

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRISCILLA HARE : CIVIL ACTION
 :
 v. :
 :
 H&R INDUSTRIES, INC. : NO. 00-CV-4533

MEMORANDUM & ORDER

J.M. KELLY, J.

MARCH , 2001

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial in the above captioned matter, and review of the pleadings filed by the parties in the above matter, the Court makes the following Findings of Fact, Conclusions of Law and decision.

FINDINGS OF FACT

1. Plaintiff worked for H&R Industries from February, 1997 until October, 1999. (Hare 11/20/01, p. 10-12).

2. Harry Schmidt is the owner of H&R Industries. Mick Jones is the general manager. Gary Schmidt is the son of Harry Schmidt. Dave Wolfgang is the Milling Department supervisor and Plaintiff's supervisor. (Hare 11/20/01, p. 12-13).

3. Harry Schmidt never attended any classes on sexual harassment and never had a professional come in to the plant to give a lecture on sexual harassment. (Harry Schmidt 11/26/01, p. 41).

4. Mick Jones was the General Manager of H&R from 1991 to

September, 2000. Prior to the lawsuit, he had not reviewed the handbook since it was written in 1996. He never had any formal training on sexual harassment at H&R. There was never a meeting on sexual harassment, and no employee was ever given any kind of instruction on the policies. (Jones 11/16/01, p. 2-3).

5. David Wolfgang started with H&R in 1972 and was Plaintiff's immediate supervisor. (Wolfgang 11/21/01, p. 87).

6. There was no training on sexual harassment or sensitivity training at any time. (Wolfgang 11/21/01, p. 124-125). Wolfgang has never had training on sexual harassment. Wolfgang never provided any training on sexual harassment to the men in his department. (Wolfgang 11/21/01, p. 95; Webster 11/27/01, p. 96).

7. The following statement taken from the H&R Industries, Inc.'s Policy Manual (D-4) is the only information provided to employees and management on the subject of sexual harassment:

SEXUAL HARASSMENT

H & R INDUSTRIES, INC. agrees with the guidelines on sexual harassment as described by the Equal Employment Opportunities Commission (EEOC) which treat sexual harassment as illegal sex discrimination under the Civil Rights Act of 1964.

Working relationships between employees must be based on mutual respect. Any

employee who feels he/she has been or is being sexually harassed is encouraged to

report such incidents to management. All complaints will be handled confidentially and impartially.

8. The Plaintiff was sent to Wolfgang's department.
(Wolfgang 11/21/01, p. 89).

9. Plaintiff felt she was doing a very good job and was told by Dave Wolfgang that she was doing very well. (Hare 11/20/01, p. 17; Wolfgang 11/21/01, p. 90).

10. Wolfgang discussed personal things about his wife which Plaintiff did not feel were necessary. (Hare 11/20/01, p.17).

11. Mick Jones would put his arm around Plaintiff and squeeze her cheeks. Jones would call her "gorgeous." (Hare 11/20/01, p. 19-20; Jones 11/26/01, p. 12-13, 27). Plaintiff testified:

I felt very uncomfortable the way he talked to me. It was inappropriate touching. I didn't feel that a general manager had a right to wrap his arm around you and call you "gorgeous." I never had a general manager or supervisor do that to me before at any other companies I worked at I withdrew from the situation he put me in.

(Hare 11/20/01, p. 128).

12. Kevin Webster is a coworker who worked very close to Plaintiff. After six months, Webster started doing things to Plaintiff like leaving things in her machine. (Hare 11/20/01, p. 20).

13. Plaintiff testified:

Fishbones, ham bones. I did complain to Dave about the stuff and he [Kevin] would chase me around the machines. He grabbed me a lot. He grabbed my ass a lot. He brushed up against me tons of times. He would try to get me into the tool room and he would shut the light out and he mentioned how he would bend me over the railing up in the foyer and he told me eventually, we're going to sleep together . . . he would just not leave me alone even after I told him to stop.

(Hare 11/20/01, p. 21, 21).

14. Plaintiff complained to Dave Wolfgang, Joe Kroliczak, Gary Schmidt, Mike Seacrist, Phil, Tom Rothford and Tom Lynch, in the office. (Hare 11/20/01, p. 47).

15. Bruce Elton, an Inspector, walked through Plaintiff's department once or twice a day performing inspections. He saw Kevin Webster chase Plaintiff around the machine. Mr. Elton also witnessed Webster putting his hands on Plaintiff, pinching her butt. (Elton 11/20/01, p. 149-151, 161).

16. Webster called Plaintiff "My little hamhock" or "fatty." Plaintiff stopped eating in the shop and lost a dramatic amount of weight. Webster told Plaintiff she made "junk." (Hare 11/20/01, p. 22, 176).

17. Bruce Elton heard Webster whistle and make cat calls at Plaintiff. He heard Webster call her "Blondie." Webster also said to Plaintiff as she was bending over her machine, "Hold it right there." (Elton 11/20/01, p. 151-152).

18. Webster mocked Plaintiff for how far she had to lean

over her machine. (Hare 11/20/01, p. 23-24).

19. Bob Biro asked Plaintiff personal questions. He asked her if she was bisexual. (Hare 11/20/01, p. 27). He asked if she had a boyfriend, and he tried to wrap his arms around her. Biro would hang around Plaintiff's machine a lot. (Hare 11/20/01, p. 31).

20. Webster, among other co-workers, would call Plaintiff like a dog and say "Hey, baby" as she walked by them going to the bathroom or the tool room. Plaintiff would avoid it by walking around the other side of the shop. (Hare 11/20/01, p. 28-29).

21. Igor, a co-worker, left a note on Plaintiff's desk which said she would be worth a couple of thousand on the Russian market. (Hare 11/20/01, p. 30).

22. Greg Keller, a co-worker, made comments to Plaintiff about her perfume and how it was giving him an erection and he couldn't get any work done. (Hare 11/20/01, p. 38).

23. Mike Cheatly, a co-worker, would goose and tickle Plaintiff when she was on her machine. Plaintiff almost cut off her finger. (Hare 11/20/01, p. 39).

24. The co-workers called Plaintiff names such as "air-head." They put bugs in her machine. (Wolfgang 11/21/01, p. 92). They put grease on the handle of her machine. (Wolfgang 11/21/01, p. 111).

25. Mike Cheatly would come at Plaintiff with hands open as

to want to grab her breasts. (Hare 11/20/01, p. 41).

26. While Plaintiff was working at H&R, Webster saw a drawing of a naked woman that was supposed to be Plaintiff passed around the shop. He found it by the pay phone and threw it away. Plaintiff asked him if he saw the picture, and he told her he had. She was upset. (Webster 11/27/01, p. 95, 96).

27. Wolfgang asked in the shop who was responsible for the drawing, and everybody denied it. There were no warnings or disciplinary action as a result of the picture. (Wolfgang 11/21/01, p. 124-125). He made no record that it happened. (Wolfgang 11/21/01, p. 127).

28. Wolfgang had pornography on his company computer which he called "Blow 13." It depicted a woman having oral sex with a woman and a man having oral sex with a woman. He does not know if there was another depiction of a woman masturbating or a woman with three breasts. He brought it into the office because he wanted to see it on a bigger monitor. He showed it to other employees in the shop, such as Kevin Webster, Tom Rothford, Joe Kroliczak. His computer is on the second floor overlooking the CNC department. Nobody told him to get rid of it. (Wolfgang 11/21/01, p. 105-107).

29. Webster started a rumor that Plaintiff and Wolfgang were having an affair. Wolfgang told Plaintiff to deny it. (Hare 11/20/01, p. 49). Plaintiff was disturbed because of the

rumor. (Hare 11/20/01, p. 50). Plaintiff complained to Mick Jones about the rumor about her and Wolfgang having an affair. Jones said he did not know what to do about it. She also complained to Tom Lynch, an employee in the office, because she was not getting anywhere with Mick Jones. (Hare 11/20/01, p. 61).

30. Jones got most of his information off the floor. Michael Cheatly, an expediter who goes from department to department, informed Jones that there was a rumor that Plaintiff and Wolfgang were having an affair. He first discussed this rumor with Harry Schmidt who asked him to discuss it with Wolfgang and Plaintiff. He asked Wolfgang if he was having an affair with Plaintiff and he denied it. So, management just dropped the matter. (Jones 11/26/01, pg. 7; Harry Schmidt 11/26/01, p. 43).

31. Harry Schmidt heard the rumor that Wolfgang and Plaintiff were having an affair. Jones told him there was no truth to it. Schmidt made no effort to find out where that rumor started. He heard Wolfgang gave Plaintiff greeting cards and gifts. He heard of rumors of an affair between Plaintiff and Kroliczak either from Jones or in the shop. He confronted Kroliczak who looked at him like he was an idiot and then denied it. He never spoke to Plaintiff. He made the assumption there was nothing to the rumors. He never asked Plaintiff if the

rumors affected her in any way. (Harry Schmidt 11/26/01, p. 49-52, 56).

32. Plaintiff advised a female co-worker that she and a male worker, Jeff Munnis had sexual relations. Plaintiff believed the female co-worker was the source of the rumor that the Plaintiff and Munnis were having sex together. (Hare 11/21/01, p. 49).

33. Plaintiff complained to Wolfgang once or twice a week and more frequently at the end of her employment. (Wolfgang 11/21/01, p. 98).

34. Plaintiff complained to Wolfgang at least three times a week. Plaintiff knew he had talked to Webster about the complaints because Webster would then call her a tattletale and a snitch. "Plaintiff said everything got worse". (Hare 11/20/01, p. 50-51). Plaintiff told Wolfgang:

. . . the situation I was going through, I had no problem with the job. I don't think I could handle the stress that they were putting on me. I had--no one else was treated like that. I didn't think it was fair that I was treated like that and could he do something about it After David told me to either give it back to them or do what I can to defend myself, I may have played one or two incidents.

(Hare 11/20/01, p. 174). Because Wolfgang told Plaintiff to "give it back", she put a plastic spider in one of the machines. (Hare 11/20/01, p. 25; Wolfgang 11/21/01, p. 146).

35. When Wolfgang spoke to the men, the majority of them

just said it was no big deal. They did admit to the behavior. (Wolfgang 11/21/01, p. 100).

36. Wolfgang never wrote any of Plaintiff's complaints down. (Hare 11/20/01, p. 52; Wolfgang 11/21/01, p. 93). He wrote nothing down relative to what the men said to him. He wrote nothing down about what action he took. (Wolfgang 11/21/01, p. 93).

37. Wolfgang discussed the complaints with Jones. The actions he took were at the suggestion of Mick Jones. (Wolfgang 11/21/01, p. 95). There was no discipline of Kevin Webster and nothing was put in his file. (Wolfgang 11/21/01, p. 94). Jones heard Plaintiff was complaining about clowning around in the shop from Wolfgang. He did nothing about that. (Jones 11/26/01, p. 13).

38. To Harry Schmidt's knowledge, Wolfgang went to the plant floor and questioned people relative to Plaintiff's complaints and instructed them to stop. It stopped for a while and then started again. Harry Schmidt does not know what else could be expected to be done other than that. (Harry Schmidt 11/26/01, p. 47).

39. On the Friday before Plaintiff's termination the Plaintiff and a Mrs. Kroliczak got into a loud obscene shouting match on the employees parking lot. Mrs. Kroliczak believed that the Plaintiff and her husband were engaged in an illicit affair.

Plaintiff continued to use loud vulgar language inside the plant. (Joseph Kroliczak 11/27/01, p. 157).

40. Plaintiff was asked to sign a change of career paper. She refused. (Hare 11/20/01, p. 81). There was nothing filled in on Plaintiff's termination papers as to the reason for her termination - Plaintiff's Exhibit 4. Wolfgang escorted Plaintiff out of the building. She was upset by the fact that she had to leave. (Wolfgang 11/21/01, p. 132-133).

41. There were no reasons in Plaintiff's performance reviews to lead to her termination.

42. The company retaliated in part against Plaintiff for her complaints of harassment.

43. After her termination, Plaintiff could not afford COBRA or therapy. After leaving H&R, Plaintiff was arrested for DUI. (Hare 11/20/01, p. 82-83).

44. Plaintiff made two suicide attempts. In January, 2000, she cut her wrists, and in October, 2000, she overdosed on pills. (Jennings 11/26/01, p. 85).

45. Plaintiff was admitted to Doylestown Hospital through the Crisis Center from October 26 through November 7, 2000, where she was diagnosed with alcohol abuse, gastroesophageal reflux disease, and major depression. (Jennings 11/26/01, p. 81).

46. Tests were administered that indicated Plaintiff has average intelligence and suffers from depression with agitation

which means that Plaintiff is both angry and depressed.

(Jennings 11/26/01, p. 88).

47. Other stressors in Plaintiff's life included the death of a grandfather and a co-worker and a split up with a boyfriend that she had had problems with. (Jennings 11/26/01, p. 89).

48. Plaintiff's psychologist, Dr. Jennings, testified that the primary diagnosis of Plaintiff's condition was major depression with a secondary diagnosis of drug and alcohol abuse by history. Dr. Jennings' opinion was that prognosis is fair if Plaintiff can be involved with treatment. (Jennings 11/26/01, p. 90).

49. Dr. Jennings also testified that with 3 to 6 months treatment, Plaintiff would be able to return to a non-machine job. (Jennings 11/26/01, p. 105).

50. Plaintiff worked for Summit Machine as a machine operator from March, 2000 to August, 2000. (Catherman 11/27/01, p. 76).

51. In June, 2000, at Plaintiff's request, she changed her job at Summit Machine from a machine operator to work in the office at no decrease in pay. (Catherman 11/27/01, p. 76).

52. In September, 2000, Plaintiff quit her job at Summit Machine because she was angry with her employer because the employer had advertised for an additional office employee. (Catherman 11/27/02, p. 77).

53. In December, 2000, Plaintiff was offered a full-time position at Summit Machine, but agreed to work part-time because she was unable to work full-time. (Catherman 11/27/01, p. 80).

54. Later, Plaintiff agreed to work full-time at Summit Machine, but never showed up as she promised to do. (Catherman 11/27/01, p. 82).

55. Summit Machine had a medical benefits program for employees. (Catherman 11/27/01, p. 84).

56. Plaintiff's position at Summit Machine would have been a permanent position. (Catherman 11/27/01, p. 84).

57. When Plaintiff was interviewed by Dr. Getzow in October, 2000, she talked about the difficulties she encountered in her last 8 years. She mentioned an abusive relationship with her boyfriend, difficulties with her mother, but did not make any reference to sexual harassment in the work place. (Romirowsky 11/27/01, p. 13).

CONCLUSIONS OF LAW

I. Title VII

Defendant H&R Industries, Inc. ("H&R") violated Title VII by discriminating against Plaintiff, Priscilla Hare ("Hare") based on her sex (female).

A. Hostile Work Environment

1. Title VII of the Civil Rights Act of 1964 makes it

"an unlawful employment practice for an employer . . . to discriminate against anyone with respect to his compensation, terms, conditions of privileges of employment because of such individual's . . . sex . . ." 42 U.S.C. § 2000e-2(a)(1) (1994). H&R, an employer subject to the prohibitions of Title VII, clearly discriminated against Hare with respect to the terms and conditions of her employment because of her sex (female).

2. The creation, existence and tolerance of a sexually hostile work environment is a recognized form of sex discrimination in violation of Title VII. Harris v. Forklift Systems Inc., 510 U.S. 17, 21 (1993)(citing Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57 (1986)). Title VII was violated because Hare's workplace was permeated with discrimination, ridicule, and insult that was sufficient to alter the conditions of Hare's employment.

3. To prove a hostile work environment, the Plaintiff must show (1) she suffered intentional discrimination because of her sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected the Plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; (5) the existence of respondeat superior liability. Andrews v. City of Philadelphia, 895 F.2d 1469, 1483 (3d Cir. 1990). Hare has satisfied her burden, by a preponderance of evidence, that she was subject to a hostile work

environment. She suffered intentional discrimination because of her sex; the discrimination was pervasive and regular; the discrimination detrimentally affected her; the discrimination suffered by Plaintiff would detrimentally affect a reasonable person of the same sex in that position; and she has shown the existence of respondeat superior liability. Hare regularly experienced harassment at work and in various forms. She was touched inappropriately, called inappropriate names, subject to rumors about her sexual activities, subject to sexually inappropriate images at work and had various pranks played on her.

4. Respondeat superior liability exists in connection with a hostile environment sexual harassment if either: (1) the tort is committed within the scope of employment (i.e., the harasser has actual authority over the victim, by virtue of his job description; (2) the employer was negligent or reckless in failing to train, discipline, fire or take remedial action upon notice of harassment; or (3) the offender relied upon apparent authority or was aided in commission of the tort by the agency relationship. Thus, if the employer knew or should have known of the harassment and failed to take prompt remedial action, it is liable under Title VII. Bonenberger v. Plymouth Township, 132 F.3d 20, 26 (3d Cir. 1997) (citations omitted). Hare was harassed by Dave Wolfgang, her immediate supervisor, and Mick

Jones, the General Manager. She also experienced harassment from various co-workers. H&R utterly failed to take remedial action when Hare complained about the various harassment she was experiencing.

5. In addition to respondeat superior liability, Defendant is directly liable for the hostile work environment at H&R. When the employer knew or should have known of the hostile work environment because the harassment was open and obvious, the employer is directly liable when the employer fails to take remedial action. Jones v. Flagship Int'l., 479 U.S. 1065 (1987). Hare complained several times to her supervisor and others and the harassment Hare had to endure was open and obvious. Several co-workers, including her supervisor, engaged in harassing behavior towards Hare on a regular basis during her employment at H&R. Furthermore, H&R did not attempt to remedy the situation. Since H&R took no action to end the sexual harassment, it is responsible for the condition it caused. Carter v. Chrysler, 173 F.3d 693 (8th Cir. 1999).

B. Retaliation

H&R is also liable under Title VII because it retaliated, in part, against Hare for complaining about the sexual harassment.

1. Title VII prohibits employers from engaging in retaliatory conduct by discriminating against an employee who opposes unlawful employment practice under Title VII. See §

2000e-3(a). Hare complained many times about the harassment she experienced to various H&R supervisors and co-workers. Instead of remedying the situation, she was subject to more harassment and name calling. H&R eventually fired Hare.

II. Intentional Infliction of Emotional Distress

H&R is liable to Hare for Intentional Infliction of Emotional Distress.

A. An employer, who by extreme and outrageous conduct, either intentionally or recklessly causes emotional distress, including bodily harm, is guilty of Intentional Infliction of Emotional Distress. Hoy v. Anemone, 720 A.2d 745, 753-55 (Pa. 1998).

B. Not all sexual discrimination rises to the level of extreme and outrageous conduct sufficient to prove Intentional Infliction of Emotional Distress. Only cases of extreme abhorrent conduct by the employer do. The fact of retaliation by the employer is a weighty, although non-mandatory, factor in finding extreme and outrageous conduct. Id. H&R's conduct in this matter was extreme and outrageous. Not only did her supervisors acquiesce in the harassment, they were directly responsible for much of the harassment. Furthermore, not only did H&R allow this atmosphere of on-going and extreme hostile work environment continue to exist, it actually encouraged it. For example, instead of remedying the situation, Hare's

supervisor told Hare to "give back."

C. Hare suffered emotional distress, in part, as a result of H&R's conduct. Hare tried to commit suicide and was admitted to the hospital. One of the diagnosis was depression.

III. DAMAGES

Under the Civil Rights Act of 1991, the complaining party may recover compensatory and punitive damages. Plaintiff is also entitled to compensatory and punitive damages under the tort of Intentional Infliction of Emotional Distress.

1. Compensatory Damages

§ 706(g)(1) of Title VII provides:

if the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

2. Punitive Damages

Under the Civil Rights Act of 1991, 42 U.S.C. § 1981a(b)(1), punitive damages are available when the employer engages in intentional discrimination and has done so with malice or with

reckless indifference to the plaintiff's federally-protected rights. An employer must at least discriminate in the face of a perceived risk that its actions will violate federal law to be liable in punitive damages. Kolstad v. ADA, 527 U.S. 526, 536 (1999).

H&R was clearly engaged in intentional discrimination and has done so with malice or with reckless indifference to Hare's federally-protected rights. None of the supervisors nor the employees at H&R received training on sexual harassment. H&R's only attempt at addressing issues of sexual harassment at the workplace is the insertion of 4 broad statements in H&R's policy manual. Moreover, as stated previously, H&R's supervisors were directly responsible for the creation and continuation of the hostile environment and utterly failed to remedy the situation when Hare complained of being subject to harassment.

Punitive damages should be reasonable in their amount and rational in light of their purpose to punish what has occurred and to deter its repetition. BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996). Considering that Defendant's gross profit for the year 2000 was \$700,000, punitive damages in the amount of \$50,000 is reasonable and should suffice to punish H&R for its abhorrent conduct in this matter and hopefully deter it from future misconduct.

DAMAGES¹

COMPENSATORY DAMAGES

Back Pay

October 18, 1999 to March 6, 2000,
Plaintiff was unemployed at a
loss of \$445.31 per week for 20 weeks \$8,906.20

September 9, 2000 to December 16, 2000
Plaintiff was unemployed for 14 weeks
at \$441.31 6,178.34

Front Pay

Plaintiff had agreed for full time
employment at Summit Machine Co. at
equal pay as she had earned with H&R
Industries, Inc. which included medical
insurance. Summit Machine Co. was aware
of Plaintiff's employment problems at the
time they made the offer. She did not
show up for work as she had promised to do so. 0

Medical Expenses

Doylestown Hospital 7,763.83

Future Medical Treatment
2 times per week for 52 visits
@ \$55.00 per visit 2,860.00

TOTAL COMPENSATORY DAMAGES \$25,708.37

PUNITIVE DAMAGES \$50,000.00

¹Only the Plaintiff submitted proposed findings on damages.
The Defendant submitted no proposed findings on damages, nor did
it file any objections to Plaintiff's proposed findings.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRISCILLA HARE : CIVIL ACTION
 :
 v. :
 :
 H&R INDUSTRIES, INC. : NO. 00-CV-4533

O R D E R

AND NOW, this day of March, 2002, in consideration of the foregoing Findings of Fact and Conclusions of Law, and calculations on damages, it is ORDERED that judgment is entered in favor of Plaintiff, Priscilla Hare, and against Defendant, H&R Industries, Inc., in the amount of \$25,708.37 plus prejudgment interest on the back pay and \$50,000.00 for punitive damages.

BY THE COURT:

JAMES MCGIRR KELLY, J.