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G. Thomas Harper, Editor
www.HarperGerlach.com

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RACE DISCRIMINATION

He wasn't laughing: Inappropriate humor lands company in court

A fun workplace can be a productive workplace. As this case demonstrates, however, that fun can't be at the expense of other employees. The company owner himself set the tone at the workplace, which included racial and sexual humor, and not everyone was laughing. The company now finds itself in federal court.

Facts

Michael Bailey, an African American, was a pool deck painter who worked for Final Touch Acrylic Spray Decks in Brevard County during the fall of 2005. He knew the owner of Final Touch, Glenn Sadowski, through a roommate before he was hired. They were cordial with one another, although not necessarily friends. Final Touch had 23 employees; two were African-American. The other African-American employee worked on the "mud crew," while Bailey worked on the "finishing crew."

During the first three months of Bailey's employment, he heard several employees use racial slurs, including the "N" word. He reported it to Sadowski, who spoke with his employees. The racial slurs became less frequent after that, although they still occurred occasionally.

Two office pranks made Bailey feel especially uncomfortable. The first occurred when Sadowski, after checking that the mud crew wasn't in the office,

plugged in an African-American Santa Claus that sang and danced. Although the Santa played normal Christmas songs, Bailey felt the display was discriminatory and was made uncomfortable when one employee turned around and stared at him and he overheard another employee say, "Tell me that's not racially motivated." Sadowski said he bought the Santa at Wal-Mart to "create a holiday ambience during the Christmas Holiday Season."

The second incident occurred the same month. An employee had made a "phallic-shaped hat out of newspaper and scotch tape." The hat had a "penis coming . . . out of the forehead" and "two wadded balls of tape at the base." The hat was put on the top of a paint can outside of Sadowski's office, and four one-inch "black baby dolls" were placed around the base of the hat. A fifth "black baby doll" was inserted into the tip of the hat feet first, "as if the doll's head was the tip of the penis." According to Bailey, everyone at the office except him got a good laugh at the display. He was upset by "the context in which the dolls appeared and the way that his co-workers reacted."

Bailey left the office after that incident to look for a camera at a nearby gas station. He returned to the office after about five minutes and knocked on Sadowski's door. He asked the owner "what was up with the black baby dolls,"

and Sadowski responded, "What, Mike, if you don't like it, call the NAACP." A heated exchange ensued, which led to Sadowski telling Bailey to "get the f___ out of here" and Bailey calling Sadowski a "punk" and leaving.

Sadowski contended Bailey was terminated because he left the job site without permission and for being insubordinate by using profanity in the confrontation. Bailey

Off-color jokes aren't appropriate in the workplace.

disputed those reasons, arguing it was common practice for employees to leave the job site to get snacks and soft

drinks and that the use of profanity was accepted at the workplace. Bailey filed suit in federal court in Orlando, alleging a hostile work environment and retaliation under Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act (FCRA). Final Touch requested that the case be dismissed.

Court's ruling

The court denied Final Touch's request and decided that Bailey's case could proceed to trial. It found he produced enough evidence of a hostile work environment for a reasonable jury to find in his favor. A hostile work environment must be shown by both a *subjective* and *objective* reasonable belief that the work environment was sufficiently pervasive and severe to alter the terms and conditions of employment.

In this case, Bailey testified that the "black baby doll" incident "strongly provoked him," and the court determined a jury could find his beliefs were objectively reasonable. The court also determined a jury could find the discrimination was sufficiently severe because of the use of the "N" word and the sexually explicit and therefore demeaning style of the antics. The humiliating nature of the incident and the way it was handled by Sadowski could reasonably keep an employee from performing his job, thereby altering the conditions of his employment, the court said. Therefore, the judge gave the green light for the case to go to trial. *Bailey v. Final Touch Acrylic Spray Decks, Inc.*, 2007 WL 3306749 (M.D.Fla., November 6, 2007).

Bottom line

Off-color jokes — either racial or sexual in nature — aren't appropriate in the workplace. The jokes in this case

were visual as well as verbal, increasing their potency. The company owner was a participant in the antics and then failed to effectively defuse the situation once Bailey let him know he was upset. Ultimately, those at the top of an organization must instill an environment of respect, not humiliation. That can be done with humor — just keep it clean and nonoffensive! ♣

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