

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEW JERSEY**

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MARY OSGOOD

Plaintiff,

v.

HARRAH’S ENTERTAINMENT, INC.,  
d/b/a Harrah’s Atlantic City, HARRAH’S  
ATLANTIC CITY, INC. and MARINA  
ASSOCIATES, INC. and MARINA  
ASSOCIATES, d/b/a HARRAH’S CASINO  
HOTEL ATLANTIC CITY  
Defendants.

Civil Action No. 00-284 (FLW)

**ORDER**

This matter having been opened to the Court by Eileen Oakes Muskett, Counsel for Defendants Harrah’s Entertainment, Inc., et al., seeking Summary Judgment with respect to Plaintiff’s claim of retaliatory and discriminatory discharge under Title VII of the Federal Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d (“Title VII”); 42 U.S.C. § 1981; and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, et seq., (“NJLAD”); this matter having been opposed by Deborah Hart Simon, Counsel for the Plaintiff, with respect to the claims for retaliatory discharge under Title VII and the NJLAD only<sup>1</sup>; the Court having reviewed the

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<sup>1</sup>Plaintiff requested that the Court grant defendant’s motion for discriminatory discharge under Title VII and 42 U.S.C. § 1981 as unopposed. Pl. Br. at 21. However, Plaintiff’s claims of racial discrimination other than with respect to her discharge, upon which the Court denied Defendant’s Motion for Summary Judgment on July 24, 2003, are unaffected by the present motion.

moving papers, Plaintiff's opposition, and Defendants' reply thereto, and having heard oral argument on January 5, 2005; and it further appearing that:

1. Simon represented to the Court at oral argument that she had requested documents regarding other employees identified by Defendant as being in an equivalent position to Plaintiff, and that these documents had not been turned over to Plaintiff during discovery. Jan. 5, 2005 Unofficial Transcript ("Tr.") at 4:12-5:3.
2. In support of its Motion for Summary Judgment, Defendant submitted the certification of Jodi Muraczewski, currently employed by Harrah's as a Paralegal Supervisor, stating the dates of hire, dates of the start of probation for failure to meet set goals during an initial probationary period, and dates of termination, with respect to sixteen former Harrah's employees that were allegedly similarly situated. Def. Repl. Br. at Exh. A. At argument, Muskett represented that Muraczewski pulled these records from a computer database. Tr. at 6:6- 7:5.
3. The Court noted Defendant's failure to explain the procedure for the destruction of personnel files following the termination of employees. Tr. at 8:3- 8:19. In response, Muskett represented that Harrah's constructs departmental and personnel files for their employees. Tr. at 8:20- 8:22. She further represented that once an employee is terminated, the departmental file containing the type of information being sought by Plaintiff, is not maintained. Tr. at 8:22- 9:6. Rather, Harrah's keeps the personnel file only, which contains more general information. Tr. at 9:9- 9:24.
4. The Court noted, however, that the certification submitted by Defendant was deficient in this respect, as it failed to provide what personnel information was consulted; how the

information was inputted into the computer database; who was responsible for inputting such information; and at what time such information was entered into the system. Tr. at 10:12-10:23. The Court therefore requested that a Harrah's employee certify what records are destroyed and what records are maintained when an employee is terminated, and how Harrah's keeps the records that are maintained. Tr. at 10:25- 11:6.

5. Pursuant to the Court's request, Defendant submitted an additional certification from Muraczewski, which noted that she prepared the certification submitted with the Summary Judgment motion solely based upon information contained in the Harrah's Employee History Display. This display contains "dates of hire, termination and changes in employment status." Muraczewski Supp. Cert. at ¶ 3. Muraczewski did not have access to, and therefore did not review, personnel files. Id. at ¶ 4.
6. Also pursuant to the Court's request, Muskett reviewed the personnel files of the employees referenced in the Muraczewski Certification, and produced any documents concerning the employees' production goals and failure to meet those goals between 1998 and 2001. These documents were submitted as attachments to a letter to Ms. Simon and the Court dated February 3, 2005. Muskett argues that these documents do not provide any evidence that any of the employees were given longer probationary periods, or had more lenient performance goals. Muskett Feb. 3 Letter at 2.
7. In response, Simon has argued to the Court, in a letter dated February 7, 2005, that two documents, in particular, that were attached to Ms. Muskett's February 3 Letter are relevant. Specifically, Plaintiff contends that memos addressed to Yvonne Sadler and Angela Schiavo suggest that they were given the opportunity to be evaluated on factors

other than the criteria upon which Plaintiff was allegedly evaluated, and were also given two month extensions of their probationary period, whereas Plaintiff was only given an extension for medical leave. Simon Feb. 7 Letter at 1. Moreover, Plaintiff points to inconsistencies between the Muraczewski Certification's representation as to Saddler and Schiavo's dates of termination, and the extensions of probation referenced in these documents. Id. at 2.

8. The Court finds that Plaintiff should have the ability to take discovery as to these matters prior to deciding Defendant's Motion for Summary Judgment.

And for good cause shown,

IT IS on this 10<sup>th</sup> day of February, 2005,

ORDERED that Defendant's Motion for Summary Judgment is GRANTED as to Plaintiff's claims of discriminatory discharge under Title VII and 42 U.S.C. § 1981; and it is further

ORDERED that Defendant's Motion for Summary Judgment is DENIED WITHOUT PREJUDICE with respect to Plaintiff's claim of retaliatory discharge; and it is further

ORDERED that Plaintiff shall have thirty (30) days from the date of this order to engage in discovery limited to the issues raised in the February 7, 2005 letter, namely, the extension of probationary periods and the evaluation of other employees using criteria different from that used to evaluate Plaintiff; and it is further

ORDERED that Defendant may renew its Motion for Summary Judgment at that time.

/s/ Freda L. Wolfson  
The Honorable Freda L. Wolfson  
United States District Judge