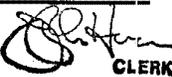


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

FILED

FEB 17 1999

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC),	:	Civ. 98-41-95	 CLERK
Plaintiff,	:		
	:		
	:		
	:		
AND ELIZABETH FAWKES,	:	COMPLAINT IN INTERVENTION	
Intervenor,	:		
	:		
G & N ENTERPRISES, INC. (d/b/a Western Way Work Warehouse)	:		
Defendant,	:		

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The Intervenor named above, files this, her complaint of intervention, against the above-named Defendants, and says:

1. The Equal Employment Opportunity Commission, the original Plaintiff in this cause, filed its complaint on October 30, 1998 (“the original Complaint”), against G & N Enterprises, Inc. (d/b/a Western Way Work Warehouse, Defendant for violation of 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. 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 express opposition to James Greenfield’s sexual harassment.

2. G & N Enterprises, Inc. (d/b/a Western Way Work Warehouse), the original Defendant in this case, filed its Answer in the original action on December 30, 1998.

STATEMENT OF CLAIMS

COUNT I: Sexual Harassment – Hostile Work Environment

3. Elizabeth Fawkes, intervenor in this action, hereby incorporates all allegations in Plaintiff's Complaint as if fully set forth herein, and claims that the effect of the practices complained of have been to deprive her of equal terms and conditions of employment and otherwise adversely affected 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).

4. The unlawful employment practices complained of in the original Complaint were intentional.

5. The unlawful employment practices complained of were done with malice or with reckless indifference to the federally protected rights of Fawkes.

COUNT II: Sexual Harassment – Quid Pro Quo

6. In the course of Fawkes' employment James Greenfield ("James"), her immediate supervisor, made statements to her that if she performed oral sex on him he would give her Sundays off, which terms of employment constituted quid pro quo sexual harassment.

COUNT III: Retaliation

7. The effects of the practices complained of have 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 believed constitute violations of Title VII, in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3(a).

8. The unlawful employment practices complained of were intentional.

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

COUNT IV: Negligent Retention of James Greenfield

10. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

11. Fawkes had complained to Harvey Greenfield (“Harvey”), Defendant’s President, on at least two occasions of James Greenfield’s sexual harassment of her, and was told by Harvey that he would take care of the problem. James Greenfield was never reprimanded for his actions, and is still in a supervisory position with Defendant. Defendant failed in its duty to provide a safe work environment for its employees, and failed to take corrective actions against James Greenfield, thereby threatening and harming Fawkes and possibly other employees of Defendant.

COUNT V: Negligent Supervision of James Greenfield

12. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

13. Harvey Greenfield knew or should have known that James was sexually harassing Fawkes, and had a duty but failed to properly supervise James in an attempt to abate such harassment, thus leaving Fawkes in an intimidating and hostile work environment.

COUNT VI: Intentional Infliction of Emotional Distress

14. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

15. The actions of Defendant, through its agents as previously alleged herein, constitute extreme and outrageous conduct toward Fawkes, which actions were done intentionally or recklessly by Defendants.

16. As a direct and proximate result of Defendant's extreme and outrageous conduct, Plaintiff has suffered and continues to suffer severe emotional distress, including but not necessarily limited to mental anguish, pain and suffering, humiliation, embarrassment, and fear.

COUNT VII: Battery

17. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

18. James Greenfield committed battery on Fawkes, including but not limited to touching and smelling her hair on a frequent basis, rubbing his waist and genitalia against her, putting his armpit in her face, and grabbing her in the rib cage directly below her breast area.

COUNT VIII: Wrongful Discharge

19. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

20. Fawkes was wrongfully discharged from her employment with Defendant after exercising her lawful rights as an employee by complaining of sexual harassment.

COUNT IX: Invasion of Privacy

21. Fawkes incorporates all allegations of this Complaint and the original Complaint as if fully set forth herein.

22. Subsequent to Defendant's discharge of Fawkes, James or other agents of Defendant made numerous anonymous and annoying telephone calls to Fawkes' home for the purpose of further harassing Fawkes.

23. Such actions by Defendants' agents invaded the privacy of Fawkes and resulted in Fawkes' being fearful and intimidated by Defendant and its agents.

COUNT X: Punitive Damages

24. Based on the foregoing allegations, Defendant's conduct showed a disregard for Plaintiff's rights because Defendant acted willfully or wantonly to the injury of Plaintiff and is therefore liable to Plaintiff for punitive damages.

PRAYER FOR RELIEF

Wherefore, Intervenor requests that this Court:

A. Pursuant to all Counts, 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. 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. 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. 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, front pay.

E. 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. Order Defendant to make Fawkes whole by providing compensation for past and future non-pecuniary 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, in amounts to be determined at trial.

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

I. Order Defendants to pay Intervenor's attorney fees, costs, and disbursements and any further amounts deemed appropriate.

J. Intervenor further requests that an Answer be filed to this complaint in intervention by G & N Enterprises, Inc. (d/b/a Western Way Work Warehouse), the Defendant in this cause.

JURY TRIAL DEMAND

Plaintiff requests a jury trial on all questions of fact raised by this Complaint

Dated this 31<sup>st</sup> day of December, 1998.



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