


FILED

OCT 30 1998

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
G & N ENTERPRISES, INC.)
(d/b/a Western Way Work Warehouse))
)
Defendant.)

01098-4195  CLERK

COMPLAINT AND JURY TRIAL DEMAND

NATURE OF THE ACTION

This action arises under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Elizabeth Fawkes ("Fawkes"), who was adversely affected by such practices. As alleged with greater particularity below, the Commission alleges that Fawkes, a woman, was subjected to on-going sexual harassment by James Greenfield, a supervisor employed by G & N Enterprises, Inc. ("Defendant" or "Employer"). The Commission also alleges that Defendant, by and through James Greenfield and Defendant's owner, Harvey Greenfield, retaliated against Fawkes by terminating her employment after she engaged in the protected activity of expressing opposition to James Greenfield's sexual harassment.



JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3), of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981A.

2. The employment practices alleged herein to be unlawful were committed within the jurisdiction of the United States District Court for the District of South Dakota.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1) and (3).

4. At all relevant times, Defendant has continuously been a South Dakota corporation authorized to do business in the State of South Dakota and has continuously had at least 15 employees.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF FACTS

6. More than thirty days prior to the institution of this lawsuit, Fawkes filed charges of discrimination with the Commission alleging violations of Title VII by Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least January of 1996, Defendant has engaged in unlawful employment practices at its Sioux Falls, South Dakota facility, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), and Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

8. Fawkes began working for Defendant in January, 1996. At the time of the alleged discriminatory practices, Fawkes worked as a sales clerk under the direct supervision of James Greenfield.

9. During her employment, James Greenfield subjected Fawkes to unwelcome sexual harassment to the extent of creating a hostile and intimidating work environment. Specifically, James Greenfield engaged Fawkes and other employees in inappropriate sexual discussions and sexual joke telling, invited Fawkes to give him a "blow job" in exchange for a day off, propositioned Fawkes to permit him to take sexually-provocative pictures of her, and asked Fawkes to try on see-through t-shirts.

10. James Greenfield's sexual harassment of Fawkes involved physical contact, including but not limited to, touching and smelling her hair on a frequent basis and rubbing his waist and genitalia against her.

11. On at least two occasions during Fawkes' employment, Fawkes reported James Greenfield's harassment to Harvey Greenfield. No remedial action resulted from Fawkes' complaints.

12. At or around the time of these occurrences, Respondent had no policy prohibiting sexual harassment in effect, no established procedures for reporting and investigating complaints of sexual harassment, and no sexual harassment training program for managers and employees.

13. On or around April 4, 1997, Fawkes complained to co-workers about James

Greenfield's harassment of her.

14. One co-worker who overheard Fawkes' complaints or otherwise became aware of said complaints reported Fawkes' comments to James Greenfield.

15. Thereafter, on or about April 5, 1997, James Greenfield called Fawkes into his office and asked her whether she told co-workers that he was sexually harassing her. Fawkes admitted that she had made such comments and maintained that her reports regarding James Greenfield's sexual harassment were true.

16. James Greenfield immediately terminated Fawkes for "spreading rumors." Fawkes then contacted Harvey Greenfield by telephone to determine whether she was, in fact, terminated. Harvey Greenfield ratified James Greenfield's decision to terminate Fawkes' employment.

17. On April 18, 1997, Fawkes filed a charge of discrimination against Defendant, alleging sexual harassment and retaliatory discharge.

STATEMENT OF CLAIMS

COUNT I: Sexual Harassment

18. The effect of the practices complained of in paragraphs 9-12 above has been to deprive Fawkes of equal terms and conditions of employment and otherwise adversely affect Fawkes' status as an employee because of her gender, in violation of Section 703(a) of Title VII, 42. U.S.C. § 2000e-2(a).

19. The unlawful employment practices complained of in paragraphs 9-12 were intentional.

20. The unlawful employment practices complained of in paragraphs 9-12 were done with malice or with reckless indifference to the federally protected rights of Fawkes.

COUNT II: Retaliation

21. The effect of the practices complained of in paragraphs 11-16 above has been to deprive Fawkes of equal employment opportunities and otherwise to adversely affect Fawkes' status as an employee because of her exercise of a federally protected right to oppose practices that she reasonably believes constitute violations of Title VII, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

22. The unlawful employment practices complained of in paragraphs 11-16 above were intentional.

23. The unlawful employment practices complained of in paragraphs 11-16 above were done with malice or with reckless indifference to the federally protected rights of Fawkes.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Pursuant to Counts I and II, grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in sexual harassment and retaliation, and any other discriminatory employment practice.

B. Pursuant to Count I, order Defendant to institute and carry out policies, practices, and programs that proscribe workplace sexual harassment, that provide equal employment opportunities for women, and that eradicate the effects of its past and present unlawful employment practices.

C. Pursuant to Count II, order Defendant to institute and carry out policies, practices, and programs that proscribe retaliation against those who complain about discriminatory employment practices, and that eradicate the effects of its past and present unlawful employment

practices.

D. Pursuant to Counts I and II, order Defendant to make Fawkes whole, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and order other affirmative relief necessary to eradicate the effects of its unlawful employment practices described herein, including, but not limited to, frontpay.

E. Pursuant to Counts I and II, order Defendant to make Fawkes whole, by providing compensation for past and future pecuniary and non-pecuniary losses resulting from the unlawful employment practices described herein, in amounts to be determined at trial.

F. Pursuant to Counts I and II, order Defendant to make Fawkes whole by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of above, including physical and emotional pain and suffering, inconvenience, loss of enjoyment of life, and medical expenses, in amounts to be determined at trial.

G. Order Defendant to pay Fawkes punitive damages for its malicious and reckless conduct described in paragraphs 9-17 above, in amounts to be determined at trial.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

I. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by this complaint.

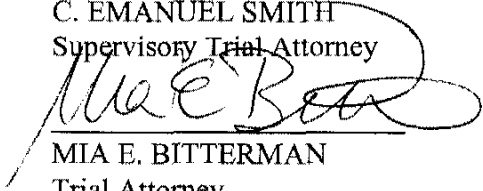
Dated this 29th day of October, 1998.

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PLEASE NOTE:

It is sufficient for purposes of service on the EEOC that pleadings, notices, and any other court document be served upon the Trial Attorney. Therefore, duplicate service is not required on the General Counsel or Deputy General Counsel located in Washington, D.C.