

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

SANDRA AFFARE,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 1:22-cv-18
v.)	
)	Judge Atchley
UNIVERSITY OF TENNESSEE,)	
)	Magistrate Judge Steger
<i>Defendant.</i>)	
)	

AGREED FINAL PRETRIAL ORDER¹

This Court conducted a Final Pretrial Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure on June 24, 2024. James Friauf appeared as counsel for the plaintiff and Harold Pinkley and Caitlyn Elam appeared as counsel for the defendant. The following action was taken:

I. Jurisdiction

This is an action for discrimination on the basis of race and/or sex in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* Jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1331. The jurisdiction of the Court is not disputed.

II. Pleadings

The pleadings are amended to conform to this pretrial order.

III. General Nature of the Claims of the Parties:

- a. **Claims:** The following claims (including claims stated in the complaint, counterclaims, crossclaims, third-party claims, etc.) have been filed: discrimination on the basis of race and/or sex in violation of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

¹ The Court has made minor edits to the parties' proposed agreed order to reflect the current procedural posture of the case. No substantive changes to the proposed agreed order have been made.

b. Stipulated Facts: The following facts are uncontroverted.

- i. Plaintiff is an alumnus of the University of Tennessee at Chattanooga (“UTC”).
- ii. From February 1, 2018, until July 31, 2021, Plaintiff was employed as a faculty member with the University of Tennessee Space Institute (“UTSI”) in a full-time, non-tenure track appointment as an Assistant Professor of Practice.
- iii. Since the UTSI non-tenure track appointment ended, Plaintiff has continued to serve in a part-time, non-tenure track adjunct faculty position at UTC.
- iv. In 2019, Plaintiff applied for an available full-time, tenure track faculty position in the UTC Engineering Management and Technology (“EMT”) Department.
- v. Defendant tasked a search committee in vetting candidates for the position.
- vi. The ‘voting’ members of the search committee consisted of Aldo McLean (“McLean”), Erkan Kaplanoglu (“Kaplanoglu”), SeongDae Kim (“Kim”), and Khalid Tantawi (“Tantawi”). McLean, Kaplanoglu, Kim, and Tantawi are all male. Julie David (“David”), a non-faculty female was also a member of the search committee but was not a ‘voting’ member.
- vii. Plaintiff was one of approximately 50 applicants for the position.
- viii. During the initial screening process, Plaintiff was deemed by the search committee as sufficiently qualified for the position to be granted a Zoom conference interview.

- ix. After Zoom conference interviews were conducted, Plaintiff was numerically ranked sixth out of all the candidates based on the Zoom interview scoring rubric.
- x. The search committee did not include Plaintiff in the initial pool of candidates to be invited to campus for an in-person interview.
- xi. All the candidates placed in the first pool were male. None were of African American heritage.
- xii. One of the candidates placed in the first pool for an in-person interview, Andreas Garstenauer (“Garstenauer”), was numerically ranked lower in the Zoom interview rubric scoring by the search committee than Plaintiff. Garstenauer is a Caucasian male.
- xiii. The Office of Equity and Inclusion (“OEI”) recommended to the search committee that Plaintiff be extended an opportunity to interview on campus.
- xiv. In an email to the other search committee members, Kim, the head of the search committee stated:

There was a request from the Office of Equity and Inclusion (OEI) to invite [Plaintiff] yesterday. OEI says her minority status and current adjunct status warrant her an on-campus interview although she is lacking research publication and external funding. I want you to be aware of what happened behind this change.
- xv. At the conclusion of the search process, Defendant initially offered the position to Garstenauer.
- xvi. Garstenauer declined the offer.

- xvii. After Garstenauer declined the offer, Defendant offered the position to Serkan Varol (“Varol”) who is male and not of African American heritage.
 - xviii. In March 2020, Varol accepted the offer.
 - xix. Defendant never offered the position to Plaintiff.
 - xx. Plaintiff’s Assistant Professor of Practice Appointment continued until it ended July 31, 2020.
 - xxi. All tenure-track faculty members in Defendant’s EMT Department are male.
 - xxii. The previous six (6) tenure-track faculty hires in Defendant’s EMT Department are male.
 - xxiii. In Fall of 2020, Plaintiff applied for two positions at Tennessee Tech in 2020. She was unsuccessful in gaining employment at Tennessee Tech.
 - xxiv. In December 2020, Defendant offered Plaintiff a position as an Assistant Professor of Practice in the EMT Department at the base salary of \$75,000. Plaintiff declined the position.
 - xxv. Plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”).
 - xxvi. Plaintiff timely initiated this action on January 26, 2022.
- c. **Plaintiff’s Theory:** Plaintiff applied for a full-time tenure track faculty position with Defendant for which she was qualified. Despite ranking higher than a Caucasian male candidate, Plaintiff was not included in the first pool of candidates invited to campus for an interview. Due to his concerns over the search committee’s processes, one of its members, McLean raised concerns to OEI. After an investigation, OEI recommended

that due to her minority status and status as an alumnus, Plaintiff should be extended an invitation to interview on campus. Thereafter, an offer to interview on campus was extended to Plaintiff. After on-campus interviews, Defendant offered the position to the Caucasian male who ranked lower than Plaintiff but had nonetheless been included in the initial on-campus interview pool. This individual declined the offer. Defendant then offered the position to another Caucasian male who was objectively less qualified for the position based on all information obtained by the search committee. This individual accepted the position. The position was never offered to Plaintiff. Given all the foregoing, as well as the fact that Defendant's EMT Department is comprised entirely of males not of African American descent, Defendant has discriminated against Plaintiff in the hiring process on the bases of race and/or sex.

- d. **Defendant's Theory:** Under then-Dean Daniel Pack, the College of Engineering and Computer Science was giving far more weight to externally funded research than it had before. It was emphasized in every faulty search conducted under his deanship. This was true in the search for a tenure-track assistant professor's position that was opened in late 2019. The applicants chosen for on-campus interviews, including Plaintiff, were chosen by the search committee. After the on-campus interviews, comments of the members of the search committee were gathered and given to the Department Chair, Dr. Ahad Nasab, who recommended first Dr. Andres Gastenauer and then Dr. Serkan Varol, because he felt that each of them had more experience in attracting and performing research than did Plaintiff. On this basis, he recommended the two to Dr. Pack, who approved the choices. The decision was also approved by Dr. Jerome Hale, the provost of UTC. Plaintiff had no history of attracting externally funded research

and no history of scientific publications. Since it was Dr. Pack's goal to raise UTC's research classification to a Carnegie R2, the candidates with the most capacity to do that were selected. The decision had nothing whatever to do with Plaintiff's sex or race.

e. **All Other Parties' Claims:** None.

IV. Contested Issues of Law

There are no special issues of law to be resolved.

V. Exhibits

The parties have disclosed all exhibits in accordance with Fed. R. Civ. P. 26(a)(3)(C). All exhibits to be introduced have been pre-marked in such a way as to allow the Court to determine which party is offering them. The parties have prepared a joint list of exhibits. A copy of each exhibit has been furnished to the Court at the Final Pretrial Conference. The parties have endeavored to stipulate to the admissibility of all exhibits to the extent possible. The parties cannot stipulate to the admissibility of the following exhibits: None.

VI. Witnesses

The parties have disclosed all witnessed in accordance with Fed. R. Civ. P. 26(a)(3)(A). A list comprising the names of all witnesses, their addresses and telephone numbers is as follows:

a. **For Plaintiff(s):**

	<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
1.	Sandra Affare	8023 Squirrel Wood Ct. Ooltewah, TN 37363	(423) 322-0487
2.	Aldo McLean	2666 Kings Hwy. Louisville, KY 4020	(502) 533-2537

b. For Defendant(s):

	<u>Name</u>	<u>Address</u>	<u>Telephone No.</u>
1.	Daniel J. Pack	Baylor University School of Engineering & Computer Science One Bear Place #97356 Waco, TX 67698-7356	(254) 710-3871
2.	Ahad Nasab	Univ of TN Chattanooga 203 Founders Hall, Dept 5655 615 McCallie Avenue Chattanooga, TN 37402	(423) 425-4121
3.	SeongDae Kim	Univ of TN Chattanooga 450 EMCS Building, Dept 2452 615 McCallie Avenue Chattanooga, TN 37403-2598	(423) 425-5786
4.	Erkan Kaplanoglu	Univ of TN Chattanooga 450 EMCS Building, Dept 2452 615 McCallie Avenue Chattanooga, TN 37403-2598	(423) 425-4121
5.	Rosite Delgado	Univ of TN Chattanooga UTC Human Resource Center Dept 5455 720 McCallie Avenue Chattanooga, TN 37403-2598	(423) 425-5760
6.	Jerold Hale	Univ of TN Chattanooga 102 Founders Hall, Dept 5555 615 McCallie Avenue Chattanooga, TN 37403-2598	(423) 425-4633
7.	Charlene Ragland	Univ of TN Chattanooga Dept 5455 615 McCallie Avenue Chattanooga, TN 37403-2598	(423) 425-5468
8.	Khalid Tantawi	Univ of TN Chattanooga 450 EMCS Building, Dept 2452 615 McCallie Avenue Chattanooga, TN 37403	(423) 425-4121

VII. Other Matters

- a. **Trial:** This case is set for trial before the undersigned and a jury at 10:00 a.m. on October 8, 2024. Counsel shall be present on the first day before commencement of trial to take up any preliminary matters. The probable length of trial is three (3) days. The parties should be prepared for trial on the scheduled date. If this case is not heard immediately, it will be held in line until the Court's schedule allows the trial to begin.
- b. **Possibility of Settlement:** remote.
- c. **Miscellaneous Matters:** There are no pending motions or unresolved matters.

This Final Pretrial Order shall supplant the pleadings and is agreed upon by the parties as of June 17, 2024. Fed. R. Civ. P. 16; *see U.S. v. Hougham*, 364 U.S. 310, 315 (1960); *see also Ricker v. Am. Zinser Corp.*, 506 F. Supp. 1 (E.D. Tenn. Sept. 11, 1978), *aff'd*, 633 F.2d 218 (6th Cir. 1980).

SO ORDERED.

/s/ Charles E. Atchley, Jr.
CHARLES E. ATCHLEY, JR.
UNITED STATES DISTRICT JUDGE

**APPROVED AS TO FORM AND
SUBSTANCE:**

/s/James W. Friauf
(with permission by T. Harold Pinkley)
James W. Friauf, Counsel for Plaintiff

/s/T. Harold Pinkley
T. Harold Pinkley, Counsel for Defendant