

5.1.9: Case Study: Skanska USA Building to Pay \$95,000 to Settle EEOC Racial Harassment and Retaliation Lawsuit

Building Contractor Ignored Complaints of Racial Harassment and Fired Black Employees in Retaliation, Federal Agency Charges

MEMPHIS, Tenn. - Skanska USA Building, Inc., a building contractor headquartered in Parsippany, N.J., will pay \$95,000 to settle a racial harassment and retaliation lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

According to the EEOC's suit, Skanska violated federal law by allowing workers to subject a class of black employees who were working as buck hoist operators to racial harassment, and by firing them for complaining to Skanska about the misconduct. Skanska served as the general contractor on the Methodist Le Bonheur Children's Hospital in Memphis, where the incidents in this lawsuit took place. The class of black employees worked for C-1, Inc. Construction Company, a minority-owned subcontractor for Skanska. Skanska awarded a subcontract to C-1 to provide buck hoist operations for the construction site and thereafter supervised all C-1 employees while at the work site.

The EEOC charged that Skanska failed to properly investigate complaints from the buck hoist operators that white employees subjected them to racially offensive comments and physical assault. The EEOC alleged that after Maurice Knox, one of the buck hoist operators, complained about having urine and feces thrown on him at the job site, Skanska cancelled its contract with C-1 Inc., and immediately fired all of its black buck hoist operators. With assistance from the Memphis Minority Business Council's president, Skanska reinstated the contract with C-1 and recalled the black buck hoist operators to work. The white employees, however, continued to subject the buck hoist operators to racial harassment on a daily basis.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed suit (*EEOC v. Skanska USA Building, Inc.*, Civil Action No. 2:10-cv-02717) in U.S. District Court for the Western District of Tennessee after first attempting to reach a pre-litigation settlement through its conciliation process.

During litigation, Skanska asserted that it did not employ the sub-contracted buck hoist operators. The U.S. District Court for the Western District of Tennessee ruled in favor of Skanska, granting summary judgment. After the EEOC appealed, the U.S. Court of Appeals for the Sixth Circuit reversed the ruling and remanded the case. The Sixth Circuit acknowledged that it had not previously applied the joint employer theory in a Title VII case. According to the joint employer theory, two separate entities are considered to be joint employers if they share or co-determine essential terms and conditions of employment. The Sixth Circuit adopted the joint employer theory in the Title VII context and held that there was sufficient evidence to hold Skanska liable as a joint employer because Skanska supervised and controlled the day-to-day activities of the buck hoist operators.

Besides the \$95,000 in monetary relief, the three-year consent decree settling the lawsuit enjoins Skanska from subjecting employees to racial harassment or retaliating against any employee who lodges a discrimination complaint. The consent decree also requires defendant to provide in-person training on race discrimination and retaliation, maintain records of any complaints of racial harassment, and provide annual reports to the EEOC. Knox intervened in the EEOC's lawsuit and settled his claim separately for an undisclosed amount.

"Employees should not have to endure a racially hostile work environment to make a living," said Faye Williams, regional attorney for the EEOC's Memphis District Office, which serves Tennessee, Arkansas, and portions of Mississippi. "This case highlights the importance of companies providing training in the workplace on anti-discrimination laws for its employees."

According to company information, Skanska USA Building, Inc. is a building contractor with approximately 3,000 employees and 26 offices nationwide. Skanska acts as a general contractor for many construction sites, including the Methodist Le Bonheur Children's Hospital in Memphis, which was completed in 2010.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

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