



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: EM14WB-54045
REFERRAL AGENCY NUMBER: 17E-2008-00560

SHI-JUAN LIN AND)
CHINH Q. LE, DIRECTOR,)
NEW JERSEY DIVISION ON CIVIL)
RIGHTS,)
)
Complainants,)
)
v.)
)
DANE CONSTRUCTION AND)
PAT BUCKLEY, INDIVIDUALLY,)
)
Respondents.)

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on July 28, 2008, and a subsequent Amendment to the Verified Complaint, the above-named respondent has been charged with unlawful discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1, *et seq.*), and specifically within the meaning of N.J.S.A. 10:5-4 and 10:5-12(a), because of race and national origin.

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2(e).

SUMMARY OF COMPLAINT

Complainant alleged that she was subjected to an unlawful hostile work environment because of her national origin and race, and was constructively discharged.

SUMMARY OF RESPONSE

Respondent denied that Complainant was discriminated against and subjected to a hostile environment because of her national origin or race. Respondent denied that Complainant's resignation was a constructive discharge.

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BACKGROUND

Respondent Dane Construction is an electrical contractor located in New Brunswick, Middlesex County, New Jersey, specializing in large commercial buildings, schools and hospitals.

Respondent Pat Buckley is the founder and principal owner of Dane Construction.

Complainant is a resident of Carteret, Middlesex County, New Jersey.

Chinh Q. Le (Director) is the Director of the Division on Civil Rights and, in the public interest, has intervened as a complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF INVESTIGATION

The investigation revealed sufficient evidence to support a reasonable suspicion that Complainant was subjected to a hostile work environment and that unlawful racial comments prompted her constructive discharge.

Respondent hired Complainant as a bookkeeper and secretary in February 2008. During the fact-finding conference, it was established that Complainant learned of the position through a mutual friend, interviewed with Respondent Buckley and office manager David Gorman, and began work on or about February 25, 2008. She was assigned a work station on the first floor while Respondent Buckley and office manager David Gorman occupied offices on the second floor. Typically, Complainant and Mr. Gorman spent the entire day in the office while Respondent Buckley came and went, checking on his crews working at various sites.

Complainant explained that she is of Asian heritage and her fiancé, a native of Jamaica, is black. Additionally, she explained that they are the parents of a five-year-old son. She stated that her employer was well aware of these facts, as they came up during the interview process. She further indicated, and Respondent Buckley confirmed, that he met her son on several occasions. Complainant also used her child's photograph as the screen saver on her computer. Moreover, Complainant stated that she spoke about her son's bi-racial heritage to both Respondent Buckley and office manager Dave Gorman during casual conversation.

Complainant alleges that she was subjected her to a hostile work environment because Respondent Buckley routinely used the word "nigger" in her presence, even referring to an African-American employee in that manner.¹ She stated that she reminded Respondent Buckley that her son was bi-racial and this language was hurtful, but he laughed it off, answering that he was not

¹Complainant stated that Respondent Buckley also used a racial slur when referring to employee Peter Allain, who is black. Respondent Buckley did not recognize Mr. Allain's name during the fact-finding conference even though his name was first in the alphabetical listing of employees Respondent Buckley provided to the investigator.

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“using it against your son.” Complainant indicated that she went to Respondent’s office manager, Dave Gorman, explaining how she found the comments offensive, and he answered “that’s just the way [Respondent Buckley] is.” When asked about this alleged conversation at the fact-finding conference, Mr. Gorman stated he “did not recall” a specific conversation but that “it sounded like something I would say.”

Complainant further explained that out of desperation she contacted the woman who had recommended her for the position, their mutual friend Jodi Michaud. Complainant confided in Ms. Michaud how difficult it was to hear this racially hurtful language continuously. During an interview, Ms. Michaud recalled this phone call and indicated that Complainant was extremely distressed and crying because she desperately needed the job, but it was difficult to work in that environment. Ms. Michaud stated that she contacted Respondent Buckley about the matter, but to no avail. Ms. Michaud explained that she knew Respondent Buckley about a year when she recommended Complainant for the job. Ms. Michaud also indicated that she has heard Respondent use various racial and ethnic slurs in casual conversation.

At the fact finding conference, Respondent Buckley denied using the word “nigger” frequently, although he acknowledged that he used it on at least one occasion within earshot of Complainant. He explained that following an argument over the phone with a client he believed to be Jamaican, he used the slur “nigger” both in his office and perhaps a second time as he continued his “rant” coming down the stairs.² He stated that this was an isolated incident and that he did not regularly use such language in the office. However, he admitted that in “private office personal conversations, these words may have popped up, been overheard” and that “[in our office,] we can discuss things the way we want.”

Respondent Buckley recalled that either the same week or perhaps a week after this incident, Complainant tendered her resignation. Mr. Gorman also recalled Complainant’s final week with Respondent and acknowledged that this incident probably prompted her resignation. Mr. Gorman added that he spoke with both Respondent Buckley and Complainant about it but that “there is only so much apologizing as a third party that I can do.” While admitting that he and Respondent Buckley “have had personal conversations where that word could have been used,” he maintained that, to the best of his recollection, he “did not recall that word” being used in Complainant’s presence.

Complainant explained that by June 9, 2008, she realized that she was unable to continue her employ with Respondent. Despite having no job to go to, she gave her notice and resigned on June 13, 2008. According to Respondent Buckley, Complainant contacted him by phone. Respondent Buckley recalled telling her he “was busy,” and that she reminded him that her “son and husband are Jamaican.” Respondent Buckley also admitted that he “apologized to her for losing [his] temper but that it had nothing to do with her.”

²Respondent admitted that he never met the client personally, only dealing with him by phone, but that he assumed he was Jamaican because of his “cool runnings” accent.

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Beyond Respondent Buckley's alleged use of racially derogatory language in reference to African Americans, Complainant also alleged that Respondent Buckley made an inappropriate comment to her specifically about her national origin, which she felt was demeaning. Specifically, Complainant alleged that Respondent Buckley once commented "those are nice jeans on that Oriental ass." Although she was offended, Complainant stated that she did not immediately respond to the comment. However, she allegedly later informed Mr. Gorman, who offered no advice or counsel.

At the fact-finding conference, Mr. Gorman stated that he "did not recall" that specific incident, and Respondent Buckley denied making the comment. Respondent Buckley stated that on one occasion, he "may have" overheard another construction employee make a similar comment that Complainant could have overheard. He further explained that his worker may not have understood that the comment was inappropriate because "guys in the field have a learning curve." Respondent Buckley did not identify the worker, however, and Complainant acknowledged that she was not subjected to any similar comments again.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40,56 (App. Div.1988), rev'd on other grounds, 120 N.J. 73 (1990), cert.den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218,226 (App. Div.1978). See also Frank v. Ivy Club, *supra*, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In the instant case, the investigation determined that there is sufficient evidence to support a reasonable suspicion that Respondent Buckley used racial slurs in Complainant's presence. Respondent admitted using the word "nigger" several times on at least one occasion, and he is known by both his office manager and Complainant's witness to use that language in casual, private conversation. Moreover, both Complainant's witness and Respondent's office manager recalled the extent of Complainant's distress over Respondent Buckley's language and that, in an attempt to remain employed, she went to both of them for help in addressing it. While the additional comment that Respondent allegedly made regarding Complainant's "Oriental ass" would not, alone, support a finding that Respondent maintained a hostile working environment, the likelihood that such a comment was made further increases the weight of the evidence supporting the Division's finding of a hostile work environment.

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The investigation also found that Complainant was constructively discharged. That is, a reasonable person in Complainant's circumstance would find the conditions to which she was subjected to be intolerable. The record shows that Complainant complained to both Respondent Buckley and Mr. Gordon, but neither appeared to have taken her concerns seriously, and the hostile environment persisted. Complainant, therefore, had no alternative but to resign.

FINDING OF PROBABLE CAUSE

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

Date

Chinh Q. Le, Esq., Director
New Jersey Division on Civil Rights