

appropriate inquiry:

Whether judgment as a matter of law is appropriate in any particular case will depend on a number of factors. Those include the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.

The court must draw all reasonable inferences in favor of the non-movant, and disregard all evidence favorable to the moving party that the jury is not required to believe. *Id.* at 150-51.

Trial courts should not treat discrimination differently than other ultimate questions of fact for purposes of Rule 50 or 56. *Id.* at 148.

On this record, there is a significant factual dispute whether Oyoung was terminated for an offense (i.e. sleeping in a locked conference room at lunchtime) for which similarly-situated younger non-Chinese employees were not disciplined at all. Oyoung testified that he observed a younger white engineer (LaVerne) sleeping in another conference room at lunchtime. Oyoung Deposition at 102-03. This testimony is contradicted by defendant's human resources manager, who denies that other employees ever engaged in similar conduct. *See* Affidavit of Janie Lay, Defendant Ex. A, ¶ 11. There is also a factual dispute about whether Oyoung was told that there was no company rule against using unoccupied conference rooms for rest at lunchtime. *Compare* Oyoung Dep. at 101, 104 with Lay Aff. ¶ 6.

Defendant alternatively argues that, even if LaVerne did sleep in a conference room, he was not similarly situated and the circumstances were not so nearly identical as to warrant

an inference of disparate treatment. But on this thin summary judgment record it cannot be said that a reasonable jury would be compelled to reach the same conclusion. In other words, whether Oyoung and LaVerne were similarly situated in this respect is itself a genuine issue of material fact.

Other factual disputes concern the somewhat confusing sequence of events leading to Oyoung's termination. Defendant claims that the initial termination decision was made on Friday, November, 5, 2004 and conveyed to Oyoung by a co-worker (LaVerne) who was not Oyoung's supervisor; after Oyoung loudly protested LaVerne's authority to fire him, the decision was delayed until the following Monday, when it was confirmed by the company president. Lay Aff. ¶¶ 7, 8. By contrast, Oyoung claims that he was not finally advised of his termination until Tuesday, November 9, in a meeting with the company president, and that no reason was given for his termination. Oyoung Dep. at 123-24. Indeed, no reason for termination was stated in Oyoung's official termination notice. D. Ex. A, 8. Defendant asserts by affidavit that Oyoung was terminated for "inability to collaborate and work well with others coupled with his inappropriate and disruptive behavior in the workplace." Lay Aff. ¶ 8. It is unclear whether the "disruptive behavior" refers to Oyoung's outburst in response to the initial termination notice the preceding Friday.

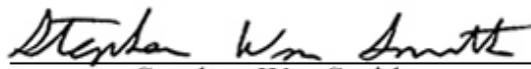
In addition to these factual disputes, Oyoung argues a reasonable jury could infer discrimination from other more or less established facts, including the failure to provide Oyoung a private office and a designated parking space, as well as inappropriate name-

calling by co-workers (i.e. “Mr. Doolittle”). Defendant denies that any inference of age or national origin discrimination can be drawn from these circumstances, and it is true that, separately considered, these incidents do not immediately suggest unlawful age or national origin bias.

However, a summary judgment ruling must be based on the record “taken as a whole.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Until the factual disputes outlined above are resolved, this court is not in a position to rule with any confidence that a fact-finder could not reasonably return a verdict in favor of Oyoung. Of course, once all the evidence is presented at trial, the situation may change, and judgment as a matter of law for the defendant may prove necessary. But at this stage Oyoung must be accorded his day in court.

For these reasons, defendant’s motion for summary judgment² is DENIED.

Signed at Houston, Texas on November 8, 2006.


Stephen Wm Smith
United States Magistrate Judge

² Defendant’s motion also addresses a purported claim for intentional infliction of emotional distress. The court does not construe Oyoung’s pleadings to assert such a cause of action, and Oyoung’s response to the motion does not even mention such a claim, much less argue that Texas law supports such a claim on these facts. It doesn’t. *See Hoffmann-LaRoche, Inc. v. Zeltwanger*, 144 S.W.3d 438, 447 (Tex. 2004).