Race Discrimination: Court Turns Down Nurse's Case.

An African-American nurse sued her employer for two counts of racial discrimination.

She was denied a transfer to another facility. Her supervisor had a monkey doll on a shelf in her office which the nurse considered racially offensive.

The US District Court for the Northern District of Alabama turned down her case.

Failure to Transfer

An employer is required to consider all applicants for an available position on a non-discriminatory basis regardless of race, religion, gender, national origin, etc.

The rule of non-discrimination applies only to a position which the employer has made available. In this case there was no nursing position available at the time at the other facility, so the hospital could not be considered guilty of discrimination for failing to make a position available just because the nurse expressed a desire to transfer there.

The Court went on to point out that the nurse filled out a new-hire application at the other facility, which was not the hospital's correct procedure for an existing employee who wished to receive assistance in being transferred. Failure to follow the employer's legitimate procedures can be a defense to a charge of employment discrimination.

Hostile Work Environment

The Court acknowledged that monkey imagery and name-calling can be considered racial harassment, given the historical prevalence in the US of racial stereotypes against African-American minorities.

However, even if the monkey doll she saw on a shelf in her supervisor's office was genuinely insulting and disconcerting to the nurse, her one-time encounter with the monkey doll was not sufficiently severe or pervasive as to alter the terms and conditions of her employment by creating a hostile or abusive working environment.

The doll's tiny shirt read "Cleaning Surgical Instruments Is Serious Business." It was given out by a sales rep at a national infection-control conference. It could not be interpreted to convey a racist message. The nurse was never the object of any racial slurs. **Hollings v. Noland Health, 2013 WL 978992 (N.D. Ala., March 11, 2013).**

The US Civil Rights Act is violated when the workplace is permeated with discriminatory intimidation, ridicule and insult that is sufficiently severe or pervasive as to alter the conditions of the victim's employment and create a hostile or abusive working environment.

The US Federal courts have recognized that monkey imagery and name-calling can be considered racial harassment for which the victim has the right to sue.

Given the history in the US of racial stereotypes against African-Americans, monkey imagery can easily be taken as a racial insult if there is no benign or innocent explanation.

However, even if the monkey doll on a shelf in her supervisor's office was genuinely insulting to the plaintiff, her one-time encounter with it was not sufficiently severe or pervasive as to alter the conditions of her employment and did not create a racially hostile work environment.

There is no evidence it was intended to convey a racial message and there were never any racist slurs against her.

UNITED STATES DISTRICT COURT
ALABAMA
March 11, 2013

Insubordination: Court Lets CNA's Discrimination Case Go Forward.

The nursing home had a complicated method for deciding who could go home or who would be sent home if the patient census dictated that too many non-licensed staff were present on duty.

An African-American CNA who was over forty years of age had ten years seniority at the facility and had received a near perfect score on her most recent performance review.

One day she clocked out and left the facility during her shift, after finishing up with a patient, believing she was the one who had been given the option to leave early voluntarily due to low patient census.

When confronted the next day she explained that it was just a big misunderstanding. Her supervisors treated it as patient abandonment which they deemed to be insubordination and grounds for immediate termination.

One non-minority CNA under forty years of age had at least two incidents in her file that smacked of insubordination, but she was never labeled as insubordinate or terminated.

UNITED STATES DISTRICT COURT
TENNESSEE
March 6, 2013

The US District Court for the Middle District of Tennessee saw grounds for a lawsuit for race and age discrimination.

Three other CNAs, all younger and Caucasian, had never walked off the job. However, their disciplinary histories included numerous write-ups for which they were never terminated for insubordination.

The crux of the case was the facility's decision to pick out a minority CNA's behavior and call it insubordination, grounds for immediate termination, while other non-minority CNAs pointed out for comparison were never deemed insubordinate. **Foster v. Spring Meadows, 2013 WL 829363 (M.D. Tenn., March 6, 2013).**