

## Suspending Employee Who Hit Boss With Vehicle Not Retaliation

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In a rather unusual case, the U.S. Court of Appeals for the Fifth Circuit Court ruled that the U.S. Postal Service (“Postal Service”) did not retaliate against an employee when it suspended him for two days after he hit his supervisor with a postal vehicle. Javier Cabral, a letter carrier for the Postal Service, filed three different Equal Employment Opportunity Commission (“EEOC”) complaints and several union grievances alleging discrimination, harassment and retaliation. Cabral ultimately sued the Postal Service, alleging hostile work environment, harassment, retaliation and discrimination based on his race, national origin and age. Cabral is Mexican-American and over the age of 40. The U.S. District Court for the Western District of Texas initially dismissed all of Cabral’s claims with the exception of one: that the Postal Service retaliated against him for making complaints by placing him on a two-day unpaid suspension. The suspension was issued after Cabral stuck his supervisor with a postal vehicle and was unable to show a valid driver’s license. Once Cabral produced the valid driver’s license, Cabral was permitted to return to work and was reimbursed for any lost pay. The Postal Service moved the district court for reconsideration and the district court granted the motion, dismissing the final retaliation claim. Cabral appealed and the Fifth Circuit affirmed the dismissal. As the Fifth Circuit noted, to state a claim for retaliation under Title VII of the Civil Rights Act, the plaintiff must show that “(1) he engaged in conduct protected by Title VII; (2) he suffered a materially adverse action; and (3) a causal connection exists between the protected activity and the adverse action.” Here, the Court of Appeals found that the two-day suspension did not amount to a “materially adverse action” because Cabral was unable to show his suspension exacted a physical, emotional or economic toll. Instead, Cabral offered only conclusory statements and no other evidence. As a result, Cabral’s final claim was dismissed.

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