

VERDICTS & SETTLEMENTS

THE LOS ANGELES DAILY JOURNAL AND SAN FRANCISCO DAILY JOURNAL • FRIDAY, JANUARY 8, 1999

EMPLOYMENT LAW

Sexual Harassment Constructive Discharge

BENCH VERDICT: Defense.

CASE/NUMBER: Joseph Santo Bucaro v. Schaefer Ambulance Service, Inc. / 78154.

COURT/DATE: Orange Superior / Nov. 20, 1998.

JUDGE: Hon. Randell L. Wilkinson, Dept. 19.

ATTORNEYS: Plaintiff - Linda Hart Chandler, Shannon M. Silverman (Corona Del Mar).

Defendant - Howard M. Kneel, Lisa G. Sherman (Knee & Ross, L.A.); Steven M. Steese (Law Offices of Steven M. Steese, Gardena).

TECHNICAL EXPERTS: Plaintiff - Dennis Greenberger, Ph.D., Santa Ana.

FACTS: Plaintiff Joseph Santo Bucaro was a 22-year-old male employed by defendant Schaefer Ambulance Service Inc. (Schaefer) in its Orange County Division. He held the position of dispatcher EMT from Aug. 14, 1995, until he was promoted to field supervisor on or about Oct. 16, 1996, and remained in that position for the remainder of his employment. On July 11, 1997, plaintiff filed a complaint alleging one cause of action for sexual harassment in violation of the California Fair Employment and Housing Act against Schaefer based on the alleged conduct of Lana Waldo, his former married female supervisor who had a child. The plaintiff claimed that Waldo sexually harassed him from June 1996 to April 1997 by engaging in such things as commenting that she liked his hair long, prying into his personal life, expressing intimate feelings for him, reading him portions from the book, "The English Patient," touching his hair, giving him two gifts, brushing up against him in the hallway, and grabbing his hand and placing it against her body. The plaintiff also claimed that he complained to the regional manager of the Orange County Division on two separate occasions in October 1996, but that nothing was done in response to his complaints. Despite having knowledge of the harassment, the plaintiff further claimed that Schaefer did not conduct an investigation until April 1997 and that the investigation conducted was improper, ineffective and damaging to plaintiff in that Schaefer allegedly never spoke to plaintiff, went first to Waldo, did not conduct an investigation until the alleged harasser quit and only after plaintiff complained three times allegedly destroyed the notes of interviews and failed to maintain confidentiality. The plaintiff continued to work for the Schaefer until July 8, 1997, approximately three months after Waldo resigned her employment. As a result of the faulty investigation, the plaintiff

claimed that he was constructively discharged from his employment. Schaefer claimed that Waldo was interested in plaintiff for a brief period of time. During that time, Waldo was having marital difficulties and was confused by her feelings for plaintiff. Significantly, Schaefer contended that Waldo's feelings towards plaintiff were not rejected by him, and were openly reciprocated. Several of Schaefer's current and former employees testified that they observed plaintiff make sexual comments to Waldo, and that he openly and affectionately touched her in the workplace. Schaefer further contended that Waldo's relationship with plaintiff changed in early November 1996 when Waldo reconciled with her husband and informed plaintiff that she was going to make her marriage work. Nonetheless, plaintiff wanted to maintain a close relationship as before, but Waldo insisted that the relationship be professional and not personal. As a result, Schaefer claimed that plaintiff refused to work with Waldo. Waldo responded by trying to distance herself from him. Waldo voluntarily resigned her employment on April 22, 1997. The plaintiff brought this action against the defendant based on sexual harassment and gender discrimination theories of recovery.

CONTENTIONS: The plaintiff contended that he was subjected to ongoing, unwelcome sexual conduct by Waldo that created a sexually abusive work environment for him. The plaintiff contended Schaefer was liable, even without knowledge as the sexual harassment was perpetrated by a supervisor. The plaintiff denied at trial that he engaged in similar conduct towards Waldo in the workplace. The plaintiff further contended that he was physically and emotionally scarred because of Waldo's alleged conduct. The plaintiff also contended that he was required to reveal the details of his sexual harassment claim to various public employers when he applied for employment and, as a result, he was rejected for employment.

The defendant contended that any conduct that occurred was harmless, inoffensive and not unwelcome and did not create a sexually abusive working environment. The defendant also contended that even though it had a written policy prohibiting sex harassment that was disseminated to all its employees, plaintiff never complained to anyone listed or referred to in the policy; that its investigation was irrelevant because there could be no liability based on an employer's failure to take all reasonable steps to prevent harassment where there was no underlying harassment in the first instance; that it conducted

a prompt and thorough investigation; and that plaintiff could not pursue a claim for constructive discharge because he did not allege such a claim in his complaint or in the charge of discrimination he filed with the Department of Fair Employment and Housing. The defendant also contended that plaintiff did not lose any wages when he left since he took a job with another ambulance company at the same rate of pay. In addition, Schaefer contended that plaintiff was not rejected from employment because he was forced to reveal his sexual harassment claim, but that he had repeatedly been rejected from similar positions before making his sex harassment claim. Schaefer also contended that plaintiff's claim for damages for physical, emotional and psychological suffering caused by Waldo's alleged conduct were non-existent and that plaintiff did not consult with a psychologist until March 1998, almost a year after Waldo left Schaefer and nine months after he left Schaefer.

DAMAGES: The plaintiff claimed that he lost approximately \$700,000 in wages by not having been hired by the Sheriff's Department.

BENCH TRIAL: Length, four days.

SETTLEMENT DISCUSSIONS: The plaintiff made a settlement demand for \$1 million. The defendant made no offer.

OTHER INFORMATION: The verdict was reached approximately one year and three months after the case was filed.