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Equal Employment Opportunity Commission v. Red Robin Diner

Judge Bruce Kauffman

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Equal Employment Opportunity Commission v. Red Robin Diner

Keywords

EEOC, Red Robin Diner, 03-3881, Consent Decree, Disparate Treatment, Hostile Work Environment, Sexual Harassment, Terms and Conditions, Constructive Discharge, Sex, Female, Service, Title VII, Employment Law

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	Civil Action No. 03-3881
)	Judge Bruce Kauffman
)	
v.)	
)	
RED ROBIN DINER,)	
)	
)	
Defendant.)	

CONSENT DECREE

This Consent Decree is entered into by the Plaintiff, the United States Equal Employment Opportunity Commission (the "EEOC" or the "Commission") and the Defendant, Red Robin Diner ("Red Robin "), its directors, officers, agents, employees, successors or assigns.

The Commission brought this action on June 30, 2003, in the United States District Court for the Eastern District of Pennsylvania to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 2000e, et. seq ("Title VII"). The EEOC alleged that Red Robin Diner violated Title VII, by subjecting Bonnie Hopwood, Catherine Mileski, and a class of female employees to unlawful sexual harassment. The Commission further alleged that as a result of the sexual harassment and the disparate treatment in the terms and conditions of her employment, Ms. Hopwood was constructively discharged. Red Robin denies all of the allegations.

As a result of settlement discussions, and in an attempt to avoid further litigation costs, the parties to this action do hereby agree to entry of this Consent Decree (hereinafter referred to as the

“Decree”) which shall resolve fully and finally all claims which were raised by the EEOC in its Complaint filed on behalf of Ms. Hopwood, Ms. Mileski, and the class of female employees. It is the intent of the parties that this Decree shall be a final and binding settlement between the parties signatory hereto, their successors and assigns, in full disposition of all claims alleged in the Commission’s Complaint against Red Robin.

The Parties hereby agree that:

1. This Decree is entered into in compromise of the claims asserted in this civil action. Red Robin denies any wrongdoing, and this Decree shall, under no circumstances, be construed or deemed to be evidence of (i) any wrongdoing, fault, or liability; or (ii) any infirmity in the defenses that Red Robin asserted.

2. The EEOC is the agency of the United States government authorized by Congress to investigate allegations of unlawful employment discrimination, to bring civil actions based upon these allegations of unlawful practices, and to seek relief for individuals affected by such practices.

3. The parties stipulate that, pursuant to Title VII and 28 USC § 1331, the United States District Court for the Eastern District of Pennsylvania has jurisdiction over both the subject matter and the parties in this case. The parties further stipulate that venue is appropriate in the Eastern District of Pennsylvania .

4. The rights of Red Robin Diner and for those whom the Commission seeks relief are protected adequately by this Decree.

5. The entry of this Decree will further the objectives of Title VII and will be in the best interests of the parties and those for whom the Commission seeks relief.

NON-DISCRIMINATION

6. Red Robin agrees to (i) comply fully with all of the provisions of Title VII, and (ii) will avoid engaging in any employment practice which operates to harass individuals or deny equal employment opportunity based on sex in violation of Title VII.

NON-RETALIATION

7. Red Robin shall not engage in any employment practices which retaliate in any manner against any person, including any class member or person identified in this litigation, because of that person's cooperation with the EEOC with respect to the Commission's administrative investigation or this civil action. Red Robin agrees to comply with Title VII's prohibition of retaliation because of the filing of a charge, the giving of testimony or assistance, or participation in this matter, or in any investigation, hearing or proceeding under Title VII. Nothing in this Consent Decree, either by inclusion or exclusion, shall be construed to limit Red Robin's obligations under Title VII or the EEOC's authority to process or litigate any charge of discrimination under Title VII which may be filed against Red Robin in the future.

NON-ADMISSION

8. This Decree, being entered with the consent of the Commission and Red Robin shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission of liability by Red Robin Diner.

DURATION OF THE DECREE

9. The Consent Decree shall be in effect for an initial period of three (3) years from the date it is entered by the Court.

MONETARY COMPENSATION

10. Red Robin Diner agrees to pay the sum total of **Fifteen Thousand dollars(\$15,000)** to resolve this matter as follows:

(A) Red Robin shall issue a check payable to Bonnie Hopwood, and named class member, Patricia Shepherd.¹ As ordered by the Court, these checks shall be issued on or before November 16, 2005. These checks shall be sent, via United States first class mail return receipt requested, to Ms. Hopwood and Ms. Shepherd, with a copy of each to Iris Santiago-Flores, Senior Trial Attorney, at EEOC Philadelphia District Office, 21 S. 5th Street, The Bourse, Suite 400, Philadelphia, Pa. 19106. Red Robin shall also provide Ms. Santiago-Flores with any return receipts returned by the United States Postal Service. The monetary relief shall be as follows:

(B) Defendant Red Robin shall pay to Bonnie Hopwood monetary relief in the amount of **Ten Thousand dollars (\$10,000.00)**.

(C) Red Robin shall pay to Patricia Shepherd monetary relief in the amount of **Five Thousand dollars (\$5,000.00)**.

(D) In order to receive the monetary relief set forth above, Bonnie Hopwood and Patricia Shepherd will be required to execute a Release. Each class member shall be required to execute a Release in the form attached hereto as Exhibit A. The Commission will provide Ms. Hopwood and Ms. Shepherd with a Release. Upon receipt of the signed Releases, the Commission will forward them to counsel for Red Robin.

¹ No relief is sought for Ms. Mileski who is now deceased.

EQUITABLE RELIEF

11. Red Robin Diner agrees to the following injunctive relief:

SEXUAL HARASSMENT POLICY AND COMPLAINT PROCEDURE:

(A) Red Robin agrees to disseminate to all employees a sexual harassment policy and employee complaint procedure outlining Defendant's policy against sexual harassment and detailing the steps an employee should use to complain of discrimination at its Philadelphia facility, as follows:

(1) Red Robin shall maintain a written procedure against sexual harassment and for receiving and investigating discrimination complaints received from employees, beginning as of the date of this Decree;

(2) Within sixty (60) days of the execution of this Decree, Red Robin shall disseminate said sexual harassment policy and employee complaint procedure to all employees, supervisors, and managers at the Philadelphia facility;

(3) Red Robin shall conduct an investigation into the complaints in a discrete manner through designated employees, who will report to the Complainant regarding the result of the investigation within fifteen (15) days after the complaint is received;

(4) Red Robin shall make all efforts to prevent unlawful retaliation against complainants, and its written policy will state that retaliation against complainants is prohibited under Title VII.

(5) Red Robin shall disseminate the written complaint procedure referenced in this Section by paycheck enclosure or by hand delivery within sixty (60) days of the execution of this Decree.

POSTING OF NOTICE

12. Red Robin agrees that it shall post a copy of the Notice attached as Exhibit B in its Philadelphia restaurant, and in all locations at the facility where employee notices are regularly posted. The Notice shall be posted for one (1) year from the date this Decree is entered by the Court, unless otherwise ordered by the Court. Should the posted copy of the Notice become defaced, marred or otherwise made unreadable, Red Robin agrees to immediately post a readable copy of the Notice.

TRAINING

13. Red Robin agrees that it will hire an external source to conduct training at its Philadelphia facility on Title VII, and specifically sexual harassment and retaliation, within 120 days of the date of this Decree. The training will be mandatory for all managers, supervisors, and other persons with authority over other employees, regarding their obligations under Title VII. Red Robin further agrees to conduct training of all new employees, as well as new and existing managers, supervisors, and other persons with authority over other employees, regarding their rights and obligations under Title VII, at least once per year for three (3) years from the date of the Court's approval of the Decree. Red Robin agrees that within fourteen (14) days of each training session given, it will provide written verification to the Commission of the date(s) that the training was conducted, will provide an outline of the topics covered; will identify the instructors who provided the training and their qualifications, and the duration of the training.

DISPUTE RESOLUTION AND COMPLIANCE

14. In the event that the EEOC determines that a violation of this Decree has occurred, it will, before exercising any remedy provided by law, provide notice to Red Robin identifying the

alleged violations. Red Robin will have fifteen (15) days in which to investigate and respond to the allegations, unless the Commission determines there to be exigent circumstances. If these exigent circumstances exist, the Commission may immediately apply to the Court for relief. The parties shall engage in a good faith effort to resolve any dispute as to compliance prior to seeking review by the Court. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Decree. The party seeking Court intervention shall be required to give notice to the opposing party ten (10) days before moving for such review. The Court may conduct expedited discovery under the Federal Rules of Civil Procedure for purposes of determining compliance with this Decree or defending against a claim of non-compliance. The Court will have all equitable powers, including injunctive relief, to enforce this Decree.

MISCELLANEOUS

15. Nothing in this Decree, either by inclusion or exclusion, shall be construed to limit Red Robin Diner's obligations under Title VII or the EEOC's authority to process or litigate any charge of discrimination that may be filed against Red Robin in the future.

16. If any provision(s) of the Consent Decree is found to be unlawful, only the specific provision(s) in question shall be affected and the other provisions will remain in full force and effect.

17. The terms of the Decree are and shall be binding upon the present and future employees, agents, trustees, administrators, successors, representatives, and assigns of Red Robin Diner.

18. The Decree constitutes the entire agreement and commitments of the parties. Any modifications to this agreement must be mutually agreed upon and memorialized in a writing signed by Red Robin and the Commission.

19. When this Decree requires the submission by Red Robin of any documents to the

Commission, if not otherwise indicated in the Decree or Attachments, they shall be mailed by certified mail to the Regional Attorney, Philadelphia District Office, 21 S. 5th Street, The Bourse, Suite 400, Philadelphia, PA. 19106.

20. Failure by the Commission to seek enforcement of this Decree with regard to one provision shall not be construed as a waiver of its rights to do so with regard to the same or other provisions of this Decree.

21. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

22. This Consent Decree shall be filed in the United States District Court for the Eastern District Court of Pennsylvania.

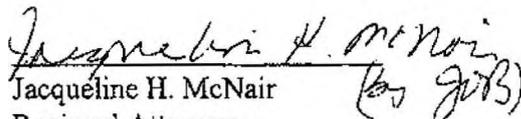
23. The Court retains jurisdiction over this case in order to enforce the terms of the Consent Decree.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

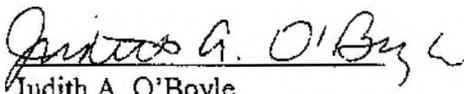
RED ROBIN DINER

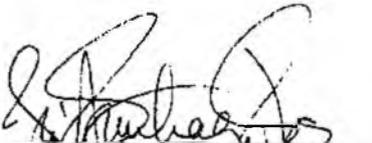
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Judith A. O'Boyle
Supervisory Trial Attorney


Iris Santiago-Flores
Senior Trial Attorney

U.S. EEOC
Philadelphia District Office
21 S. 5th Street, Suite 400
Philadelphia, PA 19106
(215) 440-2828

Nov 1, 2005
DATE

DATE

APPROVED AND SO ORDERED:

DATE

THE HONORABLE BRUCE KAUFFMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	Civil Action No. 03-3881
Plaintiff,)	Judge Bruce Kauffman
)	
v.)	
)	
RED ROBIN DINER,)	
)	
)	
Defendant.)	

RELEASE

Pursuant to the terms of the Consent Decree entered into by the Equal Employment Opportunity Commission ("EEOC") and Red Robin Diner in the above-captioned case, I, _____, do hereby waive, remit, release and forever discharge Red Robin Diner, its subsidiary companies, and any and all of the officers, directors, agents, employees, and members of such entities from any and all claims, demands or causes of action under Title VII, arising from any right or entitlement now existing until the date of execution of this Release for facts arising from or allegations made in EEOC v. Red Robin Diner, Civil Action No.03-3881, based on claims of sexual harassment and constructive discharge occurring prior to this date. This Release is freely executed in return for the good and valuable consideration set forth in the above-referenced Consent Decree.

Date: _____, 2005

SIGNATURE: _____

Sworn to and Subscribed
Before me this _____ day
of _____, 2005.

Exhibit A

EXHIBIT B

NOTICE TO ALL RED ROBIN DINER EMPLOYEES

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Red Robin Diner, Civil Action Number 03-CV-3881 (E.D. PA.), resolving a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Red Robin Diner.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e, et seq., as amended, ("Title VII"), prohibits discrimination against employees and applicants for employment based upon race, color, sex, religion, or national origin. Title VII further prohibits retaliation against employees or applicants who avail themselves of the rights under Title VII by engaging in protected activities, such as filing a charge of discrimination and/or testifying or participating in a Commission investigation. The EEOC is the federal agency which investigates charges of unlawful employment discrimination. The EEOC has the authority to bring lawsuits in federal court to enforce Title VII.

In its lawsuit, the EEOC alleged that Red Robin Diner subjected employees to harassment based on their sex and constructively discharged one of them in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Red Robin denies these allegations. To resolve the case, Red Robin and the EEOC have entered into a Consent Decree. The Decree is not, under any circumstances, an admission of liability by Red Robin.

If you believe you have been discriminated against, you may contact the EEOC at (215) 440-2600. The EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for One (1) year from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to the: Regional Attorney, EEOC Philadelphia District Office, 21 South 5th Street, Philadelphia, PA 19106.

Gregory A. McNeil
U.S. Equal Employment Opportunity
Commission

Red Robin Diner, Inc.
Red Robin Diner

DATED: November 1, 2003 DATED: November 1, 2005