

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 30th day of September, two thousand nine.

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6 PRESENT: ROGER J. MINER,
7 CHESTER J. STRAUB,
8 RICHARD C. WESLEY,
9 *Circuit Judges.*

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13 Sharon Hubbard,
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15 *Plaintiff-Appellee,*

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17 v. 08-5085-cv

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19 Total Communications Inc.,
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21 *Defendant-Appellant.*

1 FOR PLAINTIFF-APPELLEE: JACQUES J. PARENTEAU, Madsen,
2 Prestley & Parenteau LLC,
3 New London, CT
4

5 FOR DEFENDANT-APPELLANT: WILLIAM H. CHAMPLIN III
6 (Douglas F. Seaver, and
7 Michael T. McCormack *on the*
8 *brief*), Hinckley, Allen &
9 Snyder LLP, Hartford, CT

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12 Appeal from the United States District Court for the
13 District of Connecticut (Bryant, *J.*).
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15 UPON DUE CONSIDERATION, it is hereby ORDERED, ADJUDGED,
16 AND DECREED that the judgment of said District Court be and
17 hereby is AFFIRMED:
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19 Appellant Total Communications Inc. ("Total") appeals
20 from decisions of the United States District Court for the
21 District of Connecticut (Bryant, *J.*), entering judgment in
22 favor of Appellee Sharon Hubbard on a jury verdict and
23 denying Appellant's judgment as a matter of law under
24 Federal Rule of Civil Procedure 50. We assume the parties'
25 familiarity with the underlying facts, the procedural
26 history of the case, and the issues on appeal.

27 We review the denial of a Rule 50 motion de novo,
28 requiring the movant to show that there is no legally
29 sufficient evidentiary basis for a reasonable jury to find
30 in favor of the non-movant. *Cross v. N.Y. City Transit*
31 *Auth.*, 417 F.3d 241, 247-48 (2d Cir. 2005). In reviewing

1 the sufficiency of the evidence, we draw all inferences in
2 favor of the non-moving party, which means we cannot
3 determine the credibility of witnesses, weigh conflicting
4 evidence, or substitute our judgment for that of the jury.
5 *Gronowski v. Spencer*, 424 F.3d 285, 291-92 (2d Cir. 2005).
6 We may not retry the case ourselves. *Id.* at 292. We may
7 only overturn a jury's verdict when no evidence exists to
8 support that result, or there exists such overwhelming
9 evidence in favor of the movant-appellant that the verdict
10 is unreasonable. *LeBlanc-Sternberg v. Fletcher*, 67 F.3d
11 412, 429 (2d Cir. 1995).

12 In order to prove a claim of retaliation under Title
13 VII, as well as Connecticut state law, see *Brittell v. Dep't*
14 *of Corr.*, 717 A.2d 1254, 1264 (Conn. 1998), a plaintiff must
15 demonstrate that (1) she participated in a protected
16 activity known to the defendant, (2) she suffered an adverse
17 employment action, and (3) there exists a causal connection
18 between the protected activity and the adverse employment
19 action. *Johnson v. Palma*, 931 F.2d 203, 207 (2d Cir. 1991).
20 "Protected activity" includes opposition to a discriminatory
21 employment practice or participation in any investigation,
22 proceeding, or hearing under Title VII. See 42 U.S.C. §

1 2000e-3(a). To demonstrate participation in a protected
2 activity, a plaintiff in a retaliation case need not prove
3 that the conditions she protested amounted to an actual
4 Title VII violation; she need only establish that she had a
5 good faith, reasonable belief that a violation occurred.
6 *Wimmer v. Suffolk County Police Dep't*, 176 F.3d 125, 134 (2d
7 Cir. 1999). Neither must the plaintiff formally oppose the
8 alleged discriminatory behavior. This court has interpreted
9 the opposition clause to protect not only the filing of
10 formal discrimination charges, but also "informal protests
11 of discriminatory employment practices, including making
12 complaints to management, writing critical letters to
13 customers, protesting against discrimination by industry or
14 by society in general, and expressing support of co-workers
15 who have filed formal charges." *Sumner v. U.S. Postal*
16 *Serv.*, 899 F.2d 203, 209 (2d Cir. 1990).

17 Total argues that the October 27, 2003 email from
18 Appellee Sharon Hubbard ("Hubbard") to her supervisor was
19 not sufficient as a matter of law to constitute protected
20 activity for purposes of a Title VII retaliation claim.
21 However, the jury reasonably found that the email complaint
22 alleged differential treatment between Hubbard and the men

1 in her department. Indeed, the second sentence of the
2 complaint refers to "guys": "IT IS REALLY NICE TO FIND OUT
3 THAT THE ENTIRE SERVICE DEPT GOT THEIR REVIEW/RAISES THAT
4 WERE DUE IN JULY 2003. WHICH WOULD BE 10-12
5 GUYS/TECHNICIANS." (emphasis added). This informal
6 complaint of discrimination is enough to satisfy the
7 protected activity requirement under Title VII.

8 Total also argues that Hubbard's termination occurred
9 too far in time after the email complaint to qualify as
10 retaliatory. To prove a retaliation claim indirectly, a
11 plaintiff must demonstrate that the adverse employment
12 action closely followed the protected activity. *Cifra v.*
13 *Gen. Elec. Co.*, 252 F.3d 205, 217 (2d Cir. 2001). We have
14 never established a temporal bright line beyond which an
15 adverse employment action cannot qualify as retaliatory.
16 *See Gorman-Bakos v. Cornell Co-op Extension of Schenectady*
17 *County*, 252 F.3d 545, 554 (2d Cir. 2001). In this case,
18 Hubbard's termination happened a little over four months
19 after her email complaint. Wherever the outer limit, this
20 case does not present it, and the jury was entitled to find
21 that there was a causal connection.

22 Total also argues that Hubbard did not present

1 sufficient evidence to support a conclusion that Total's
2 reasons for firing Hubbard were pretextual. Total claims
3 Hubbard was fired for excessive personal Internet use.
4 Hubbard, however, established that other Total employees
5 used the Internet as much, or more, than she did, and that
6 only she and two other women were monitored. The evidence
7 she introduced called into question Total's explanation for
8 her termination. The jury was entitled to find that
9 explanation to be pretextual. See *Reeves v. Sanderson*
10 *Plumbing Prods., Inc.*, 530 U.S. 133, 147-48 (2000).

11 The jury's conclusion that Total fired Hubbard in
12 retaliation for her discrimination complaint was not
13 unreasonable. We have reviewed Total's other arguments and
14 find them meritless.

15 For the foregoing reasons, the judgment of the district
16 court is AFFIRMED.

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FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk

By: _____