

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

DANIELLE J. BRANDON : CIVIL ACTION
v. :
COMMONWEALTH OF :
PENNSYLVANIA DEPARTMENT :
OF PUBLIC WELFARE, et al. : NO. 95-5597

MEMORANDUM ORDER

Presently before the court is defendant Richard Szczurowski's Motion for Judgment as a Matter of Law on Counts II, VI, and VII of the First Amended Complaint. In reviewing the motion pursuant to Fed. R. Civ. P. 50(a), the court must view all of the evidence in the light most favorable to the plaintiff. The court may not make credibility determinations or weigh the evidence.

Count II of the First Amended Complaint alleges a violation of 42 U.S.C. § 1983. Specifically, this count alleges that Szczurowski deprived the plaintiff of her constitutional right to equal protection of the laws.¹ Szczurowski was the Personnel Director and Affirmative Action Officer at the Bensalem Youth Development Center ("BYDC"). The parties agree that liability under section 1983 may not be imposed upon Szczurowski solely upon the doctrine of respondeat superior. To hold Szczurowski liable under section 1983 for an equal protection violation, plaintiff is required to prove that Szczurowski personally participated in violating her rights, that he directed others to violate them, or that he had knowledge of and acquiesced in his subordinates' violations. See Robinson v. City of Pittsburgh, 1997 WL 386107, at *4 (3d Cir.

¹ Counts VI and VII request attorney fees and costs, and punitive damages.

July 14, 1997).

Viewing the evidence in the light most favorable to the plaintiff, the record demonstrates the following:

1. In March or April 1995, plaintiff telephoned Szczurowski, and complained of sexual harassment by Terry Davis. Szczurowski requested plaintiff to put her complaints in writing. Once this was done, he said he would investigate. Plaintiff told Szczurowski that she would not put her complaints in writing. However, plaintiff did reduce to writing her previous complaints about a coworker, Quay Muir.

2. Plaintiff has presented evidence that the procedures at BYDC did not require plaintiff to make a written complaint; complaints of sexual harassment could also be made orally.

3. Even if the plaintiff were correct in her assertion that she was not required to make a written complaint, it was not unreasonable for Szczurowski to make this specific request. It was reasonable for a manager, such as Szczurowski, to insist that a complainant reduce her charges to writing before he took the serious steps of assigning an investigator; notifying and interviewing the accused; and taking preventive measures pending the investigation, such as separating the offender from the complainant. Requiring a written complaint ensures that the complainant reflects on the charges before she proceeds. It also may prevent a person from lodging frivolous or unfounded charges. Moreover, the specific details contained in a written complaint would assist the investigator in determining the truth.

4. At no time did Szczurowski refuse to investigate plaintiff's complaints. At best, the plaintiff has proven that Szczurowski incorrectly interpreted BYDC's procedures by

requiring a written complaint as a precondition for the investigation. However, in my view, no reasonable jury could find that this decision amounted to a refusal to investigate, or to an acquiescence, condonation, or ratification, of the harassment by Davis.

5. The undisputed evidence shows that after the March/April 1995 telephone call between plaintiff and Szczurowski, which I referred to earlier, the plaintiff never again complained to Szczurowski about further acts of harassment by Davis. Her only complaint was that defendant Sams was assigned to conduct the investigation. This complaint directed toward Sams was made in April or May of 1995, during a telephone conversation between plaintiff and Szczurowski. At the time of this telephone call, Szczurowski was not aware that Sams was conducting his own investigation.

6. As part of his investigation, Sams interviewed both Davis and the plaintiff on April 20, 1995. During that interview, plaintiff told Sams that the reason she did not report the harassment to Sams (who was then her direct supervisor) was because she had resolved the problem herself, and since then there had been no problem with Davis.

7. Sometime after April 20, 1995, Szczurowski received a copy of Sams' reports of interviews with the plaintiff and Davis. Those reports indicated that Davis denied the plaintiff's charges, and that Sams told Davis that sexual harassment would not be tolerated. Furthermore, the reports showed that plaintiff had told Sams that she no longer had any problems with Davis.

8. In view of the contents of the reports prepared by Sams, combined with plaintiff's refusal to put her complaints regarding Davis in writing, it was reasonable for Szczurowski to conclude that no further investigation was necessary on his part.

9. After April 21, 1995, Davis did not sexually harass plaintiff. Indeed, after that date, the two never again worked together.

10. On May 1, 1995, Szczurowski ordered that Davis be separated from the plaintiff because of the allegations plaintiff made against Davis. That separation did take place.

11. Sometime after May 1, 1995, Szczurowski again requested plaintiff to place her complaints about Davis in writing; plaintiff did not comply. During this conversation, plaintiff never told Szczurowski that Davis continued to harass her.

12. On May 10, 1995, plaintiff met in person with Szczurowski and Mr. Laverne Alford. During that meeting, she complained about Sams. However, she never complained about Davis, even though she had ample opportunity to do so at the meeting.

13. On May 10, 1995, Szczurowski ordered Sams separated from the plaintiff based on plaintiff's allegations against Sams.

14. After the May 10, 1995 meeting, Szczurowski began a full-scale investigation of plaintiff's complaints regarding Davis. On May 30, 1995, he submitted a report to Mr. Alford regarding the allegations. At this time, Szczurowski did not reach a conclusion as to the truth of plaintiff's allegations.

15. After plaintiff reported to Szczurowski and Mr. Alford that her car had been vandalized on May 11, 1995, Szczurowski placed plaintiff on administrative leave without pay, so that an investigation could be conducted.

16. The court acknowledges that Barbara Enck Ranson, another employee at BYDC, testified that during March or April 1995, she met with Szczurowski and discussed several matters. During this meeting, she said she told Szczurowski about the acts of sexual

harassment committed by Davis against her. According to Ms. Ranson, Szczurowski said he was aware that Davis was a problem and that Szczurowski was addressing the problem. Ranson said, however, that to her knowledge there was no investigation of her complaints by anyone at the BYDC. Accepting this testimony as true, the court nonetheless concludes that a reasonable jury could not find that Szczurowski acquiesced in, or condoned the harassment committed by Davis against the plaintiff. In contrast to Ranson's account, plaintiff testified that Szczurowski stated that he would act on her complaints if she put the facts in writing. Plaintiff refused to do this. In any event, once Szczurowski learned that Sams conducted his own investigation, Szczurowski acted promptly by demanding a copy of Sams' report, reviewing the same, ordering the separation of Davis from the plaintiff, and again reminding plaintiff to put her allegations in writing.

17. At best, the only complaint plaintiff has against Szczurowski is in terms of the speed of his actions. Plaintiff's evidence shows that it took Szczurowski approximately thirty days from the time she orally complained about Davis, to the time Davis was ordered separated from the plaintiff. However, on at least ten of these days, from April 21, 1995 to May 1, 1995, Davis and the plaintiff did not work together. More importantly, plaintiff never made another complaint about Davis to Szczurowski after the initial telephone call in March/April 1995. While in hindsight Szczurowski could have acted with more haste, no reasonable jury could find that this delay constituted an intentional, or a reckless disregard of plaintiff's constitutional right to equal

protection of the laws.

For all the above reasons, defendant Szczurowski's Motion for Judgment as a Matter of Law on Counts II, VI and VII of the First Amended Complaint is GRANTED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

Dated: _____