

Patient Created Racially Hostile Workplace: Aide's Case Nixed.

A hospital nurses aide sued the hospital where she worked alleging racial discrimination in the form of a racially hostile work environment and in the form of retaliation for her complaints.

The aide was assigned to care for a patient who was known to make intolerable racist comments to minorities and used the "N-word" toward her.

The US Court of Appeals for the Second Circuit (New York) dismissed the suit.

Hospital Did Not Create

Racially Hostile Work Environment

A lawsuit for a hostile work environment must be supported by evidence that the harassment was sufficiently severe or pervasive as to alter the conditions of the victim's employment by creating an abusive working environment. A basis must exist for imputing the harassing or abusive conduct to the employer itself.

According to the Court, it is not enough to make out a case of a hostile work environment to say that the hospital was aware of and was unable to control the racist outbursts of a demented patient. There was no basis to say that the patient was operating on behalf of the hospital when he acted out as he did.

Hospital Did Not Retaliate For

Complaint About Patient's Behavior

The aide also alleged in her lawsuit that she was the victim of retaliation for her complaints about the patient's objectionable racist behavior.

An employer is not permitted to retaliate against an employee who opposes an employer practice forbidden by the anti-discrimination laws or who assists or participates in an investigation or legal proceeding related to charges of discrimination brought by the employee or another.

Again the Court pointed out that the patient's racist behavior was not an action or employment practice by the hospital.

The aide was assigned this patient after a nurse objected to the aide reporting a patient of hers for drug usage on the unit and had her assignments switched so she would longer work with that patient. The aide herself never claimed that race was a factor in that action, the Court said. **Wright v. Monroe Community Hosp.**, 2012 WL 3711743 (2nd Cir., August 29, 2012).

The nurses aide based her hostile work environment lawsuit on the fact that she was assigned to care for a patient who made intolerable racist comments to her specifically and was known to target minority caregivers in general with accusations and to lodge frequent complaints against them.

The patient repeatedly taunted the aide with racial epithets including the "N-word."

When the aide complained about the patient's behavior her supervisors refused to acknowledge her complaints and simply told her that the patient suffered from dementia and she would just have to learn to deal with it.

The aide did not allege in her lawsuit that her supervisor's decision to assign this patient to her was based on racism by her supervisors or hospital management.

While the patient's alleged behavior is certainly objectionable, the Court cannot conclude from the facts alleged in the aide's lawsuit that there is any reasonable basis for imputing the patient's objectionable conduct toward the aide to the hospital itself.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
August 29, 2012

Discrimination: Minority Nurse's Jury Verdict Upheld.

Two female nurses, one an immigrant from Ghana, one a Caucasian, who worked together in the emergency department, got into a physical altercation on the hospital premises.

The minority nurse claimed the other nurse started with racial epithets and then physically attacked her. The Caucasian nurse testified just the opposite, that she was the victim of an unprovoked assault.

After the incident the minority nurse was suspended without pay and then was terminated. She sued for race discrimination and was awarded \$385,000 as damages plus \$249,525 as fees for her attorneys, all to be paid by the hospital.

The Superior Court of New Jersey, Appellate Division, upheld the jury's verdict.

There were no eyewitnesses to the altercation between the minority nurse and her co-worker, although those within earshot said they heard both parties yelling at each other.

The minority nurse was automatically deemed the aggressor. She was suspended without pay, while the other nurse continued to work. Only the minority nurse was terminated.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
September 10, 2012

The Court saw further evidence of uneven discipline and an overall discriminatory climate at the hospital in the fact the minority nurse was previously reprimanded several times for temporarily leaving her post in the emergency department while her Caucasian co-workers were never reprimanded for exactly the same conduct. **Ofori v. Univ. of Medicine**, 2012 WL 3889134 (N.J. App., September 10, 2012).