

Eighth Circuit Holds that Supervisor's Bizarre Conduct does not Constitute Discrimination

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In *Rickard v. Swedish Match North America, Inc.*, the Eighth Circuit held that a supervisor's allegedly inappropriate behavior did not rise to the level of actionable discrimination based on age and sex. The case reminds us that an employment discrimination plaintiff must do more than simply allege offensive conduct. The alleged actions must be sufficiently serious as to affect the "terms, conditions or privileges" of employment.

Plaintiff had worked for Swedish Match North, a company that manufactures and distributes snuff, chewing tobacco and other tobacco-related products, for twenty-three years when he allegedly was assigned to a supervisor who repeatedly criticized his work and threatened to fire him. Moreover, Plaintiff alleged that the supervisor, who was one year older than Plaintiff, made disparaging remarks about his age, including comments such as "you know, old man, you have a lot of years in." According to Plaintiff, it was common knowledge that the company was attempting to force out older employees.

Plaintiff also alleged that the supervisor subjected him to sexual harassment based on two incidents. First, the supervisor allegedly grabbed and squeezed Plaintiff's nipple and stated: "This is a form of sexual harassment." Second, the supervisor allegedly grabbed a towel from Plaintiff, rubbed it on his own crotch, and handed it back to Plaintiff. Plaintiff alleged that these incidents were motivated by sexual desire.

Plaintiff reported these incidents to the company, which reprimanded the supervisor. Nevertheless, Plaintiff retired voluntarily in 2011 because of health conditions that he attributed to the stress of working with the supervisor. He later sued the company alleging, among other things, a hostile work environment based on age and sex. The district court granted the company's motion for summary judgment, holding that Plaintiff had failed to offer sufficient evidence to sustain his claims.

The Eighth Circuit affirmed the judgment. In so holding, the court stated that **Plaintiff had provided "meager" evidence that the supervisor mistreated him on the basis of age** — and further failed to show that the treatment was serious enough to meet the legal standard of affecting the "terms, conditions and privileges" of employment.

The court noted that simple teasing or offhand remarks cannot substantiate a discrimination claim. The supervisor's statements, "even if intentionally disparaging, are not severe enough to be actionable," the court stated.

As for the sexual discrimination claims, the court held that Plaintiff failed to demonstrate that the supervisor's alleged conduct was based on sex. Although Plaintiff claimed that the supervisor's actions were motivated by sexual desire, Plaintiff offered no evidence suggesting a sexual motive. Plaintiff, for example, admitted that the supervisor never pursued a romantic relationship or made unwanted sexual overtures.

"Without more than [Plaintiff's] speculation, a reasonable juror could not find [the supervisor's] actions — although contemptible — amounted to harassment based on sex."

Determining whether inappropriate conduct rises to the level of discrimination can be difficult. Hinshaw & Culbertson attorneys are available to answer any questions you may have.

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