

University must rehire transgender professor, says 10th Circuit

By Daniel Wiessner

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Transgender rights activist waves a transgender flag as they protest the killings of transgender women this year, at a rally in Washington Square Park in New York, U.S., May 24, 2019. REUTERS/Demetrius Freeman/File Photo [Purchase Licensing Rights](#)

- Said jury's verdict for prof made clear that she would have been granted tenure if not for transitioning
- Panel found unconvincing the school's claim of 'extreme hostility' precluding reinstatement

(Reuters) - A U.S. appeals court on Monday ordered an Oklahoma state university to reinstate with tenure a transgender English professor after she won her lawsuit claiming she was denied tenure and ultimately fired after transitioning from male to female.

A unanimous three-judge panel of the 10th U.S. Circuit Court of Appeals rejected Southeastern Oklahoma State University's claim that the hostility created over six years of litigation between the school and plaintiff Rachel Tudor, and the school's concerns about her scholarship, made her reinstatement untenable.

The court said a jury verdict in favor of Tudor in her 2015 discrimination lawsuit made clear that she would have been granted tenure if not for her gender identity, foreclosing the university's claims about her academic record.

And "a tenured university professor holds an insular position that can effectively operate without the need for extensive collaboration with colleague or schools administrators," Circuit Judge David Ebel wrote.

New York-based solo practitioner Jillian Weiss, who represents Tudor, did not immediately respond to a request for comment. The university's president, Thomas Newsom, declined to comment on the decision in a statement, citing the ongoing litigation.

The Obama-era U.S. Department of Justice sued □ the university on behalf of Tudor in 2015, claiming its decision to deny her tenure amounted to sex discrimination. It was the first discrimination lawsuit filed by DOJ on behalf of a transgender person.

DOJ settled with the school in 2017, but Tudor had intervened in the case after President Donald Trump was elected and continued to pursue the litigation, winning a jury verdict of about \$1 million later that year.

U.S. District Judge Robin Cauthron in Oklahoma City lowered the verdict to about \$300,000 in 2018, citing caps on damages under Title VII of the Civil Rights Act of 1964, plus about \$60,000 in "front pay" to reflect her lost future earnings. Tudor had sought more than \$2 million in front pay. Cauthron denied Tudor's bid to be reinstated to her job with tenure, after the school claimed that many faculty members opposed her return and that it did not have the money to pay her.

Southeastern appealed the jury verdict and Tudor appealed the calculation of front pay and the decision denying her reinstatement. The 10th Circuit on Monday said the evidence offered up by Tudor was clearly sufficient for a jury to rule in her favor.

The panel pointed to statements that the school's dean and vice president made about Tudor's appearance and lifestyle, the fact that a faculty committee voted 4-1 to grant her tenure, and expert testimony that Tudor was more qualified than other professors in her department who were granted tenure.

But the court agreed with Tudor that her case did not include the kind of "extreme hostility" necessary to preclude reinstatement.

"There are plenty of workarounds and solutions making reinstatement possible in cases where some animosity exists, such as a remote office, a new supervisor, or a clear set of workplace guidelines," Ebel wrote.

The court also said Cauthron had made numerous errors in calculating front pay, including treating her compensation for eight-month contracts as an annual salary. The panel also included Circuit Judges Carolyn McHugh and Harris Hartz.

The case is Tudor v. Southeastern Oklahoma State University, 10th U.S. Circuit Court of Appeals, No. 18-6102.

For Tudor: Jillian Weiss

For the school: Zach West of the Oklahoma Attorney General's office

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