IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

vs. No. 99-2835 G

DILLARD'S, INC.,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

The Equal Employment Opportunity Commission ("EEOC") brings this case against defendant Dillard's, Inc. ("Dillard's"), alleging that Dillard's retaliated against Mary E. Anderson, an African-American Dillard's employee, for her opposition to its illegal employment practices. Specifically, EEOC contends that Dillard's terminated Anderson's employment after she complained to her supervisors about racially discriminatory scheduling under which Caucasians were given more favorable work schedules than African-Americans. EEOC brings this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e) et seq. ("Title VII"), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) ("Section 1981"). The court now considers a motion for summary judgment filed by Dillard's pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

Dillard's argues that it is entitled to summary judgment



99

because EEOC has failed to present a prima facie case for a retaliation claim. Furthermore, Dillard's contends that even if a prima facie case exists, it has offered a legitimate, nondiscriminatory reason for taking its actions, and EEOC has failed to demonstrate that the reasons it has articulated were pretext.

The following facts relevant to Dillard's motion for summary judgment are undisputed except where otherwise noted. Anderson applied for employment with Dillard's in September 1997, and following an interview with Virginia Modlin, the Area Sales Manager responsible for the Accessories Department, she was hired to work in the Accessories Department at Dillard's Hickory Ridge Mall location a few weeks later. (Anderson Dep. at 65-75.) During her interview with Modlin, Anderson agreed that she would work on weekdays after 5 p.m., and although she initially expressed her desire not to work on weekends, she and Modlin eventually agreed that she would work every other Saturday from the store's opening until 2 p.m. Id. at 72-75.

In July 1998, Modlin scheduled Anderson to work on Saturday, July 11, from 3 p.m. until 9 p.m. during Dillard's inventory. Id. at 96, 98. Anderson objected to this schedule and requested that it be changed so that she would not have to work on Saturday night, yet the schedule remained unchanged. Id. at 112-13. On July 9, 1998, Anderson gave a written complaint about her schedule to Reggie Clement, Dillard's Operations Manager. Id. at 115-16. In this letter, Anderson indicated that, in an attempt to have her schedule changed, she had spoken to Modlin about her

schedule, had left a note on Modlin's desk, and had left a note on a bulletin board where Modlin asked employees to leave messages for her. Id. Ex. 10. Anderson also wrote that the scheduling conflict appeared to be racially motivated, because a Caucasian employee had a better schedule than she did, and because only Caucasian employees were scheduled to work on July 3, a busy day, but on July 4, a "dead day", all of the handbag department employees, including Anderson, worked. Id.

After receiving the letter, Clement discussed its contents with the store's manager, Chris Warner, and then called Modlin into his office and allowed her to read the letter. (Clement Dep. at 49-50.) Modlin denied giving employees scheduling preferences based on their race. Id. at 50. Clement then called Anderson into his office, and he, Modlin, and Anderson discussed her letter. Id. at 51. At the meeting, Anderson explained that she could not work on Saturday evenings because she had to care for her terminally ill sister, a situation that she had not previously made known. (Id. at 52; Anderson Dep. at 132-33.) In light of this information, Clement had Anderson complete a change of status form so that she would not be scheduled on Saturday nights, including the night of July 11. (Clement Dep. at 52; Anderson Dep. at 133, 135.) In response to Anderson's allegation that the scheduling was racially discriminatory, Clement explained that Dillard's made the schedules based on the information contained on employees' job applications and the store's needs, with preferences going to full-time workers. (Clement Dep. at 52-53.)

Following this meeting, Anderson did not have any other scheduling problems. (Anderson Dep. at 136.) Furthermore, she did not make any other complaints about racial discrimination while working at Dillard's. Id. at 123.

In August, 1998, Modlin reprimanded Anderson for violating Dillard's policy on proper attire. Id. at 150-51, 155-56; Modlin Dep. at 81. Specifically, after seeing Anderson wearing slippers, Modlin told her not to wear slippers or sandals and made notes of Anderson's infractions pursuant to instructions from Warner or Clement to record dress code violations. (Anderson Dep. at 155-56; Modlin Dep. at 78, 81. Ex. 5.) Prior to this reprimand, Modlin had asked Anderson to remove the slippers from the understock drawer where she was keeping them so that Dillard's owners would not see employees' personal possessions when they visited the store. (Anderson Dep. at 150-51.) Anderson took the slippers home but then brought them back to the store after the visit by Dillard's owners. Id. at 151. Although Modlin never disciplined Anderson for wearing the slippers, id. at 159, she told Clement that Anderson had worn slippers despite being instructed not to do so. (Clement Dep. at 61.) Anderson and several of her co-workers all claim that other employees similarly violated Dillard's policy but were not reprimanded, even though Modlin was aware of the violations. (Anderson Dep. at 155; Holt Dep. at 14-15, 40; Conrad Dep. at 20; Brown Dep. at 17.)

Prior to Anderson's termination, Modlin asked Godfrey Howard, a security officer, to watch Anderson because other

employees had complained to Modlin that Anderson was engaging in conflicts with other employees and customers.[1] (Howard Dep. at 28.) Before this request, Howard had warned Anderson to be careful, although the exact content of his warning is unclear. Howard testified that he told Anderson to watch herself because other sales associates were complaining about her and the "friction" in the department. Id. at 29. Anderson testified that Howard told her that someone was out to get her and that she should "watch her back." (Anderson Dep. at 146-47.)

In October 1998, Modlin discovered a pair of Dillard's house slippers with visible signs of having been worn in a drawer under the counter ("understock drawer"). (Modlin Dep. at 69.) Modlin suspected that Anderson had worn the slippers because someone had told her that Anderson had worn slippers one night. Id. Modlin proceeded to remove the slippers, take them to Clement, and inform him that she had found them and that the store records indicated that they had not been sold. Id. at 75. By her own admission, Modlin had previously found merchandise in the understock drawer, but she simply put the merchandise back on the sales floor because it was new and could be sold. Id. at 75-76. According to Dorothy Holt, a Dillard's employee under Modlin's supervision, Modlin knew that employees placed merchandise in the understock drawer, yet she never removed the merchandise and returned it to the shelves. (Holt. Dep. at 21, 23.) Similarly,

[1] Anderson disputes that Modlin asked Howard to watch her, but she bases her disagreement on Modlin's testimony that she did not recall whether she asked anyone other than Marcus Bryant, an areas sales manager at Dillard's, to watch Anderson. (Pl.'s Mem. Opp. Mot. to Summ. J. at 9-10; Modlin Dep. at 67-68.)

Shirley Conrad, one of Anderson's coworkers who worked for Dillard's from July 1990 until July 1998, testified that other employees violated Dillard's "no-holds" policy by placing merchandise on hold prior to purchasing it. (Conrad Dep. at 37, 39.) Holt also testified that one of her co-workers took a pair of slippers from the store shelf, wore them during her shifts, and left them under the counter. According to Holt, Modlin saw the slippers under the counter, yet never removed them and took them to management. (Holt Dep. at 80-82.)

After discovering these slippers and removing them, Modlin asked Marcus Bryant, an area sales manager at Dillard's, to watch Anderson to see if she was wearing slippers. (Modlin Dep. at 67-69, 72; Byrant Dep. at 33.) Although Modlin testified that she might have previously asked sales managers to watch employees believed to be engaged in illegal activity, she was unable to recall any specific requests of this nature. (Modlin Dep. at 68.) Bryant saw Anderson standing near the slippers fixture, where slippers were kept, and later saw her wearing slippers and saw an empty slippers box. (Bryant Dep. at 34.) Additionally, Clyde Brown, a security officer at Dillard's whom Bryant instructed to watch Anderson to see if she wore any slippers,[2] observed Anderson wearing a pair of slippers and saw her place them back on the sales rack after she wore them. (Brown Dep. at 13-14.) The next morning, Bryant told Modlin what he and Brown had seen,

[2] Anderson disputes that Bryant asked Brown to watch her, but she bases her disagreement on Bryant's testimony that he only told Brown to keep an eye on Anderson. (Pl.'s Mem. Opp. Mot. to Summ. J. at 11; Bryant Dep. at 31.)

and he and Modlin went to the slippers fixture and found a pair of worn slippers. (Bryant Dep. at 36.)

Anderson was terminated from her position at Dillard's on November 2, 1998. (Anderson Dep. at 79.) During a meeting with Warner, Clement, and Modlin, Warner told Anderson that she was being terminated for wearing Dillard's merchandise, the house slippers, without paying for it. (Id. at 140-41; Warner Dep. at 60, 64.)

In this meeting, Anderson admitted that she had worn the two pairs of house slippers that Warner showed her. (Anderson Dep. at 141.) She explained that she had worn the first pair of slippers and then placed them in the understock drawer because she intended to purchase them. Id. On October 26, 1998, Anderson was unable to find the slippers in the understock drawer, and she took the second pair of slippers from the shelf on October 30, believing that they were the same slippers she had originally worn because they had been worn. Id. at 141, 191, 187. Anderson never received permission to remove the slippers from the sales rack and wear them, and she did not pay for either pair of slippers on the pay days after she began wearing them. Id. at 164-65, 167, 177, 180, 188.

Prior to terminating Anderson, Warner had seen six to eight employees wearing merchandise prior to purchasing it, yet in each of these instances he warned the employees not to wear merchandise without purchasing it but did not discharge them. (Warner Dep. at 64-65, 93.) Warner differentiated his treatment of Anderson on three grounds: Anderson made the slippers unfit

for sale by wearing them, id. at 64, Anderson, unlike the other employees, placed the merchandise back on the sales rack after wearing it, id. at 65, and Anderson wore merchandise prior to purchasing it twice. Id. at 93. In reaching his decision to terminate Anderson, Warner relied solely on information that Modlin provided to him. Id. at 80-81.

Despite Warner's insistence that the severity of violating the prohibition against wearing merchandise prior to purchasing it depended on how soiled the merchandise became due to its being worn, Dillard's company policy provided no exceptions to the rule that employees could not wear merchandise prior to purchasing it. Id. at 78. Furthermore, Warner never inspected the merchandise that other employees wore to determine whether it was soiled. Id. at 89. According to Conrad, moreover, other employees working under Modlin's supervision wore robes without purchasing them and then placed the robes back on the sales racks. (Conrad Dep. at 40.)

At the November 2 meeting, Anderson protested the decision to terminate her, arguing that although she knew it was against store policy to wear merchandise, other employees wore store merchandise but were not terminated. Id. at 141. Specifically, Anderson had seen three other employees wearing watches and other jewelry, at least one of whom Modlin supervised, and she saw another employee try on hats while Modlin was watching her. Id. at 159-61. Furthermore, Anderson believed that it was acceptable to place merchandise in the understock drawer because her co-workers did it, even though Modlin never explicitly approved of

their actions. Id. at 174.

Summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment "bears the burden of clearly and convincingly establishing the nonexistence of any genuine issue of material fact, and the evidence as well as all inferences drawn therefrom must be read in a light most favorable to the party opposing the motion." Kochins v. Linden-Alimak, Inc., 799 F.2d 1128, 1133 (6th Cir. 1986). The moving party can meet this burden, however, by pointing out to the court that the respondents, having had sufficient opportunity for discovery, have no evidence to support an essential element of their case. Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479 (6th Cir. 1989).

When confronted with a properly supported motion for summary judgment, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. A genuine issue for trial exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party opposing the motion must "do more than simply show that there is some meta-physical doubt as to the material facts." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

The nonmoving party may not oppose a properly supported summary judgment motion by mere reliance on the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Instead, the nonmoving party must present "concrete evidence supporting its claims." Cloverdale Equip. Co. v. Simon Aerials, Inc., 869 F.2d 934, 937 (6th Cir. 1989). The district court does not have the duty to search the record for such evidence. Interroyal Corp. v. Sponseller, 889 F.2d 108, 110-11 (6th Cir. 1989); Street, 886 F.2d at 1479-80. Respondents have the duty to point out specific evidence in the record that would be sufficient to justify a jury decision in their favor. Interroyal Corp., 889 F.2d at 111.

Unless a Title VII plaintiff presents direct evidence of discrimination, the burden shifting approach set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and further refined in Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981), applies to Title VII employment discrimination cases. Johnson v. Univ. of Cincinnati, 215 F.3d 561, 572 (6th Cir. 2000). Pursuant to this tripartite approach, the plaintiff must initially present circumstantial evidence that establishes a prima facie case of discrimination. Id. After the plaintiff establishes a prima facie case, the burden shifts to the defendant to articulate a legitimate, nondiscriminatory reason for the adverse employment action. Id. at 573; Allen v. Michigan Dept. of Corrections, 165 F.3d 405, 409 (6th Cir. 1999). By setting forth a legitimate, nondiscriminatory reason for engaging in actions that the plaintiff alleges to be discriminatory, the defendant converts the mandatory inference of

discrimination that the plaintiff's prima facie case creates into a permissive inference. Manzer v. Diamond Shamrock Chemicals Co., 29 F.3d 1078, 1083 (6th Cir. 1994), Burdine, 450 U.S. at 254-56. At that point, the plaintiff must show that the defendant's reason is merely a pretext for discrimination. Johnson, 215 F.3d at 573; Allen, 165 F.3d at 409; Burdine, 450 U.S. at 253. In this case, EEOC presents no direct evidence of discrimination in its retaliation claim. Therefore, the tripartite burden-shifting approach applies.

To establish a prima facie case for Title VII retaliation, a plaintiff must prove that 1) she engaged in activity protected by Title VII; 2) the defendant knew of her exercise of protected rights; 3) the defendant thereafter took adverse employment action against the plaintiff, or the plaintiff was subjected to severe or pervasive retaliatory harassment by a supervisor; and 4) a causal connection exists between the protected activity and the adverse employment action or harassment. Morris v. Oldham County Fiscal Court, 201 F.3d 784, 792 (6th Cir. 2000). When considering whether a Title VII plaintiff establishes a prima facie case, courts must be mindful that plaintiffs do not face an onerous burden, but one that is easily met. Nguyen v. City of Cleveland, 229 F.3d 559, 563 (6th Cir. 2000); EEOC v. Avery Dennison Corp., 104 F.3d 858, 861 (6th Cir. 1997).

In support of its motion for summary judgment, Dillard's contends that the EEOC cannot set forth a prima facie case because Anderson never engaged in a protected activity prior to being terminated. Dillard's further argues that even if Anderson

did engage in a protected activity, no causal connection between her actions and her termination exists.

In its "opposition clause," Title VII provides that opposing an employment practice that is unlawful under Title VII constitutes a protected activity.[3] 42 U.S.C. § 2000e-3(a). Specifically, "an employee is protected against employer retaliation for opposing any practice that the employee reasonably believes to be a violation of Title VII." Johnson, 215 F.3d at 579. In examining the parameters of the opposition clause, the Johnson court looked to the EEOC's guidelines:

> The EEOC has qualified the scope of the opposition clause by noting that the manner of opposition must be reasonable, and that the opposition must be based on "a reasonable and good faith belief that the opposed practices were unlawful." In other words, a violation of Title VII's retaliation provision can be found whether or not the challenged practice ultimately is found to be unlawful.

Johnson, 215 F.3d at 579-80 (quoting EEOC Compliance Manual, (CCH), § 8006); see also Booker v. Brown & Williamson Tobacco Co., Inc., 879 F.2d 1304, 1312-13 (6th Cir. 1989)("A person opposing an apparently discriminatory practice does not bear the entire risk that it is in fact lawful; he or she must only have a good faith belief that the practice is unlawful.").

In this case, Anderson complained to Clement that she believed Modlin prepared the schedules in a racially discriminatory manner. Clearly, the manner of her opposition was

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[3] Title VII provides, in pertinent part, that "[i]t shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because [the employee] has opposed any practice made an unlawful employment practice by this subchapter." 42 U.S.C. § 2000e-3(a).

reasonable. If Modlin had been preparing the schedules with a desire to give Caucasians preferable schedules and better hours than African-Americans, moreover, she would have been engaging in an unlawful employment practice. Given that the issue is before the court on Dillard's motion for summary judgment, when all doubts must be resolved in favor of the non-moving party, the court cannot conclude that Anderson lacked a reasonable and good faith belief that racial consideration actually motivated Modlin as she prepared the schedules. Therefore, the EEOC meets the first prong for establishing a prima facie case of retaliation by producing evidence that Anderson engaged in a protected activity.

To demonstrate that a causal connection exists between Anderson's complaint to Clement and her termination, the EEOC must produce sufficient evidence from which an inference can be drawn that Anderson would not have been terminated if she had not told Clement that she believed Modlin was purposefully giving Caucasian employees better schedules than African-American employees. Nguyen, 229 F.3d at 563. "Although no one factor is dispositive in establishing a causal connection, evidence that defendant treated the plaintiff differently from similarly situated employees or that the adverse action was taken shortly after the plaintiff's exercise of protected rights is relevant to causation." Id. In most circumstances, however, temporal proximity alone, without some additional evidence of discrimination or retaliatory action connecting the protected activity and the adverse employment action, fails to establish the causal connection necessary for a prima facie case of

retaliation. Id. at 566.

Applying these considerations to the present case, only four months separated Anderson's complaint from her termination, a factor that supports an inference of causal connection. In addition to this temporal connection, events during this four month interval allow for an inference that Anderson's complaint and her termination were causally connected. First, Modlin reprimanded Anderson for wearing slippers at work, even though other employees under her supervision regularly wore slippers, a fact of which Modlin was aware. Second, the record indicates that Modlin knew that other employees kept merchandise in the understock drawer prior to purchasing it, often for several days, yet she only told Modlin to take her items out of the drawer. Third, Modlin asked Howard and Bryant to watch Anderson, even though she could not remember previously asking other Dillard's employees to scrutinize the behavior of another employee.

When taken in their entirety, these factors at least support an inference that a causal connection exists between Anderson's complaint to Clement and her termination. See Harrison v. Metro Govt., 80 F.3d 1107, 1119 (6th Cir. 1996)(finding a causal connection between protected activity and alleged retaliation when the record "reveals an atmosphere in which the plaintiff's activities were scrutinized more carefully than those of comparably situated employees, both black and white"). Finding that no causal connection existed would require the court to make credibility decisions that are impermissible in the summary judgment context. Therefore, the EEOC has established all of the

elements necessary for a prima facie case of retaliation.

In support of its decision to terminate Anderson, Dillard's emphasizes that Anderson had violated its company policy by wearing store merchandise without paying for it on more than one occasion, both times rendering the merchandise unfit for sale. Since this explanation "raises a genuine issue of fact as to whether it discriminated against the plaintiff" and is "legally sufficient to justify a judgment for the defendant," it serves to rebut the prima facie case and compels the plaintiff to demonstrate that the rationale is merely a pretext for intentional discrimination. Burdine, 450 U.S. at 254-55.

To challenge an employer's explanation as being a pretext for discrimination, a plaintiff must "produce sufficient evidence from which the jury may reasonably reject the employer's explanation." Manzer, 29 F.3d at 1083. Furthermore, "a reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason." St. Mary's Honor Center v. Hicks, 509 U.S. 502, 515 (1993)(quoting Burdine, 450 U.S. at 253). In the Sixth Circuit, the plaintiff must show by a preponderance of the evidence that the proffered reasons had no basis in fact, did not actually motivate the employment decision, or were insufficient to motivate the employment decision. Manzer, 29 F.3d at 1084. Both the first and third of these options directly attack the credibility of the defendant's explanations for the employment action. Id. The first approach "consists of evidence that the proffered bases for the plaintiff's discharge never happened,

i.e., that they are factually false," whereas the third approach generally "consists of evidence that other employees, particularly employees not in the protected class, were not fired even though they engaged in substantially identical conduct to that which the employer contends motivated its discharge of the plaintiff." Id. In contrast, the second approach challenges the defendant's explanation indirectly because it admits the factual basis of the defendant's explanation but insists that unarticulated, illegal motivations were more likely the reasons for the employment action. Id. Equally important, under the first and third approaches, an inference of discrimination can be drawn from the evidence offered to support a prima facie case without additional evidence. Id.; Kline v. Tenn. Valley Auth., 128 F.3d 337, 346 (6th Cir. 1997). Under the second approach, however, the plaintiff must introduce additional evidence of discrimination beyond that which established a prima facie case. Manzer, 29 F.3d at 1084; Kline, 128 F.3d at 346. This requirement exists "because the reasons offered by the defendant are not directly challenged and therefore do not bring about an inference of discrimination." Kline, 128 F.3d at 346.

In this case, EEOC attempts to establish pretext through the third method. Pursuant to this approach, EEOC contends that Dillard's reasons for terminating Anderson were insufficient to motivate the discharge because other similarly situated employees engaged in similar conduct yet were not terminated. In support of its position, EEOC emphasizes that Warner acknowledged that, after finding other employees wearing store merchandise, he

verbally reprimanded them but did not terminate their employment. For this differential treatment to be legally significant, however, the employees being compared must have "dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Smith v. Leggett Wire Co., 220 F.3d 752, 762 (6th Cir. 2000)(internal quotations and citations omitted). Despite this requirement, exact correlation between their conduct is not necessary. Instead, "the plaintiff and the employee with whom the plaintiff seeks to compare himself or herself must be similar in all of the relevant aspects." Id. (internal quotations and citations omitted).

As an initial matter, the employees with whom Anderson seeks to compare herself were supervised by Modlin, and many of them worked in the same department as she did. With regard to their behavior, Conrad testified that other employees wore robes without purchasing them and then returned the robes to the sales rack at the end of their shifts. Although there is no direct evidence in the record that Modlin, Clement, or Warner knew that these employees wore robes and then placed them back on the shelves, the record, when viewed in a light most favorable to Anderson, allows a reasonable person to conclude that if Modlin, Clement, and Warner had focused as much attention on the other employees as they devoted to scrutinizing Anderson, they would have become aware of the other employees' actions.

Equally important, Holt's testimony indicates that an

employee under Modlin's supervision took a pair of slippers from the shelf, wore them during her shifts, and left them under the counter, and that Modlin saw the slippers under the counter yet never removed them. Holt also testified that Modlin knew that an employee under her supervision placed merchandise in the understock drawer, yet she never removed the merchandise and returned it to the shelves. Conrad's testimony, moreover, indicates that other employees violated Dillard's "no-holds" policy by placing merchandise on hold prior to purchasing it. These factors all at least allow for an inference that other employees under Modlin's supervision were engaging in activities similar to those for which Anderson was terminated, yet they were never disciplined.

Finally, Warner verbally reprimanded, but did not discharge, other employees whom he found wearing store merchandise without purchasing it. These violations of Dillard's company policies, as well as Warner's admission that he never inspected the merchandise other employees wore, moreover, raise doubts about his attempts to distinguish Anderson's behavior on the basis of the slippers' being soiled and unfit for sale. Furthermore, Dillard's prohibition against wearing store merchandise prior to purchasing it does not provide any exceptions based on whether the merchandise becomes soiled while it is worn.

This differential treatment of Anderson and other similarly situated employees at least allows for an inference that Anderson's conduct was insufficient to justify her termination. Therefore, when the record is considered in its entirety, with

all inferences drawn in favor of the EEOC and Anderson, a reasonable jury could reject Dillard's explanation for its decision to terminate Anderson as mere pretext. Accordingly, Dillard's motion for summary judgment is denied.

IT IS SO ORDERED.

Julia Smith Gibbons
JULIA SMITH GIBBONS
UNITED STATES DISTRICT JUDGE

February 1, 2001
DATE

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE

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