

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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February 9, 2005

Memo To Counsel Re: EEOC v. The Great Atlantic & Pacific Tea Co., Inc.
Civil No. JFM-04-3114

Dear Counsel:

I have reviewed the memoranda and other papers submitted in connection with defendant's motion for summary judgment.

The motion is denied. The timing of Ms. Taylor's discharge gives rise to a reasonable inference that (defendant's assertion to the contrary notwithstanding) the discharge was related to the John Sullivan incident. Of course, that incident (particularly when considered against the background of the other incidents in which Ms. Taylor had been involved) would have provided a legitimate basis for defendant to discharge Ms. Taylor, provided that all that was involved was her refusal to provide Mr. Berry and Mr. Bentley with legitimate documentation for the reasons for Mr. Sullivan's shift assignments. By the same token, it would have been illegitimate for defendant to have discharged Ms. Taylor for refusing to fabricate a false document reciting reasons for Mr. Sullivan's shift assignments.

Defendant characterizes Ms. Taylor's averment that she was being asked to fabricate false documents as "self-serving speculation" and "subjective and speculative belief." This characterization is based upon Ms. Taylor's statement in paragraph 12 of her affidavit that she knew "that Mr. Bentley wanted me to fabricate documentation." What defendant ignores is that in the preceding sentence Ms. Taylor states the basis for her purported knowledge: that Mr. Bentley "himself had verbally instructed me to move Mr. Sullivan to 3rd shift to force him to leave the company."

I also have considered defendant's argument that Ms. Taylor's assertion is undermined by the fact that in her own email of June 3, 2003, she articulated an entirely nondiscriminatory reason for Sullivan's shift change: "to implement the Preventive Maintenance Program and also to work on the parts project." This is strong evidence against her. However, it seems to me that before discovery has been conducted, one must be prepared to accept the hypothesis that in writing this email Ms. Taylor was stepping gingerly, tactfully avoiding an express statement to her boss to the effect that "my only recollection is that Sullivan was transferred to another shift because you told me you wanted to get rid of him."

Despite the informal nature of this ruling, it shall constitute an Order of Court, and the Clerk is

directed to docket it accordingly.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge