

COMMONWEALTH OF PENNSYLVANIA

EXECUTIVE OFFICES

PENNSYLVANIA HUMAN RELATIONS COMMISSION

CHERYL CUNDERI CAUSA, :
Complainant :
V. : DOCKET NO. E-18649
METROPOLITAN EDISON :
COMPANY, :
Respondent :

FINDINGS OF FACT*

1. Complainant Cheryl Causa, nee Cunderi, is an adult individual residing at 416 Windsor Street, Reading, PA, 19601. (N.T. 8)
2. Respondent Metropolitan Edison Company has offices at 2800 Pottsville Pike, Muhlenberg Township, Reading, PA, 19605. (Complaint)
3. At all relevant times Respondent employed four or more persons within the Commonwealth of Pennsylvania.
4. Complainant filed a complaint against Respondent with the Pennsylvania Human Relations Commission on or about August 12, 1980 at Docket No. E-18649. (N.T. 9)
5. Ms. Causa was hired by Met Ed as a typist in the General Accounting department in September of 1975. (N.T. 9)
6. Ms. Causa had an attendance problem during the period when she worked in Respondent's General Accounting Department. (N.T. 500, 501)

*The following abbreviations are utilized throughout:

N.T. - Notes of Testimony
C.E. - Complainant's Exhibit
R.E. - Respondent's Exhibit

7. Complainant requested a transfer out of General Accounting because of difficulties in getting along with the person who hired her, Larry Mullin; Mr. Mullin was a personal friend of hers. (N.T. 38, 498, R.E. 1, 2)

8. James Rudolph of Respondent's Personnel Department assisted Ms. Causa in obtaining a transfer out of the General Accounting department. (N.T. 38, 498 - 502)

9. The Director of General Accounting wanted to terminate Complainant for excessive absenteeism but did not do so because there had been insufficient documentation and prior progressive discipline. (N.T. 500, 501)

10. Ms. Causa became secretary to Robert Dreibelbis, Manager of Purchasing in the Materials Management department, in April of 1978. (N.T.10)

11. In April of 1978, the Director of Materials Management was James Hulsebus. Mr. Dreibelbis reported to him. (N.T. 35)

12. Mr. Hulsebus' secretary at all relevant times was Rosalie Krammes. (N.T. 292-3)

13. Ms. Causa reported to Barbara Guthier (Supervisor of Purchasing Administration) and Richard Kitzmiller (Supervisor of Purchasing) in addition to Mr. Dreibelbis. (N.T. 16 - 17)

14. By September of 1978 Complainant had again requested a transfer. (N.T. 30, 31, R.E. 5)

15. Complainant's September 1978 request for a transfer was not approved because of her excessive absenteeism. (N.T. 31, 503)

16. Working conditions in the Materials Management department during the relevant time period were strained. (N.T. 40, 238, 358 - 362)

17. Ms. Krammes exercised considerable authority in Mr. Hulsebus' absence; she and Ms. Causa had an extremely poor working relationship. (N.T. 74 - 84; R.E. 13, 14, 15, 16, 25, 26, 30, and 43)

18. Complainant's performance and attendance were unsatisfactory while she worked in Materials Management, and did not improve in spite of counselling and discipline. (N.T. 245 - 265, 368 - 394; R.E. 6, 8, 9, 28, 33, 35, 36, 37, 39, 40, 42, 44, 45, 47, 48)

19. Complainant wrote numerous memoranda expressing her dissatisfaction with her job, and complained frequently to the Personnel Department. (N.T. 519 - 520; R.E. 1, 2, 3, 4, 5, 5A, 6, 10, 12, 13, 14, 15, 16, 21, 22, 30, 31)

20. Ms. Causa complained orally to Mr. Dreibelbis on one occasion that she had been touched by Mr. Kitzmiller; there were no further complaints after Mr. Dreibelbis spoke to Mr. Kitzmiller. (N.T. 408 - 410)

21. Complainant contacted an attorney after her discharge; that attorney's first letter to Met Ed did not mention sexual harassment. (N.T. 116-7; R.E. 51)

22. Complainant applied for Unemployment Compensation after consulting an attorney; her claim did not allege sexual harassment. (N.T. 116-7; R.E. 24)

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act.

2. Respondent is an employer within the meaning of the Act.

3. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.

4. The Commission has jurisdiction over the parties and subject matter of this case.

5. Sexual harassment is a form of sex discrimination and as such violates the Act.

6. Complainant's initial burden is to establish a prima facie case of discrimination, one of whose elements must be that she was sexually harassed by Respondent employees prior to her termination.

7. Complainant has failed to make out a prima facie case of discrimination.

OPINION

This case arises on a complaint filed by Cheryl Causa nee Cunderi ("Complainant") against Metropolitan Edison Company ("Respondent" or "Met Ed") with the Pennsylvania Human Relations Commission ("Commission") at Docket No. E-18649 on or about August 12, 1980. Ms. Causa alleged that she was sexually harassed and then terminated from her employment, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act").

Commission staff conducted an investigation and found probable cause to credit the allegations of discrimination. The case was approved for public hearing when efforts at conciliation were unsuccessful. The hearing was held on October 2 - 5, 1984, in Reading, Pennsylvania before Commissioner Raquel Otero de Yiengst, the parties having waived their statutory rights to a hearing before a panel of three Commissioners.

Complainant bears the initial burden of establishing a prima facie case of discrimination under the Act. General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 202, 265 A.2d 649 (1976); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If she meets this burden, Respondent may prevail by showing a legitimate, non-discriminatory reason for the challenged conduct. Philadelphia Electric Co. v. Pennsylvania Human Relations Commission, Pa. Cmwlth. 448 A.2d 701 (1982).

Ms. Causa's complaint alleged that she was sexually harassed by her supervisors, Richard Kitzmiller and Robert Dreibelbis, and terminated after resisting sexual advances from Mr. Dreibelbis. She alleged that others in his department were absent as often as she was, but were not so severely disciplined. At hearing she implicitly acknowledged that her attendance was poor prior to her discharge, but testified that she missed

work in part because of illness and in part because she was so upset by the alleged sexual harassment. The critical element of her prima facie case under either theory is that sexual harassment occurred.

Pursuant to its rule-making authority, 43 P.S. 957 (d) and (e), the Commission has promulgated Guidelines on Sexual Harassment. These state in relevant part:

Guidelines on Sexual Harassment:

- (a) Harassment on the basis of sex is a violation of the Pennsylvania Human Relations Act. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when
- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
 - (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
 - (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Pa. Bul., Vol. 11, No. 5, January 31, 1981. Although these Guidelines were published after the filing of the complaint in this case, they incorporated principles which were already well established under federal law, and we find no unfairness in resorting to them here. See Tompkins v. Public Service Electric & Gas Co., 568 F.2d 1044 (3rd Cir. 1977). We therefore find that Complainant may establish her prima facie case by proof that:

1. She belongs to a protected class;
2. She was subject to sexual harassment as defined by our guidelines;
3. The harassment complained of affected a term, condition or privilege of employment.

Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982).

As the parties argue, resolution of this case is largely a matter of making credibility determinations. Decisions about the credibility of witnesses, and the weight to be given to evidence, are the particular responsibility of the Hearing Commissioner as trier of fact. Carr v. Com., State Board of Pharmacy, 48 Pa. Cmwlth. 330, 409 A.2d 941 (1980).

Ms. Causa was hired by Met Ed as a typist in the General Accounting department in September of 1975. Credible evidence established that she developed an attendance problem while in General Accounting, and that she at least once requested a transfer out of that department because of difficulty in getting along with one of the people for whom she worked. These problems brought her into contact with James Rudolph, who at that time worked in Respondent's Personnel department and at the time of this hearing was its Personnel Service Director. Mr. Rudolph credibly testified that the Manager of General Accounting, a Mr. Bashore, wanted to discharge Ms. Causa for absenteeism but was dissuaded by Mr. Rudolph because there had been no prior progressive discipline. Instead, Mr. Rudolph assisted Ms. Causa in obtaining a transfer into the Materials Management Department. In April of 1978 she became secretary to Robert Dreibelbis, Manager of Purchasing in Materials Management. It was from this position that she was eventually discharged.

The Director of Materials Management in April of 1978 was James Hulsebus; his secretary was Rosalie Krammes. Mr. Dreibelbis reported to him. Ms. Causa although she was secretary to Mr. Dreibelbis, also reported to Barbara Guthier, the Supervisor of Purchasing Administration, and, within a short while, to Richard Kitzmiller, Supervisor of Purchasing. Within less than six months Ms. Causa again requested a transfer, which she testified

was because both Mr. Kitzmiller and Mr. Dreibelbis were sexually harassing her. She was told that the request was rejected because of her absenteeism; she admitted to an absenteeism problem but attributed at least a part of the missed time to being upset by the harassment at work.

Ms. Causa testified to various incidents of harassment by both Mr. Kitzmiller and Mr. Dreibelbis. While indicating that she was deeply upset by their conduct, she testified that, after once discussing Mr. Kitzmiller's actions with Mr. Dreibelbis, she reported the situation only to Barbara Guthier. Ms. Causa testified that she was embarrassed by the situation, and did not take her complaints to Personnel because she did not trust that department to keep her problems confidential. For the reasons which follow, the Hearing Commissioner does not find Complainant's version of these events to be credible.

The parties agree that working conditions in Met Ed's Materials Management Department during the relevant time period were strained. Mr. Hulsebus, appointed to the directorship in 1977, was instituting new procedures as part of a general redefinition of the department. Tension existed between him and Mr. Dreibelbis and was reflected throughout the department. Morale was low. Mr. Hulsebus was frequently out of the office; his secretary Ms. Krammes, exercised considerable authority in his absence. The working relationship between her and Ms. Causa was openly antagonistic. The accident at Met Ed's Three Mile Island facility in March of 1979 added pressure to a system which was already severely strained.

Within this framework, Complainant was experiencing problems on various levels. Although she attempted to deny any shortcomings, numerous documents and credible testimony from Respondent's witnesses show that she had serious performance and attendance problems throughout the time she

worked in the department. She was repeatedly advised that her work and attendance were unsatisfactory, and given more than ample opportunities to correct deficiencies. She was disciplined for absenteeism. Her performance did not improve.

Ms. Causa moreover regularly and articulately expressed her dissatisfaction with her job, her coworkers, her bosses, and conditions in the department in general. She had conversations and meetings with Mr. Dreibelbis, Mr. Hulsebus, Ms. Guthier, and various members of the Personnel Department: Mr. Rudolph testified that she came to Personnel more than any other employee he had ever known. She requested transfers. She sent memoranda defending herself against what she felt to be unwarranted criticism and complaining of ill treatment from Ms. Krammes. From time to time she made notes of her version of certain situations and meetings, which she kept for her personal use. In all of this rather voluminous material, the record establishes at most that on a single occasion she complained to Mr. Dreibelbis about being touched by Mr. Kitzmiller. Mr. Dreibelbis testified credibly that he discussed the matter with Mr. Kitzmiller and, eventually, with all of the buyers, and that no further complaints were forthcoming from Ms. Causa; obviously she did not take the matter seriously. It is particularly significant that the notes which Ms. Causa kept for herself (including a list captioned "Problems with R.M. Dreibelbis as a Boss") never mentioned a single incident of behavior by either Mr. Kitzmiller or Mr. Dreibelbis which could be characterized as even remotely sexual in nature. Both the written material and the testimony of Respondent's witnesses, especially Mr. Rudolph, establish that Ms. Causa knew very well how to voice her dissatisfaction and showed no hesitation in doing so. It is simply not believable that she nevertheless endured all but silently the

sorts of harassment to which she testified at this hearing.

It is also significant that Ms. Causa consulted an attorney immediately after her discharge. That attorney in turn promptly contacted the company on Ms. Causa's behalf. The issues addressed in the attorney's initial letter did not include sexual harassment. Nor did Ms. Causa's application for Unemployment Compensation benefits, filed after she had consulted the attorney.

Finally, the record contains no evidence in support of Complainant's claim that persons with more severe attendance problems were less severely disciplined.

Complainant has thus failed to introduce credible evidence in support of her claim that sexual harassment occurred. As she has failed to make out a prima facie case of discrimination under the Act, her case must be dismissed; an appropriate order follows.

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RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in this case, the Hearing Commissioner concludes that Respondent did not violate Section 5(a) of the Pennsylvania Human Relations Act, and therefore recommends that the foregoing findings of fact, conclusions of law, and opinion be adopted and ratified by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

Raquel Otero de Yienst
RAQUEL OTERO DE YIENGST
HEARING COMMISSIONER

February 25, 1985
DATE

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ORDER

AND NOW, this 28th day of February, 1985, the
Pennsylvania Human Relations Commission hereby adopts the foregoing findings
of fact, conclusions of law, and opinion, in accordance with the
recommendation of the hearing Commissioner, pursuant to Section 9 of the
Act, and therefore

O R D E R S

that the complaint in this case be, and the same hereby is, DISMISSED.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Doris M. Leader, Vice Chair
Doris M. Leader
Vice-Chairperson

ATTEST:

John P. Wisniewski

John P. Wisniewski
Assistant Secretary