

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

**UNITED STATES EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION,**

**Plaintiff,**

**-vs-**

**Case No. 2:04-cv-484-FtM-29DNF**

**RT TAMPA FRANCHISE, L.P.,**

**Defendant.**

**AMANDA ROENIGK,**

**Intervenor.**

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**ORDER**

This cause came on for consideration on the following motion(s) filed herein:

**MOTION: PLAINTIFF EEOC'S MOTION TO QUASH OR MODIFY  
SUBPOENA AND FOR PROTECTIVE ORDER (Doc. No.  
34)**

**FILED: March 23, 2005**

**THEREON it is ORDERED that the motion is GRANTED.**

The Plaintiff EEOC is requesting that the Court quash or modify the subpoena issued by the Defendant RT Tampa Franchise, L.P. (RT Tampa") to Amanda Roenigk's present employer the Cape

Crab and Steak House (“Crab House”). Plaintiff brought this action against the Defendant based upon a claim of sexual harassment. Ms. Roenigk claims to have been sexually harassed by her direct supervisor. RT Tampa is requesting Ms. Roenigk’s entire personnel file from the Crab House which is her present employer. The EEOC claims that the subpoena for the entire personnel file is overly broad, the information requested is not relevant, and does not appear likely to lead to the discovery of admissible evidence.

Initially, the Court must determine whether the EEOC has standing to bring a motion to quash or a protective order concerning a subpoena served on a third party, the Crab House. In the absence of a claim of “personal right or privilege”, a party generally does not have standing to object to a subpoena directed to a non-party. *Minnesota School Bd. Assoc. Insur. Trust v. Employers Ins. Co. of Wausau*, 183 F.R.D. 627, 629 (N.D. IL 1999). Personnel files do contain personal information that arguably provides the EEOC and Ms. Roenigk with standing to contest the subpoena.

The remaining issue is whether the subpoena for Ms. Roenigk’s entire personnel file is overly broad. The EEOC concedes that Ms. Roenigk’s wage records and employee benefits information from her personnel file are relevant and should be produced. The Court will also require the Crab House to provide any documentation regarding Ms. Roenigk’s unreported wages<sup>1</sup> and any policies of the Crab House that are found in Ms. Roenigk’s personnel file regarding reporting tip income.

RT Tampa argues that it needs Ms. Roenigk’s entire personnel file to determine why Ms. Roenigk’s earnings declined in the fourth quarter of 2004. The EEOC stated in its Motion that Ms. Roenigk’s back pay calculations for the last quarter of 2004 were not complete when served and the

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<sup>1</sup> RT Tampa alleges that Ms. Roenigk had unreported wages in the form of tips while she worked for RT Tampa, and may have unreported wages at the Crab House. RT Tampa is permitted to discover any documents which support Ms. Roenigk earning unreported wages.

EEOC reserved its right to amend its backpay calculations when more information becomes available. (Motion, ftnt. 3).<sup>2</sup> RT Tampa is requesting information that would show why Ms. Roenigk's earnings decreased in the fourth quarter such as documentary evidence as to misconduct, poor performance, or potential personal choices regarding a reduced work schedule. The Court finds that if Ms. Roenigk's earnings for the fourth quarter of 2004 were down, RT Tampa is entitled to a full disclosure of all documentation in Ms. Roenigk's personnel file as to why the earnings were down for this quarter. Therefore, the EEOC shall provide an accurate calculation of Ms. Roenigk's earnings for the last quarter of 2004, and if this calculation shows that Ms. Roenigk's earnings were decreased, then RT Tampa is permitted to discover any records in Ms. Roenigk's personnel file which show the reason why her wages were less for that quarter including documentation showing misconduct, poor performance, or potential personal choices regarding a reduced work schedule.

The Court finds that RT Tampa has failed to show that other documents that may be found in Ms. Roenigk's personnel file would be relevant in this action. Therefore, the Court will limit the subpoena as stated above.

**IT IS FURTHER ORDERED:**

(1) The subpoena for all of Ms. Roenigk's personnel file from the Cape Crab and Steak House is quashed. The EEOC has an obligation to notify the Cape Crab and Steak House of this decision, and that it does not have to comply with the present subpoena.

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<sup>2</sup> The EEOC should have provided an updated calculation of Ms. Roenigk's earnings as requested for the fourth quarter by the time of her deposition.

(2) Within five (5) days from the date of the Order, the EEOC shall provide an accurate calculation of Ms. Roenigk's earnings for the fourth quarter of 2004.

(3) RT Tampa has leave to serve another subpoena which is limited in its request to the following information:

- a) All records that pertain to wages including reported and unreported earnings.
- b) All records regarding employee benefits information.
- c) All records regarding the policies and procedures of the Crab House relating to reporting tip income.
- d) All records that reflect why Ms. Roenigk earned less in the fourth quarter of 2004, including but not limited to documentary evidence as to misconduct, poor performance, or potential personal choices regarding a reduced work schedule.

**DONE** and **ORDERED** in Chambers in Ft. Myers, Florida this 19th day of April, 2005.

  
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DOUGLAS N. FRAZIER  
UNITED STATES MAGISTRATE JUDGE

Copies:  
All Parties of Record