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EEOC v. KCD Construction, Inc.

Judge David S. Doty

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EEOC v. KCD Construction, Inc.

Keywords

EEOC, KCD Construction Inc., 05-2122 DSD/SRN, Consent Decree, Disparate Treatment, Harassment, National Origin, Hispanic, Construction, Employment Law, Title VII

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
v.) Civil Action No. 05-2122 DSD/SRN
)
KCD CONSTRUCTION, INC.,) **CONSENT DECREE**
)
Defendant.)
)
)
)
_____)

This action was filed by the Equal Employment Opportunity Commission ("EEOC") on September 14, 2005, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.* In its complaint, the EEOC alleged that Defendant discriminated against Francis Soto, Javier Hernandez, Jose Antonio Hernandez, Humberto Bravo, Roberto Santos, Jose Rodriguez, William Morales, Joel Perez, Otonel Rivera and Efren Romero ("Charging Party" or "Charging Parties") when it subjected them and a class of similarly situated Hispanic employees to harassment based on their national origin. The EEOC alleged that Defendant's action violated Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a). Defendant denies the allegations in the complaint.

The EEOC and Defendant (hereinafter referred to as "the parties") have agreed to settle these claims in order to reach an amicable resolution of this matter and avoid further litigation. The terms of the agreement are set forth below.

Therefore, upon the consent of the parties, and upon review by the Court of these terms, it is ORDERED, ADJUDGED AND DECREED as follows:

- I. Monetary Relief
 - A. Settlement Amount

The parties agree that the following Charging Parties are entitled to monetary relief pursuant to this Consent Decree: Francis Soto, Javier Moran Hernandez, Humberto Lopez Bravo, Roberto Soto Santos and William Morales Aldoy. Defendant agrees to settle this case for \$41,500. Checks shall be made payable to each individual Charging Party as follows: Francis Soto, \$16,500; Javier Moran Hernandez, \$10,000; Humberto Lopez Bravo, \$5,000; Roberto Soto Santos, \$5,000; and William Morales Aldoy, \$5,000. The checks shall be sent by certified mail, return receipt requested, to each individual Charging Party at addresses provided to Defendant by the EEOC. A copy of the checks shall be mailed simultaneously to the undersigned counsel for the EEOC. The payments shall be made within 10 calendar days after this action is dismissed pursuant to this Consent Decree provided that the EEOC has given Defendant's counsel the original releases described in Section I. B.

Defendant shall issue each Charging Party a form 1099 for the amount received for compensatory damages. Neither the EEOC nor Defendant make any representation, or assume any responsibility for any tax liability, assessments, interest, penalties and/or costs that the Charging Parties may or may not incur on such payments under local, state and/or federal law.

B. Releases

Each Charging Party will submit to the EEOC signed releases in the form attached hereto as Exhibit A.

II. Injunctive Relief

A. Compliance with Title VII

Defendant shall not discriminate on the basis of national origin as prohibited by 42 U.S.C. §2000e, et. seq. Specifically, Defendant shall not subject Hispanics to harassment on the

basis of national origin. Defendant shall not retaliate against any employee or former employee for exercising the right to oppose any employment practice made unlawful by Title VII, and to make a charge, testify, assist, or participate in an investigation, proceeding or hearing under 42 U.S.C. §2000e et. seq.

B. Impact Upon the EEOC's Processing

The EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation based upon allegations not included in the above-captioned case.

C. Training

Defendant shall provide training, specifically on national origin discrimination and national origin harassment, to all of its personnel including employees, supervisors and managers. Defendant shall provide a certified Spanish language interpreter for the training to accommodate its Hispanic employees. In addition, Kenneth, Chad and Dennis Doeden will participate in training on national origin discrimination and national origin harassment. Defendant will also implement annual EEO training for supervisors and managers during the period of the Consent Decree.

D. Creation and Dissemination of Anti-Discrimination Policy

Defendant shall create an anti-discrimination policy within 30 days after this action is dismissed pursuant to this Consent Decree. Such policy will specifically outline procedures for reporting and investigating complaints of national origin discrimination and harassment, and will include the names of persons to whom discrimination complaints should be made. This policy shall be disseminated to all employees. Defendant shall also have a copy of the anti-discrimination policy translated into Spanish.

E. Posting of Notice

Defendant agrees to post the notice (Exhibit B hereto) in its facility in a clear and conspicuous location customarily used for the posting of employee notices. Two copies of the notice will be posted with one written in English and the other written in Spanish. Defendant agrees to post these notices within five calendar days of approval of this Consent Decree by the Court, for the term of the Consent Decree.

F. Record-keeping and Reporting

For two years from the date of this Consent Decree, Defendant shall document and maintain records related to every complaint of national origin discrimination and national origin harassment. The discrimination complaints will be provided to the EEOC on June 30 and October 30 throughout the term of this Decree with the first reports being due six months after the Order is entered by the Court. The report shall will include the following information: (1) the name, address and telephone number of who made the complaint; (2) the date of the complaint; (3) to whom the complaint was made; (4) information regarding the substance and nature of the complaint; and (5) what action, if any, was taken in response to the complaint. In the event that Defendant ceases operation and/or dissolves KCD Construction, Inc. prior to the expiration of the term of this Decree, but later resumes operation of the business, Defendant agrees that the Consent Decree shall be in effect until the expiration of a total two year (24 month) period.

G. Enforcement of Consent Decree

If at any time during the effective date of this Consent Decree, the EEOC believes that a violation of this Decree has occurred, prior to exercising its right to move to compel

enforcement, the EEOC shall give written notice detailing the perceived violation to Defendant. Defendant shall have thirty (30) days from receipt of written notice to investigate and respond in writing to the allegation that a violation has occurred. Thereafter, the parties shall have a period of thirty (30) days, or such additional period as may be agreed upon in writing by them, in which to engage in negotiation and conciliation regarding any alleged violation before the EEOC may move to compel compliance.

H. Certification to the EEOC

Within 10 calendar days following compliance with the posting, training and creation/dissemination of anti-discrimination policy provisions of this Consent Decree, Defendant will notify the EEOC of such compliance through a letter from an appropriate representative.

I. No Other Agreements

This Consent Decree constitutes the sole agreement between and among the parties concerning the settlement of the above-captioned lawsuit. The parties agree that no promises or inducements have been made except as set forth in this Consent Decree, and that there are no other agreements, written or oral, express or implied, between or among the parties concerning the subject matter of this lawsuit.

J. Enforcement of Terms of Consent Decree and Jurisdiction

Upon execution of the Consent Decree by the parties, the parties will execute a Stipulation for Dismissal with Prejudice, pursuant to Fed. R. Civ. P. 41(a)(2), to dismiss this case without costs to the parties, with the Court to reserve jurisdiction to enforce the terms of the Consent Decree.

The affirmative obligations under this Consent Decree shall be effective and binding upon the parties for the period of two calendar years from its approval by the Court. This Court shall retain jurisdiction of this action for the purpose of enforcing this Decree and entry of such further orders as may be necessary or appropriate for the same period of time, except that, if any party has, prior to the expiration of the two year period, commenced proceedings to compel compliance, this Court will retain jurisdiction of the action until all issues relating to such compliance proceedings have been resolved. At the end of the two year period, or as soon as all enforcement issues (if any) have been resolved, whichever occurs last, this Court will dissolve the Consent Decree and will dismiss this action with prejudice without further motion by any party.

DATED: July 25, 2007

s/David S. Doty
David S. Doty
United States District Court Judge

I have read the foregoing Consent Decree, and accept and agree to the provisions contained therein.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

Date: July 23, 2007

s/John C. Hendrickson
John C. Hendrickson
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Date: 7/23/2007

s/Jean P. Kamp/JH
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Date: 7/11/07

s/Tina Burnside
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Date: 7/19/07

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Attorneys for Defendant

RELEASE AND WAIVER

In consideration for \$ _____ paid to me by KCD Construction Inc., in connection with the resolution of EEOC v. KCD Construction, Inc., Case No. 05-CV-2122 (DSD/SRN) (D. Minn.), I waive my right to recover for any claims arising under Title VII of the Civil Rights Act of 1964 that I had against KCD Construction, Inc. prior to the date of this Release and Waiver that were included in the claims alleged in EEOC's complaint in EEOC v. KCD Construction, Inc., Case No. 05-CV-2122 (DSD/SRN) (D. Minn.).

Date: _____

Signature: _____

RENUNCIA

En contraprestación por la suma de \$ _____ que recibí de parte de KCD Construction, Inc., en relación con la resolución de EEOC v. KCD Construction, Inc., Causa Núm. 05-CV-2122 (DSD/SRN) (D. Minn.), renuncio a mi derecho de cobrar una compensación monetaria por cualquier denuncia que surja en virtud del Título VII de la Ley de Derechos Civiles de 1964 que tuviera en contra de KCD Construction, Inc. antes de la fecha de la presente Renuncia y que se incluyó en las reclamaciones que se alegan en la Demanda de la EEOC incluidas en EEOC v. KCD Construction, Inc., Causa Núm. 05-CV-2122 (DSD/SRN) (D. Minn.)

Fecha: _____ Firma: _____

EXHIBIT A

NOTICE TO EMPLOYEES

This Notice is being posted pursuant to an agreement between the U.S. Equal Employment Opportunity Commission (EEOC) and KCD Construction, Inc. A complaint was filed with the EEOC by several employees alleging that KCD Construction, Inc. violated Title VII of the Civil Rights Act of 1964 by discriminating against Hispanic employees on the basis of their national origin. KCD Construction, Inc., denies the allegations in the complaint. In an effort to resolve the complaint, KCD Construction, Inc., has agreed to take the following steps:

KCD Construction, Inc. agrees not to engage in any type of discrimination prohibited by Title VII.

KCD Construction, Inc. will provide training to its employees, supervisors and managers regarding federal anti-discrimination laws including national origin discrimination and harassment under Title VII.

KCD Construction, Inc. will create and disseminate anti-discrimination policies to its employees, supervisors and managers outlining that national origin discrimination and harassment is prohibited.

The EEOC enforces Title VII, which prohibits job discrimination based on race, color, religion, sex or national origin, the Age Discrimination in Employment Act, the Equal Pay Act, prohibitions against discrimination against individuals with disabilities in the federal sector, sections of the Civil Rights Act of 1991, and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments. The Minneapolis office of the EEOC is located at 330 S. Second Ave., Suite 430, Minneapolis, MN 55401. The office is open from 8:00 a.m. to 4:30 p.m., Monday through Friday. Persons interested in contacting the EEOC may do so either by visiting or writing or by calling (612) 335-4040. Information can also be obtained on the EEOC's website at www.eeoc.gov.