

E.E.O.C. v. Minnesota Beef Industries, Inc.

D.Minn.,2004.

Only the Westlaw citation is currently available.

United States District Court,D. Minnesota.

EQUAL EMPLOYMENT OPPORTUNITY COM-
MISSION, Plaintiff,

andSheila KUTZ Plaintiff-Intervenor,

v.

MINNESOTA BEEF INDUSTRIES, INC., Defend-
ant.

No. Civ.02-CV-810(DSD/SR.

May 17, 2004.

[Jean P. Kamp](#), Regional Attorney, Equal Employment Opportunity Commission, Milwaukee District Office, Milwaukee, WI, Tina Burnside (WI 1026965), Senior Trial Attorney, Equal Employment Opportunity Commission, Minneapolis Area Office, Minneapolis, MN, for Plaintiff.

[Celeste Culberth](#), [Leslie Lienemann](#), Culberth, Liene-
mann and Stratton, St. Paul, MN, for Plaintiff-Intervenor.

[William J. Egan](#), [William J. Egan](#), PLC, Edina, MN, for Defendant.

CONSENT DECREE

[DOTY](#), J.

*1 This action was filed by the Equal Employment Opportunity Commission ("EEOC") on April 17, 2002, pursuant to Title VII of the Civil Rights Act of 1964, as amended, [42 U.S.C. § 2000e](#), *et seq.* In its complaint, the EEOC alleges that Defendant, Minnesota Beef Industries, Inc. ("Defendant") discriminated against Sheila Kutz by paying her less than male quality control supervisors, and subjecting her to a sexually hostile work environment. As a result of the discrimination, Kutz was constructively discharged from her employment. Kutz intervened in the lawsuit by bringing claims under Title VII and the Minnesota Human Rights Act.

Defendant denies that it has committed any of the violations alleged by the EEOC and Kutz. The EEOC, Defendant, and Kutz (hereinafter referred to as "the

parties") have agreed to settle these claims in order to reach an amicable resolution of this matter and avoid further litigation. The terms of the agreement are set forth below.

I. Non-Monetary Terms

A. Compliance with Title VII

Defendant agrees that it will not condone or tolerate acts of sex discrimination and/or sexual harassment as prohibited by [42 U.S.C. § 2000e](#), *et. seq.* Defendant also agrees that it will not condone or tolerate acts of retaliation against any employee or former employee for exercising the right to oppose any practice made unlawful employment practice by Title VII, and to make a charge, testify, assist, or participate in an investigation, proceeding or hearing under [42 U.S.C. § 2000e](#) *et. seq.*

B. Impact Upon the EEOC's Processing

The EEOC does not waive or in any manner limit its right to process or seek relief in any other charge or investigation based upon allegations not included in the above-captioned case.

C. Training

Defendant shall provide training, specifically on sexual harassment and sex discrimination to all of its personnel, including owners, supervisors and managers within six months after the Consent Decree is entered by the Court, and agrees to continue to provide orientation to new employees, at its expense, relating to Defendant's obligation to maintain a work environment free from discrimination and harassment on the basis of sex, and regarding Defendant's obligation not to retaliate against individuals who complain about discrimination in the workplace. This training will also instruct all employees on the policies and procedures of reporting, responding to and investigating claims of sex discrimination including harassment.

D. Creation and Dissemination of Anti-Discrimination Policy

Defendant shall certify to the EEOC that it has an anti-discrimination and anti-harassment policy. Such policy will specifically outline procedures for reporting and investigating complaints of sex discrimination, and will include the names of persons to whom discrimination complaints should be made. If no such policy exists, Defendant shall create such a policy within 30 days. This policy shall be disseminated to all employees.

E. Posting of Notice

*2 Defendant agrees to post the notice (Exhibit A hereto) in its facility in a clear and conspicuous location customarily used for the posting of employee notices. Defendant agrees to post this notice within five calendar days of approval of this Consent Decree by the Court, for 90 consecutive calendar days.

F. Removal of References to EEOC Charge/Lawsuit from Personnel File

Defendant shall remove from Kutz's personnel file any record or indication that relates to her charge filed with the EEOC, the investigation, litigation, or resolution of the charge.

G. Positive Reference

When and if Defendant is contacted by a prospective employer of Kutz's for an employment reference, Defendant shall provide positive reference information, consisting of dates of employment, positions held, and that Kutz was a good employee who performed her job well and efficiently.

H. Record-keeping and Reporting

For five years from the date of this Consent Decree, Defendant shall document and maintain records related to every complaint that it or any manager or supervisor receives from any employee alleging sex discrimination or sexual harassment. During this period, Defendant shall also provide the EEOC with semi-annual reports, with the first report being due five months after the Final Order. Defendant shall provide the EEOC with a report every six months thereafter throughout the term of this Decree. The reports shall include the following information for each

complaint known to Defendant: the name, address, telephone number, and social security number of all employees at Defendant's facility, if any, who, during the reporting period, complained either verbally or in writing about sex discrimination and/or sexual harassment; the date and nature of each complaint; the identity of each person to whom each complaint was made; and the action taken by Defendant in response to each complaint. Finally, the EEOC may inspect Defendant's premises, interview employees and examine and copy documents. The EEOC shall give written notice one week prior to coming on the premises for inspection.

I. Enforcement of Consent Decree

If at any time during the effective date of this Consent Decree, the EEOC believes that a violation of this Decree has occurred, prior to exercising its right to move to compel enforcement, the EEOC shall give written notice detailing the perceived violation to Defendant. Defendant shall have thirty (30) days from receipt of written notice to investigate and respond in writing to the allegation that a violation has occurred. Thereafter, the parties shall have a period of thirty (30) days, or such additional period as may be agreed upon in writing by them, in which to engage in negotiation and conciliation regarding any alleged violation before the EEOC may move to compel compliance.

J. Certification to the EEOC

Within 10 calendar days following compliance with the posting, training and creation/dissemination of anti-discrimination policy provisions of this Consent Decree, Defendant will notify the EEOC of such compliance through a letter from an appropriate representative.

K. No Other Agreements

*3 This Consent Decree constitutes the sole agreement among all of the parties concerning the settlement of the above-captioned lawsuit. In addition, Kutz and Minnesota Beef Industries, Inc. have also entered into a separate Confession of Judgment and Warrant of Attorney Agreement and a private Allocation Agreement, in connection with issues arising

solely between them. The parties agree that no promises or inducements have been made except as set forth in this Consent Decree and the Confession of Judgment and the Warrant of Attorney Agreement and Allocation Agreement between Kutz and Minnesota Beef Industries, Inc., and that there are no other agreements, written or oral, express or implied, between or among the parties concerning the subject matter of this lawsuit.

L. Enforcement of Terms of Consent Decree and Jurisdiction

Upon execution of the Consent Decree by the parties, the parties will execute a Stipulation for Dismissal with Prejudice, pursuant to [Fed.R.Civ.P. 41\(a\)\(2\)](#), to dismiss this case without costs to the parties, with the Court to reserve jurisdiction to enforce the terms of the Consent Decree. The affirmative obligations under this Consent Decree shall be effective and binding upon the parties for the period of five calendar years from its final approval by the Court. This Court shall retain jurisdiction of this action for the purpose of enforcing this Decree and entry of such further orders as may be necessary or appropriate for the same period of time, except that, if any party has, prior to the expiration of the five year period, commenced proceedings to compel compliance, this Court will retain jurisdiction of the action until all issues relating to such compliance proceedings have been resolved. At the end of the five year period, or as soon as all enforcement issues (if any) have been resolved, whichever occurs last, this Court will dissolve the Consent Decree and will dismiss this action with prejudice without further motion by any party.

II. Monetary Relief

A. Settlement Amount

Defendant agrees to settle this case for \$140,000.00, which will be divided into two payments. The first payment will be for the gross amount of \$90,000.00. This payment will be issued in two separate checks: one payable to Sheila Kutz for the gross amount of \$51,132.82, and the other to her attorneys, Culberth, Lienemann and Stratton, LLP for \$38,867.18. The first payment is payable within 10 calendar days after

this action is dismissed pursuant to this Consent Decree.

The second payment will be for the gross amount of \$50,000.00, which is payable on January 15, 2005. This payment will again be issued in two separate checks: one payable to Sheila Kutz for the gross amount of \$33,335.00, and the other to her attorneys, Culberth, Lienemann and Stratton, LLP for \$16,665.00.

The checks shall be sent by certified mail, return receipt requested, to Kutz and her attorneys, Culberth, Lienemann and Stratton, LLP, respectively, and copies of the checks shall be mailed simultaneously to the undersigned counsel for the EEOC.

***4** With respect to the payments made to Sheila Kutz, Defendant will pay the employer's share of required withholdings, if any, including Social Security. Neither the EEOC nor Defendant make any representation, or assume any responsibility for any tax liability, assessments, interest, penalties and/or costs that Kutz may or may not incur on such payments under local, state and/or federal law.

The amounts of settlement shall be secured by a Confession of Judgment and Warrant of Attorney Agreement (Exhibit B hereto) in the amount of \$175,000.00, less the amount or amounts, if any, paid to date of entry of the Confession of Judgment.

I have read the foregoing Consent Decree, and accept and agree to the provisions contained therein.

ORDER

SO ORDERED.

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Not Reported in F.Supp.2d, 2004 WL 1908292 (D.Minn.)

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