was hired to work in the EHPD's records division in 2001 when she was 47 years old, but things soured in 2012 when a younger woman became her coworker, according to court documents. Green said she started to feel marginalized, that her boss micromanaged and demeaned her, and that her younger colleague got better work assignments.

The biscuit incident occurred on Dec. 5, 2014, when Green noticed there had been two tins of biscuit dough in a shared fridge that had been there "since at least Thanksgiving," according to the decision. She said she decided to take one of them home so she could actually bake them for the department's staff and officers.

But after an email was sent out telling whoever swiped the biscuit dough to return it, Green tried to take it back to the kitchen, court records showed. When she got back to the kitchen, she found not only that the police chief was there but that the fridge was covered with crime scene tape, according to court documents.

Green lied to the chief about having the biscuit can in her bag, and when she tried to explain her reasoning behind taking it home, the chief refused to listen, she had claimed.

She was then placed on paid administrative leave and an investigation commenced. She resigned after a hearing was scheduled, court documents showed.

Green then sued, claiming she was constructively discharged, but the company moved for summary judgment, arguing her resignation was voluntary. U.S. District Judge Vanessa L. Bryant granted East Haven summary judgment in 2017.

"We worked very hard on the appeal and are glad to achieve a favorable outcome for our client," Jennifer X. Luo, an attorney for Green, said in a statement to Law360 on Tuesday.

Counsel for the town declined to comment to Law360 on Tuesday.

Judges Amalya Lyle KeARSE, Richard C. Wesley and Denny Chin sat on the panel for the Second Circuit.

Green is represented by Karen R. King of Paul Weiss Rifkind Wharton & Garrison LLP, and Jennifer X. Luo of Sher Tremonte LLP.

East Haven is represented by Hugh F. Keefe of Lynch Traub Keefe & Errante PC.

The case is Green v. Town of East Haven, case number 18-143, in the U.S. Court of Appeals for the Second Circuit.

--Editing by Adam LoBelia.

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