



EEOC News

U.S. Equal Employment Opportunity Commission
3300 N. Central Avenue, Ste. 690
Phoenix, AZ 85012-2504

PHONE (602) 640-5000
TTY (602) 640-5072
FAX (602) 640-5071

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Contact: Mary O'Neill, Regional Attorney
(602) 640-5044
Richard I. Sexton, Trial Attorney
(602) 640-5003
Hillary K. Valderrama, Trial Attorney
(602) 640-4988

EEOC WINS RARE PARTIAL SUMMARY JUDGMENT RULING IN RACIAL HARASSMENT CASE

Court Finds Utah Construction Company's Work Environment Was Hostile and Employer May Not Assert Affirmative Defense; Rejects Company's Motion for Sanctions

SALT LAKE CITY— A federal judge has granted partial summary judgment in favor of the U.S. Equal Employment Opportunity Commission (EEOC) and denied an employer's motion for sanctions in an EEOC class racial harassment case against a Utah construction company, the federal agency announced today. In so doing, the judge found that three black employees were subjected to an objectively hostile work environment and that the employer may not assert an affirmative defense to liability. United States District Judge Dale A. Kimball also denied the employer's motion for sanctions, characterizing it as "wholly without merit."

The EEOC filed suit against Utah construction company Holmes & Holmes Industrial, Inc. in September 2010, alleging that the company subjected Antonio and Joby Bratcher and a class of African-American employees to unwelcome racial harassment and retaliation (*EEOC et al. v. Holmes & Holmes Indus., Inc.*, No. 10-CV-955, D. Utah). In its opinion, the court observed that "[t]he conduct in this case constituted a 'steady barrage of opprobrious racial comments'" towards the Bratchers and class member James Buie. During the course of their employment with Holmes, the site superintendent referred to the Bratchers and Buie as "n---rs" or a variation of that word almost every time he spoke to them, and referred to his own nose as a "n----r nose." The superintendent frequently told racial "jokes," such as, "why don't 'n-----s' like trees? Because they are used to hanging from them."

Other Holmes employees also told racial "jokes," and several used the term "n----r-rigging" while working there. In fact, during a meeting for all Holmes employees, Holmes' human resources manager asked employees "not to n---r-rig their jobs." One of Holmes' supervisors referred to rap music as a "n----r jig" in Antonio Bratcher's presence and told him that "there is a difference between n---rs and blacks, Mexicans and spics." Racist graffiti was evident both inside and outside portable toilets on the work site.

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Title VII of the Civil Rights Act of 1964, as amended, protects workers from discrimination based upon race, including racial harassment. The EEOC filed suit after first attempting to reach a pre-litigation settlement through its conciliation process.

Judge Kimball wrote that this conduct was “constitutionally offensive in any setting” and concluded that this “is a rare case where there is no dispute as to the pervasiveness of the conduct in question. No reasonable jury could find that a reasonable African-American would not be offended by this conduct.”

The court further determined as a matter of law that Holmes was not entitled to assert an affirmative defense to liability because the undisputed facts show that the Bratchers complained on numerous occasions, including at least four times to management officials. Also, the court held that Holmes’ anti-harassment policy was “unreasonable as a matter of law” because it directed employees to report harassment to their harassing supervisor with no alternative means to bypass that supervisor.

Finally, Holmes and other defendants in intervention had requested the court to dismiss the case “based on their assertion that the Bratchers provided false testimony ...” But the court observed that “[t]he Bratchers fully testified as to each of the events Defendants rely upon” and that factual disputes “are not the basis for alleging perjury.” Judge Kimball concluded the analysis of Holmes’ motion by stating that “[t]he court is more inclined to sanction Defendants for bringing the motion than it is to grant the motion. The court discourages such aggressive litigation tactics as they are a waste of the parties’ and court’s time and resources.”

EEOC General Counsel David Lopez said, “Employers have an obligation to protect their employees from the use of racial slurs, ‘jokes,’ and epithets. Unfortunately, as several recent EEOC cases such as *EEOC v. AA Foundries Inc.* (Civ. No. 5:11-cv-792 (W.D. Tex.)), involving the routine racially offensive treatment of African-American employees; *EEOC v. WRS Compass* (Civ. No. 09-cv-4272 (N.D. Ill.)), involving nooses and the use of the ‘N-word’; and *EEOC v. Scully* (Civ. No. 11-8090 CAS (C.D. Cal.)), also involving the use of the ‘N-word’; demonstrate racial harassment is a 21st century workplace problem that our agency must continue to combat.”

Mary Jo O’Neill, regional attorney of the EEOC’s Phoenix District Office, added, “The EEOC will continue to vigorously pursue its mission of fighting employment discrimination in workplaces through our litigation program, and we will continue to litigate cases of egregious racial harassment. Employers cannot allow or condone harassing behavior at the work site and must send a strong message that such behavior is not only wrong but illegal.”

EEOC Trial Attorney Richard Sexton said, “Unfortunately, racial harassment still occurs in workplaces across the United States, even more than four decades after passage of Title VII of the Civil Rights Act. The use of racial slurs is unacceptable in any workplace.”

The EEOC enforces federal laws prohibiting employment discrimination. The EEOC’s Phoenix District Office has jurisdiction for Arizona, Colorado, Utah, Wyoming, and part of New Mexico (including Albuquerque). Further information about the EEOC is available on its web site at www.eeoc.gov.

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