

05-259 BURLINGTON NORTHERN & SANTA FE RAILWAY V. WHITE

DECISION BELOW:364 F3d 789

LOWER COURT CASE NUMBER: 00-6780, 01-5024

QUESTIONS PRESENTED:

1. Whether an employer may be held liable for retaliatory discrimination under Title VII for any "materially adverse change in the terms of employment" (including a temporary suspension rescinded by the employer with full back pay or an inconvenient reassignment, as the court below held); for any adverse treatment that was "reasonably likely to deter" the plaintiff from engaging in protected activity (as the Ninth Circuit holds); or only for an "ultimate employment decision" (as two other courts of appeals hold).
2. Whether a plaintiff, whose evidence on liability is deemed sufficient by a court of appeals, is permitted a stand-alone retrial on punitive damages under a mere preponderance-of-the-evidence standard, rather than a clear-and-convincing-evidence standard.

CERT. GRANTED 12/5/2005

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.