

## 1st Circ. Tosses Amtrak Worker's Racial Bias Suit

By **Michael Phillis**

*Law360, New York (December 19, 2016, 5:09 PM EST)* -- A First Circuit panel said Friday there wasn't enough evidence to revive a black Amtrak employee's lawsuit alleging he was deprived of overtime opportunities and subjected to a hostile work environment because of his race.

In a unanimous opinion authored by Judge O. Rogeriee Thompson, the appeals court upheld a district court's summary judgment in favor of Amtrak. Plaintiff Gregory Garmon Sr., a lineman who installs and repairs overhead electrical systems, failed to connect the way employees were given opportunities to work overtime to a racial motive, the decision said.

"As for Garmon's claim that he was subjected to an adverse employment action via a discriminatory overtime plan ... the record contains no evidence of such a discriminatory plan or an actual decrease in Garmon's overtime opportunities outside of his bare allegations to the contrary," the decision said. "Accordingly, Garmon fails to meet his ultimate burden of persuasion here."

The case, originally filed in 2013, was also tossed last year by a Rhode Island federal court that cited insufficient evidence.

Garmon claims that in 2012, Amtrak changed its overtime rules and started discriminating in its determination of overtime needs in order to provide more opportunities for white employees. In addition, he said he was intimidated at work and often ignored, which he claimed created a hostile work environment.

The appeals court said there was no evidence to back up Garmon's claims other than his own word. Amtrak's overtime rules were subject to a collective bargaining agreement under which management would tell the local union representative of the company's overtime needs. The union representative would then distribute them specific to a worker's qualifications.

Allegations that the process held a racial bias were unsupported and speculative, the opinion said. The court said there was no evidence the overtime policy changed in 2012 or that Garmon's own opportunities, which he says decreased by one-third, declined on the basis of race.

"However, Garmon proffers no evidence of an actual reduction in his overtime opportunities," the opinion said adding that Garmon never provided evidence of the exact amount of overtime available to him prior to the alleged discrimination's starting point.

“The only evidence concerning overtime opportunities demonstrates that despite Garmon’s contentions that he was denied overall overtime opportunities, he admits that he chose not to work certain overtime hours, including overtime that fell on Sundays,” the decision said. “Thus, it would seem Garmon’s real complaint may not be that his overtime hours were reduced, but that he was not afforded overtime hours on the days he preferred.”

In addition to failing to show overtime rules caused him to suffer, Garmon wasn’t able to show that any alleged harm was based on race. The decision notes a black employee was able to successfully work overtime hours.

Garmon’s claims of a hostile work environment were similarly rejected — he wasn’t able to show that, even if he encountered problems, that they were in any way connected to race.

“Garmon offers no evidence that any of the above-mentioned actions were race related outside of his unsubstantiated assertions that the actions had to be the product of discriminatory animus,” the decision said.

Representatives for Garmon and Amtrak did not return requests for comment.

Amtrak is represented by Lisa Stephanian Burton and Peter J. Mee of Morgan Lewis & Bockius LLP and Thomas J. McAndrew of Thomas J. McAndrew and Associates.

Garmon is represented by Christopher J. Trombetta of the Law Office of Christopher J. Trombetta.

The case is Garmon, Sr. v. Nat’l Railroad Passenger Corp., case number 15-1803, in the U.S. Court of Appeals for the First Circuit.

--Editing by Richard McVay and Jill Coffey.