

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

vs.

NO. 4:99CV486 SMR

KOHLER COMPANY
d/b/a STERLING PLUMBING
GROUP, INC.

DEFENDANT

ORDER

Pending before the Court is Defendant Kohler Company's Motion for Summary Judgment in this race discrimination action. The Court has reviewed the motions, briefs and exhibits filed in support thereof, and finds there are genuine issues of material fact remaining for trial. Therefore, Defendant is not entitled to judgment as a matter of law and the Motion for Summary Judgment (Doc. No. 23) is denied.

Several motions in limine are also pending. Defendant filed a Motion in Limine Regarding Evidence of Racial Slurs (Doc. No. 37). The motion is granted except as to statements made by Charles Davis ("Davis") during the time he was a supervisor of Mr. Reynolds at Kohler Company. The Court recognizes that while John Dickson and Rebecca Miller were the decision makers, Mr. Davis was instrumental in setting in place the chain of events leading to John Reynolds' ("Reynolds") discharge and was involved in the discussion concerning Mr. Reynold's production.

With respect to the Motion in Limine regarding Comparison Employees (Doc. No. 39), the Court notes at the outset that it agrees with the Equal Employment Opportunity Commission ("EEOC") that the fact that other employees met the quotas is not a distinguishing factor. However, as to Jeremy Askins, Michael Senko, Kenny Campbell and William White, Defendants

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U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
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JAMES W. MCCORMACK, CLERK
By: *[Signature]*
PLAINTIFF DEP CLERK



argue, and EEOC does not dispute in its response, that their violations were sporadic, and in no way comparable to the two year practices of plaintiff. Therefore, the motion is granted as to these employees.

The Motion in Limine is denied as to Howard Bailey, who failed to have his time cards signed but was not given a written warning from defendant, while Mr. Reynolds was given a written warning for the same behavior. The Motion in Limine is also denied as to Alan Dickson, whose practices, while not covering nearly the length of time as plaintiffs, were still over an extended period of time.

With respect to the Motion in Limine regarding Policies and Procedures (Doc. No. 41), the motion is granted as the Court sees no probative value in how any policies and procedures, or the lack thereof, would be connected in any way to Mr. Reynolds' firing.

Plaintiff filed a Motion in Limine regarding a prior lawsuit filed by Mr. Reynolds (Doc. No. 43). The Motion in Limine is granted as the Court finds evidence of Mr. Reynolds' prior litigation is not relevant, is highly prejudicial and places this judge in the position of being presented to the jury as one who had previously found against plaintiff.

Neither party should use any proposed exhibits in opening statements that have not been stipulated to by the parties or pre-received by the Court, including Defendant's "summary of time cards".

Plaintiff's Motion in Limine regarding Mr. Reynolds' Absentee Records (Doc. No. 45) is conditionally granted and such evidence will not be allowed unless testimony causes the same to become relevant.

Also pending is Plaintiff's Motion to Amend Complaint to Join Rule 19(a) Party. Plaintiff

seeks to add United Auto Workers Local 1000, the Union that represents employees at Kohler Company's Searcy, Arkansas facility. EEOC states that it seeks, as a remedy for Mr. Reynolds, reinstatement and restoration of all seniority and related entitlements and joinder of the Union is necessary to accord Mr. Reynolds complete relief. Defendant responds that the Motion to Amend comes too late and would cause either a continuance of the action or prejudice to the Union.

The Court finds the Motion to Amend is untimely and that the defendant or the Union would suffer prejudice if the amendment was allowed. Furthermore, the Court finds the proposed joinder is in all likelihood unnecessary as the Court believes the Union, as a representative of plaintiff, would abide by any Order of this Court regarding reinstatement and restoration of rights. Therefore, the Motion to Amend (Doc. No. 33) is denied.

It is, therefore, ORDERED that Defendant's Motion for Summary Judgment (Doc. No. 23) is denied; Plaintiff's Motion to Amend (Doc. No. 33) is denied; Defendant's Motion in Limine Regarding Racial Slurs (Doc. No. 37) is granted in part and denied in part; Defendant's Motion in Limine Regarding Comparison Employees (Doc. No. 39) is granted in part and denied in part; Defendant's Motion in Limine Regarding Policies and Procedures (Doc. No. 41) is granted; Plaintiff's Motion in Limine Regarding Prior Litigation (Doc. No. 43) is granted; and Plaintiff's Motion in Limine Regarding Mr. Reynolds' Absentee Records (Doc. No. 45) is conditionally granted.

SO ORDERED this 15th day of February, 2001.


United States District Judge

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 78(a) FRCP
ON 2/16/01 BY mt

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

February 16, 2001

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:99-cv-00486.

True and correct copies of the attached were mailed by the clerk to the following:

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James W. McCormack, Clerk

Date: 2/16/01

BY: BTyree