

**IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON**

RONALD D. McKINNA,)	
)	Shelby Chancery
Plaintiff/Appellant)	Case No. 104080-3R.D.
v.)	
)	
LASCO, INC.,)	Appeal No. 02A01-9604-CH-00083
)	
Defendant/Appellee)	

ORDER ON PETITION FOR RE-HEARING

We have for consideration a thoughtful petition to re-hear in which the employer insists that our enquiry was abortive since we failed (1) to examine the proffered reason for the employee's termination, (2) to examine the plaintiff's evidence of pretext, and (3) to find that age discrimination was a motivating factor in the determination.

We do not agree that the supervisor's remarks "were no more than circumstantial evidence of discrimination." These remarks were more pointed than those discussed in *Brenner*, which holds that

"11. A plaintiff may present a *prima facie* case of age discrimination by introducing evidence that he was adversely affected by the defendant's employment decisions 'under circumstances which give rise to an inference of unlawful discrimination.' "

We continue to believe that the evidence presented was sufficient to withstand summary judgment, and the petition is accordingly denied at the cost of the appellee.

William H. Inman, Senior Judge

Alan E. Highers, Judge

Holly K. Lillard, Judge