

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

ANN MARIE MORGON,	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 01-134
v.	:	
	:	
VALENTI MID-ATLANTIC	:	
MANAGEMENT, t/a WENDY'S OLD	:	
FASHIONED HAMBURGERS,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J.

December 14, 2001

I. FACTS

Plaintiff is a black female of Jamaican national origin. She claims that “she suffered an adverse employment action due to defendant’s treatment of her – both verbal and physical – due to her race, Jamaican, and color, black.” (Plf. Br. at 1).

Plaintiff worked at defendant from August 5, 1998 to September 6, 1999 (N.T. at 12). She used to do the salad bar, dining room, or whatever Mark Harwick, the general manager, asked her to do. Ellen Davis began working for defendant sometime after plaintiff. Initially, they got along, but at some point in time, this changed. Plaintiff said in her deposition as follows:

Q. Did you and Ellen ever get into arguments or disagreements other than the day of the incident?

A. Oh, yes.

Q. Tell me about those disagreements, as best you can remember.

A. Ellen normally just doesn't – if Ellen ask me to do something and I do it, she just keep yelling at me and – there's nothing I do in the store was good enough for Ellen.

Q. Did she yell? Actually yell?

A. Actually yell.

Q. Was Ellen a perfectionist? Do you know what I mean when I say that?

A. No.

Q. Was she picky? Wanted everything done just so?

A. Yes.

Q. So you may do something and it was fine as far as you were concerned, but she wanted it just so?

A. Correct.

Q. Is that what you were talking about when you said she's never satisfied or never happy with what you do?

A. No. She just – all of a sudden, Ellen was a monster against me.

Q. When did that happen?

A. Shortly after Ellen start work there and everything was fine, and afterward she just changed.

Q. The incident between you and Ellen occurred on August 28, 1999. If that's the day that you guys had your big falling-out, tell me when her attitude towards you started changing.

A. It started changing before that.

Q. How long before that?

A. Long before that, because I call the 800 number so often that's it's unreal. And one of the time, I spoke to a lady named Ms. Moore and I tell her what Ellen has been doing to me, and she told me, okay, she will talk to the manager about it.

Q. Okay.

A. And I talked to Mark also about it, and I asked Mark if he will take me from Ellen's shift and put me in another shift. So Mark let me stop working with Ellen and he put me with Robert, and everything was fine.

On that particular day, Mark asked me – I think it was the night before – if I could stay later that day for him at the store, and I told Mark, “Yes.” So Ellen, I guess, came in – because I went to work before Ellen, because I think I went in at 6:00 shift a.m.

And I was still on the shift she said to me, How come you still here? And I told her, Mark asked me to stay. And she go back and she come in and she said – she look up at the clock and she say, “Ann Marie, how come you're still here?” and I said, “Ellen, I just told you. Mark asked me to stay.”

She say I'm so illiterate I cannot read the time, right in front of the customer. Because I was the cashier. And she say it again – “Ann Marie, you are so illiterate, you cannot read the time. It's time for you to go home.”

And I feel so ashamed that the customer was right there. And I served the customer and I put my tray out with the food and everything. Then when all the customers left, that's when she asked me to go in the back to do something and the incident happened.

Plaintiff testified that she started to complain about Davis' attitude sometime in July or August of 1999. She first complained to Harwick that Davis kept harassing her and would tell her to go home, apparently because “it's slow” and Davis did not need her. (N.T. at 19, 20). In general, plaintiff complains that when work was slow, she was picked to be sent home but she also acknowledged that the managers did not want to keep anyone more than 40 hours a week to avoid overtime. Her hours were close to 40 per week. (N.T. at 21).

Apparently, the nature of plaintiff's complaint to Harwick was that Davis yelled at her for not “doing it” fast enough, or “you are not doing the fries.” (N.T. at 22). Davis was a manager and plaintiff denies ignoring her. (N.T. at 23). During the time of this alleged harassment, plaintiff said she frequently called the defendant's 800 number to

complain.¹ On August 28, 1999, plaintiff testified that Davis “told me I’m illiterate and if she have her own way she would hire no Jamaican in the store, and she call me the N word.” (N.T. at 25).

Plaintiff in her deposition also accused another worker, Gloria Green, regarding an incident in June of 1999 as follows:

She asked me to do something, and she said to me, “Ann Marie, I told you to do it.” She said – I think that’s when she say, “That’s why I hate all niggers.” I think it was in June.

She heard this person say the word “nigger” one time. (N.T. at 26, 27).

On August 28, 1999, Davis used that word, (N.T. at 27) illiterate, as previously set forth on page 3 of this memorandum. The incident that date arose after Harwick had told plaintiff on August 27th that he needed her to stay over on August 28th. After business had slowed down Davis sent her back to the dry storage room to get cups. The storage room was “one way in and one way out.” (N.T. at 32). Plaintiff went in the room, turned around and Davis was facing her. Davis then assaulted her by grabbing her shirt and shaking her. Plaintiff rushed to the phone to call 911, but Davis yanked the phone from her. Eventually, the police did respond according to plaintiff. During the incident in the storage room, David did not yell or curse at plaintiff. She said nothing. (N.T. at 48). No racist terms or anything (N.T. at 48).

1. An affidavit by defendant that there was no record of these calls being made was not contradicted by plaintiff in her brief in opposition to summary judgment.

After the incident, plaintiff called Harwick and said, “That’s it, I quit.”

(N.T. at 58).

Plaintiff further testified as follows:

Q. On August 28th did Ellen call you any racist names?

A. That day of the incident?

Q. Yes.

A. I know she told me I’m illiterate. I don’t recall –

Q. So she hurt your feelings and made you angry when she called you illiterate?

A. Yeah.

Q. Did she call you anything that you interpreted as racist?

A. On that day?

Q. Yes.

A. I don’t recall that.

Q. Ever? Did Ellen ever use a racist term with you?

A. Ellen used racial term, I think, one time, but I don’t remember the date.

Q. Do you remember the circumstances?

A. I have so much thing with Ellen that I don’t remember. I don’t recall.

Q. Do you remember what was said?

A. What was said?

Q. What did she say to you?

A. I know Ellen told me if she could have her own way in the store, she would not hire no Jamaican.

Q. Okay.

A. That day she told me I was illiterate because I did not go to school. And that was it.

With regard to the other worker who called her “nigger”, plaintiff said:

Q. Now, you described one incident where Gloria Green called you a nigger. Any other incidents with Gloria Green?

A. Gloria?

Q. Yes.

A. I ignore Gloria. Gloria do so much bad to my son and another kid. My son used to work there. My son even has to quit.

Q. Do you recall anything other than that one time with Gloria?

A. No, ma'am.

Q. Did Robert or Mark ever make racist statements in your presence?

A. Oh, no.

II. DISCUSSION

Both plaintiff and defendant cite Aman v. Cort Furniture Rental Corp., 85 F.3d 1074 (3d Cir. 1996) as establishing the standards applicable to this claim for employment discrimination due to an intimidating or offensive work environment.

In Aman, the court stated the following with regard to Title VII hostile environment claims:

In order to establish a claim for employment discrimination due to an intimidating or offensive work environment, a plaintiff must establish, “by the totality of the circumstances, the existence of a hostile or abusive *environment* which is severe enough to affect the psychological stability of a minority employee.” *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990) (quoting *Vance v. Southern Bell Tel. and Tel. Co.*, 863 F.2d 1503, 1510 (11th Cir. 1989)). Specifically, a plaintiff must show: (1) that he or she suffered intentional discrimination because of race; (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 race in that position; and (5) the existence of respondeat superior liability. *Id.*; *West v. Philadelphia Elec. Co.*, 45 F.3d 744, 753 (3d Cir. 1995). As the Supreme Court has emphasized:

whether an environment is “hostile” or “abusive” can be determined only by looking at the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.

Harris v. Forklift Systems, Inc., 510 U.S. 17, _____, 114 S.Ct. 367, 371, 126 L.Ed.2d 295, 302 (1993).

It instantly becomes clear from a review of the facts that the discrimination was not pervasive and regular. During the approximate one year that plaintiff worked for defendant, there were two incidents – one in June of 1999 where Gloria Green allegedly called plaintiff a nigger, and the other on August 28, 1999 when Davis made the comment about not hiring Jamaicans. Plaintiff was called illiterate and described an assault upon her by Davis. Neither of these are tied into plaintiff’s color or race.

The Aman case does talk about another employer requirement in Title VII cases. The court concluded that while Title VII does not prohibit racist thoughts, it does require that employers prevent such views from affecting the work environment “either by influencing employment decisions or creating a hostile work environment.”

There is no evidence that any employment decisions were affected by racial views. Moreover, the defendant’s Harassment Policy, Exhibit 4 of its summary

judgment motion, is designed to prevent racist views from creating a hostile work environment.

An order follows.

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MANAGEMENT, t/a WENDY'S OLD	:	
FASHIONED HAMBURGERS,	:	
Defendant.	:	

ORDER

AND NOW, this 14th day of December, 2001, upon consideration of Defendant's Motion for Summary Judgment (Docket No. 11), and Plaintiff's response thereto, it is hereby ORDERED that said Motion is GRANTED. Judgment is entered in favor of Defendant Valenti Mid-Atlantic Management, t/a Wendy's Old Fashioned Hamburgers, and against Plaintiff Ann Marie Morgon.

This case is CLOSED.

BY THE COURT:

RONALD L. BUCKWALTER, J.