

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
No. 04-12004  
Non-Argument Calendar  
\_\_\_\_\_  
D. C. Docket No. 01-07621-CV-JEM

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT JUNE 7, 2005 THOMAS K. KAHN CLERK
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GEORGE AKOURI,

Plaintiff-Appellant  
Cross-Appellee,

versus

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee  
Cross-Appellant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Florida

\_\_\_\_\_  
(June 7, 2005)

Before MARCUS, FAY and SILER\*, Circuit Judges.

ORDER:

The court, sua sponte, vacates the portion of the opinion published on May 11, 2005, designed as Part III B.(2) and substitutes in its place the following:

\_\_\_\_\_  
\*Honorable Eugene E. Siler, Jr., United States Circuit Judge for the Sixth Circuit, sitting by designation.

(2)

Finding that Akouri succeeded in establishing a prima facie case, we now address the DOT's argument that Akouri failed to establish that its proffered non-discriminatory business reason for not promoting him to the Atkins position<sup>1</sup> was pretextual. However, this argument is inapplicable where the plaintiff presents direct evidence of discrimination. Trans World Airlines, Inc. v. Thurston, 496 U.S. 111, 121, 105 S.Ct. 613, 621-622 (1985). Here, Blanchard's discriminatory comments made shortly after the decision to promote Atkins and in direct response to Akouri's inquiry as to the reasons for the promotion decision constituted direct evidence of discrimination. Therefore, we reject the DOT's argument, finding no basis upon which to reverse the district court's denial of DOT's motion for judgment as a matter of law with regard to the Atkins promotion, and affirm the district court's decision.

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<sup>1</sup>The DOT contended that Akouri did not interview well "in regards to his demeanor during the interview as well as the substance and lack of elaboration in his interview answers."

