

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

CHERYL WATKINS,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 97-1510
	:	
THE CHILDREN'S HOSPITAL OF	:	
PHILADELPHIA,	:	
	:	
Defendant.	:	

MEMORANDUM

R.F. KELLY, J.

DECEMBER 3, 1997

The Children's Hospital of Philadelphia ("Children's Hospital"), has filed a motion for Summary Judgment asserting that Cheryl Watkins ("Plaintiff") has failed to establish a prima facie case of disparate treatment in employment pursuant to 42 U.S.C. § 1981. For the reasons that follow, the Defendant's Motion is granted.

I. FACTS.

Plaintiff worked for Children's Hospital as a Senior Nurse's Aide until March 1, 1995. Senior Nurse's Aides are subordinates to Registered Nurses. Typically, patients are assigned to Registered Nurses who give instructions to the Nurse's Aide assigned to their patients. All employees of Children's Hospital, including Registered Nurses and Nurse's Aide's, must comply with standard Rules of Conduct.

Children's Hospital alleges two incidents of misconduct

led to Plaintiff's termination. During her shift on February 22, 1997, Plaintiff gave fruit punch to a patient whose doctor had ordered that he be given no liquids other than water ("NPO").¹ Plaintiff also disposed of this patient's stool, rather than retain it for testing, contrary to his doctor's orders. Plaintiff was terminated for these actions, which were characterized as a refusal to follow orders and a refusal to carry out assigned duties, in accordance with the Rules of Conduct.

Plaintiff does not deny these incidents occurred but claims no one informed her of the patient's NPO status and claims the patient's stool was of unacceptable quality for testing. Plaintiff contends that while she was terminated for these transgressions, a white Registered Nurse would not have been. Plaintiff alleges that, in fact, she was terminated because she is black. Although the complaint is unclear, Plaintiff's claims amount to an allegation of disparate treatment in employment, in violation of 42 U.S.C. § 1981.

II. STANDARD.

Summary Judgment is proper "if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); Anderson v.

In medical parlance, the correct term is "nothing per os" abbreviated "NPO."

Liberty Lobby Inc., 477 U.S. 242, 247 (1986). Children's Hospital, as the moving party, has the initial burden of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Then, Plaintiff, as the nonmoving party, must go beyond the pleadings and present "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(c). If the court, in viewing all reasonable inferences in favor of the nonmoving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. DISCUSSION.

Under the burden shifting framework of McDonnell Douglas v. Green, 411 U.S. 792 (1973), Plaintiff has the initial burden of establishing a prima facie case of employment discrimination. Marzano v. Computer Science Corp., 91 F.3d 497, 502-03 (3d Cir. 1996)(quoting Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981)(citations omitted)). Should the Court find that Plaintiff has failed to establish her prima facie case, then Summary Judgement in favor of Defendant is proper.

In support of its Motion, Children's Hospital argues that all of Plaintiff's allegations, even if viewed as true,

still fail to establish a prima facie case of racial discrimination. To establish a prima facie case of disparate treatment and to survive the Motion for Summary Judgment, Plaintiff must establish that (1) she is a member of a protected class; (2) she was qualified for her position; (3) despite these qualifications, she was terminated from her position; and (4) she was replaced by someone in a non-protected class, or a similarly situated individual, in a non-protected class, was treated more favorably.

Plaintiff has established the first three elements of her case. It is the fourth element that the parties dispute. It is without question that Plaintiff was replaced by a individual in a protected class, therefore, to make out a prima facie case, she must establish that a "similarly situated" individual, in a non-protected class, was treated more favorably than she.

Plaintiff seeks to compare herself, a black Nurse's Aide, with white Registered Nurses. Children's Hospital claims that Plaintiff has failed to establish that Registered Nurses are "similarly situated" with Nurse's Aides. Plaintiff contends that because of the racial disparity between the two groups, there are no white Nurse's Aides comparable to Plaintiff, and the only comparison that can be drawn is between white Registered Nurses and black Nurse's Aides.

The legal issue presented is whether Registered Nurses are "similarly situated" with Nurse's Aides for purposes of § 1981 comparison. "To be deemed 'similarly situated' the individuals with whom a plaintiff seeks to be compared must 'have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it.'" Dill v. Runyon, No. 96-3584, 1997 WL 164275 at *4 (E.D Pa. Apr. 3, 1997)(citing Anderson v. Haverford College, 868 F. Supp. 741, 745 (E.D. Pa. 1994)(citation ommitted)). The Registered Nurses with whom Plaintiff seeks to be compared do not meet the "similarly situated" standard, therefore, Summary Judgement in Defendant's favor is proper.

There are vast differences between Nurse's Aides and Registered Nurses. Most importantly, Registered Nurses exercise independent judgment in, and retain direct legal responsibility for, the care of their patients. (Grossman Decl. at ¶¶ 2-3, 7.) In contrast, Nurse's Aides do not exercise independent judgment nor can they be held legally responsible for the care of their patients. (Id.) Nurse's Aides assist Registered Nurses by completing the specific tasks assigned to them. (Id. at ¶¶ 2, 8.) Additionally, Registered Nurses may independently make changes in patient care, while Nurse's Aides cannot. (Id. at ¶ 6.) Finally, Registered Nurses are formally educated, trained,

and licensed by the state, while Nurse's Aides receive no formal education, training, or licensure. (Id. at ¶¶ 4-5.) These "differentiating or mitigating circumstances" distinguish the conduct of Registered Nurses from the conduct of Nurse's Aides and would justify any differential treatment between the two groups.

Even if it is assumed that Nurse's Aides are "similarly situated" with Registered Nurses, Plaintiff points to no Registered Nurses comparable with herself for purposes of § 1981 analysis. Plaintiff was terminated for two reasons: first, a refusal to follow orders, and second, a refusal to carry out assigned duties. Under these circumstances, Plaintiff must compare herself to a white Registered Nurse who refused to follow orders, and refused to carry out assigned duties, but was not terminated. Plaintiff has failed to make this showing.

Plaintiff points out six incidents of misconduct by Registered Nurses which she alleges are comparable to her own. Plaintiff is incorrect, however, because each incident she alleges involved a single violation of the Rules of Conduct. Plaintiff violated the Rules twice.

Under the Rules of Conduct, "subsequent violations of a related nature" require imposition of the "next higher step in the discipline pattern" (e.g., suspension up to termination). Six Registered Nurses who violated Rules of Conduct once, are not

"similarly situated" with a Nurse's Aide who violated the Rules of Conduct twice. Thus, Plaintiff has failed to establish a prima facie case of race discrimination in employment and Summary Judgment in favor of Children's Hospital is appropriate.

An Order follows.

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THE CHILDREN'S HOSPITAL OF	:	
PHILADELPHIA,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 3rd day of December, 1997, upon consideration of Defendant's Motion for Summary Judgment, and Plaintiff's response thereto, it is hereby ORDERED that said Motion is GRANTED.

BY THE COURT:

Robert F. Kelly, J.