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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAY 21 2002

CLERK, U.S. DISTRICT COURT
By _____ Deputy

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §

Plaintiff, §

VS. §

BICCGENERAL CABLE INDUSTRIES, §
INC., §

Defendant. §

Civil Action No. 3:00-CV-2122-D



ORDER

Defendants BICCGeneral Cable Industries, Inc., General Cable Industries, Inc., and General Cable Corporation (collectively, "General Cable") terminated the employment of Tony Evans ("Evans") and George Asamoah ("Asamoah"), both naturalized United States citizens who were born in Ghana, on the basis that they were found asleep on the job. Suing on behalf of Evans and Asamoah and other individuals similarly situated, the Equal Employment Opportunity Commission ("EEOC") maintains that General Cable discharged them based on their black race and/or Ghanaian national origin, or in retaliation for complaining about discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* On February 1, 2002 General Cable filed a motion for summary judgment, contending that the EEOC cannot establish a prima facie case of discrimination or retaliation and, even if it can, that it cannot prove pretext.

The court has carefully reviewed the evidentiary record produced by the EEOC and General Cable. If a jury credits General Cable's view of the evidence, it will have abundant grounds to find that, after conducting an independent investigation, General Cable discharged Evans and Asamoah for sleeping on the job. But a jury could also find that Evans and Asamoah were victims of

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discrimination based on race and/or national origin, and/or that General Cable terminated their employment in retaliation for opposing discrimination in the workplace.

Viewing the summary judgment evidence favorably to the EEOC and drawing all reasonable inferences in its favor, as the court must, the court holds that a jury could find that the EEOC has established a prima facie case of race and national origin discrimination and adduced evidence that General Cable's proffered reason for discharging Evans and Asamoah was pretextual. At about the time that Evans and Asamoah were discharged based on the complaints of supervisor Romeo Rodriguez ("Rodriguez") that they had been sleeping on the job, Rodriguez awakened Hispanic machine operators, assisted them in shaking off their grogginess, and took no disciplinary action against them. According to evidence in the summary judgment record, Rodriguez also harassed black employees and closely supervised them.

A reasonable jury could also find that the EEOC has shown a prima facie case of retaliation and of pretext. Evans had been employed by General Cable since September 1997 and Asamoah since January 1996. But neither was terminated for sleeping on the job until 1999, after Evans complained to his supervisor and to Rodriguez about discriminatory treatment and Asamoah complained to a union steward that Rodriguez had discriminated against blacks and Africans.

On February 8 or 9, 1999 Evans complained to his regular supervisor, Ken Leo ("Leo"), that Rodriguez had discriminated against him and other African-American employees. Leo, in turn, spoke to Rodriguez about the complaint. On February 10 Evans complained directly to Rodriguez about his treatment of African-Americans. Evans was discharged on February 11, 1999. Although Bob Boswell ("Boswell"), General Cable's Human Resources Manager, made the termination decision, the EEOC has introduced evidence that Boswell solicited and deferred to Rodriguez's wishes, despite

the contrary views of another supervisor who pointed out that a lot of workers slept on the job.

On or about August 18, 1999 Asamoah complained to union steward Steve McCullum ("McCullum") that Rodriguez had discriminated against blacks and Africans. McCullum prepared grievance letters that *inter alia* accused Rodriguez of discriminating against Asamoah based on his race and national origin. McCullum placed the letters in Rodriguez's mail box on August 18 and Boswell received his copies the same day. On August 20, 1999 Boswell discussed the matter with Rodriguez. Rodriguez then began closely supervising Asamoah's work. On August 23, 1999 Rodriguez accused Asamoah of sleeping on the job and sent him home with instructions to return at 8:00 a.m. to meet with Boswell. According to Asamoah, when he returned for the meeting, Boswell, Rodriguez, and a union steward were present. Boswell explicitly asked Asamoah why he had filed a serious charge against Rodriguez, and Asamoah responded that Rodriguez had been discriminating against him. Asamoah denied that he had been asleep on the job, and Boswell sent him home. The next morning, August 24, 1999, Boswell advised Asamoah that he was being discharged for sleeping on the job. The week before, Asamoah had observed Rodriguez awaken a Hispanic worker and walk him around until he was alert. No disciplinary action was taken against that worker.

General Cable also maintains that the EEOC cannot obtain injunctive relief and punitive damages. Concerning injunctive relief, this is a matter within the court's discretion that it cannot decide based on the summary judgment record alone. And the same genuine issues of material fact that preclude summary judgment on the EEOC's discrimination and retaliation claims prevent summary judgment dismissing the EEOC's claim for punitive damages.

* * *

General Cable's February 1, 2002 motion for summary judgment is denied.*

SO ORDERED.

May 21, 2002.



SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

*The Civil Justice Expense and Delay Reduction Plan adopted by this court provides that “[e]ach judge will continue to give priority to the monitoring and resolution of pending motions.” Plan at § XI(2) (*reprinted in Texas Rules of Court: Federal at 279 (West Pamp. Supp. 2002)*). To eliminate undue delay and unnecessary expense to the parties to this and other civil actions pending on the court’s docket, and because the court has determined that the motion is suitable for resolution in this manner, the court is deciding this motion by order rather than by a more detailed memorandum opinion.