

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRISCILLA HARE, : CIVIL ACTION  
Plaintiff, :  
 :  
v. :  
 :  
H & R INDUSTRIES, INC., :  
Defendant. : NO. 00-CV-4533

**MEMORANDUM & ORDER**

**J.M. KELLY, J.**

**NOVEMBER 7, 2001**

Presently before the Court are the Cross-Motions for Summary Judgment of Plaintiff, Priscilla Hare ("Hare"), and Defendant, H & R Industries, Inc. ("H&R"). Hare filed the present Complaint alleging sexual harassment pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994) and the Pennsylvania Human Relations Act, 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991).

**BACKGROUND**

Hare was employed by H & R, initially as an assembler and later as a pem setter. Eventually she was transferred to the machine shop. It was while working in the machine shop that Hare alleges that she was subjected to a sexually harassing work environment.

**STANDARD OF REVIEW**

Under Federal Rule of Civil Procedure 56(c), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." This court is required, in resolving a motion for summary judgment pursuant to Rule 56, to determine whether "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In making this determination, the evidence of the nonmoving party is to be believed, and the district court must draw all reasonable inferences in the nonmovant's favor. See id. at 255. Furthermore, while the movant bears the initial responsibility of informing the court of the basis for its motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, Rule 56(c) requires the entry of summary judgment "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

That two parties file cross-motions for summary judgment under Rule 56(c) does not necessarily make summary judgment appropriate. Reading Tube Corp. v. Employers Ins. of Wausau, 944 F. Supp. 398, 401 (E.D. Pa. 1996). In such a situation, "each side essentially contends that there are no issues of material

fact from the point of view of that party." Bencivenga v. Western Pa. Teamsters, 763 F.2d 574, 576 n.2 (3d Cir. 1985). Because each side therefore bears the burden of establishing that no genuine issue of material fact exists, "the court must consider the motions separately." Id. (citing Rains v. Cascade Indus., Inc., 402 F.2d 241, 245 (3d Cir. 1968)).

### **DISCUSSION**

A claim of employer liability for a hostile environment can be established under Title VII<sup>1</sup> when: (1) the plaintiff suffered intentional discrimination because of the employee's gender; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) respondeat superior liability exists. Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990).

#### **A. Evidence of Discrimination**

Hare has presented evidence that while in the machine shop, she was repeatedly subjected to inappropriate sexual comments and touching. In addition, there is evidence that rumors circulated around the workplace concerning her sexual activity. Also, there

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<sup>1</sup> Hare's state-law claim pursuant to the PHRA is appropriately analyzed under the same framework as her Title VII claim. See Weldon v. Kraft, Inc., 896 F.2d 793, 796 (3d Cir. 1990); Lewis v. Univ. of Pittsburgh, 725 F.2d 910, 915 n.5 (3d Cir. 1983).

is evidence that she was exposed to pornography on the screen of a supervisor's computer, another supervisor bought her gifts and visited her house and co-workers tampered with her tools and machines and passed a nude picture of Hare around the plant.

The evidence is undisputed that Hare was involved in an altercation with a wife of a co-worker in the parking lot of H & R. There is evidence to support that the wife of the co-worker had learned of rumors that had circulated throughout H & R that Hare had been sexually involved with a number of her co-workers, including her husband. When Hare reentered H & R, she was clearly upset and yelling. Accordingly, sufficient evidence to survive summary judgment exists that Hare was discriminated against because of her gender. Of course, H & R has presented evidence that much of the alleged discrimination never existed. As there is an evidentiary issue, neither party has met its burden on its Motion for Summary Judgment on this element.

#### B. Pervasive & Regular Discrimination

Conduct not severe enough to create an objectively hostile or abusive work environment is beyond Title VII's purview. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (citing Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)). The Supreme Court further instructed district courts to consider the social context in which particular behavior occurs when judging the severity of the harassment. Id. "Common sense, and

an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing . . . and conduct which a reasonable person in the plaintiff's position would find severely hostile or abusive." Id.

Accordingly, the evidence of harassment presented by Hare and H & R creates a factual issue as to whether she was sexually harassed or there was merely roughhousing and teasing in a rough environment.

#### C. Detrimental Affect upon Hare

Hare has presented evidence that the activities within the machine shop caused her to start drinking after she had been sober for several years. In addition, she has presented evidence that as a result of harassment in the machine shop, she suffered a mental breakdown. On the other hand, H & R presented evidence that she had been drinking earlier than she claimed and that her breakdown resulted in inappropriate work activity which resulted in her termination. Accordingly, a factual issue remains on this element of Hare's claim.

#### D. Detrimental Affect upon a Reasonable Person

Because a factual issue remains as to the extent of the harassment of Hare, neither party can prove that the activities of Hare's co-workers would or would not have a detrimental affect upon a reasonable person. Accordingly, summary judgment for either party is inappropriate on this issue.

#### E. Respondeat Superior

An employer is liable under respondeat superior, the fifth prong of the Andrews test, if the harassment (1) is committed within the scope of the offender's employment; (2) the employer was negligent or reckless in failing to train, discipline, fire, or take remedial action when learning of the harassment; or (3) the offender relied upon apparent authority or was aided in the commission of the tort by the agency relationship. Bonenberger v. Plymouth Township, 132 F.3d 20, 26 (3d Cir. 1996).

As H & R has presented evidence that much of the harassment never took place, it follows that there is no respondeat superior liability. Hare, however, has presented evidence that she was given gifts by a supervisor, that when she complained of her treatment she was told to retaliate in kind and that she was fired in response to her ultimate reaction to the harassing environment. Therefore, Hare has presented evidence that respondeat superior liability existed for the harassment.

#### F. H & R's Anti-discrimination Policy

H & R claims as a defense that because it had a sexual harassment policy in place, it cannot be liable to Hare as she failed to exercise her rights under that policy. See Faragher v. City of Boca Raton, 524 U.S. 775, 807-08 (1998). Faragher requires that for its sexual harassment policy to be effective, an employer must show: "(a) that the employer exercised

reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." Id. at 807. Here, Hare was required to report to her supervisor, one of the alleged harassers. Further, when she did complain of harassment, she was told to retaliate against her co-workers in kind. Therefore, Hare has presented evidence that H & R's policy was ineffective and that her failure to pursue the policy was reasonable. In addition, as Hare has presented evidence that her termination resulted from harassment, a factual issue exists as to whether H & R is entitled to this defense. Id. at 808.

#### **CONCLUSION**

As factual issues remain on all elements of Hare's claim, summary judgment is inappropriate in this case for either party.

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**O R D E R**

AND NOW, this day of November, 2001, upon consideration of the Motion for Summary Judgment of Plaintiff, Priscilla Hare (Doc. No. 8), the Motion to Dismiss, treated by the Court as a Motion for Summary Judgment, of Defendant, H & R Industries, Inc. (Doc. No. 13), the various Responses and the various Replies thereto, it is ORDERED:

1. The Motion for Summary Judgment of Plaintiff, Priscilla Hare, is DENIED.

2. The Motion to Dismiss, treated as a Motion for Summary Judgment, of Defendant, H & R Industries, Inc., is DENIED.

BY THE COURT:

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JAMES MCGIRR KELLY, J.