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PENNSYLVANIA EMPLOYMENT LAW Summary Judgment Granted



Christina M. Rogers-Spang

Kelly Young was hired as a truck driver by J.B. Hunt Transport, Inc., in August 2008. In March 2010, one of Young's co-workers made a sexually graphic motion to Young. At that time, Young did not report the incident. In May 2010, the same co-worker called Young a "f****g b****h" and made a sexually charged and explicit comment about Young to a customer while in Young's presence. Young reported both of these incidents to a supervisor. J.B. Hunt promptly investigated Young's claims and took appropriate action against the accused co-worker.

Also during the course of her employment with J.B. Hunt, Young was involved in several workplace and safety-related incidents. These incidents involved Young's tractor recording hard brake events on March 23, 2010, November 26, 2010, and February 17, 2011. After each event, verbal coaching was given to Young. On May 29, 2010, Young was observed veering toward the shoulder of the road and cleaning her mirrors and windows while driving. As a result, Young was required to complete safety training. On June 21, 2010, Young was involved in a collision and, the following day, was suspended without pay for three days and placed on probation for three months. On October 26, 2010, Young was cited by the Connecticut Department of Transportation for having faulty rear tail lights. As a result, Young was asked to complete training on equipment inspections. On March 3, 2011, Young was involved in a "safety incident" while making a delivery. Three door hinges broke when a bungee cord snapped, allowing a rear door to swing loose and strike the delivery dock. That same day, Young was suspended without pay for one day, placed on probation for six months and cautioned to be "more aware of wind conditions and to verify the condition of the bungee cord when securing the trailer door." Finally, on March 10, 2011, Young was observed traveling at speeds too fast for weather conditions, failing to maintain the proper following distance behind other vehicles, and failing to safely change lanes. She was required to complete safety training.

While still employed by J.B. Hunt, and after the aforementioned workplace and safety incidents transpired, Young filed a lawsuit claiming that she was discriminated against based upon her gender in violation of Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. Section

2000(e) *et seq.* and the Pennsylvania Human Relations Act (PHRA), 43 P.S. Section 951, *et seq.* Young also claimed that she was retaliated against after she reported the instances of harassment because she was asked to undergo safety training (after she was observed swerving to the side of the road on May 29, 2010); was given an unpaid three-day suspension and three-month probation following a June 21, 2010 auto accident and an unpaid, one-day suspension and six-month probation (after the March 3, 2011 accident wherein three door hinges broke when a bungee cord snapped, allowing the rear door of Young's trailer to swing loose and strike the delivery dock).

J.B. Hunt Transport filed a motion for summary judgment and, in her opposition, plaintiff opted not to respond to the arguments made by defendant which established that Young's gender discrimination claim could not prevail and, thus, the only argument addressed by the Court was whether there was retaliation against Young.

In order to survive summary judgment on a claim of retaliation, plaintiff must show there is: (1) protected activity, (2) materially adverse action, and (3) a causal link between the protected activity and the materially adverse action. The Court found that Young established the first prong of her case, as Young's complaints to her supervisors in May 2010 were protected activities.

The Court then noted that it was established that an action is materially adverse if it "well might have dissuaded a reasonable worker from making or supporting a charge of

discrimination." Young claimed that the requirement that she complete safety training following the May 29, 2010 observation, the unpaid three-day suspension and three-month probation following the June 21, 2010 collision and the unpaid, one-day suspension and six-month probation following the March 3, 2011 safety incident were materially adverse actions. The Court held that the safety training was not a materially adverse action; however, the unpaid suspensions and periods of probation were materially adverse.

Young attempted to show a pattern of retaliation by pointing to instances of discipline following her May 17, 2010 complaint. The Court noted that between May 17, 2010 and June 22, 2010, the date of her first suspension and probation, Young's performance was corrected only once—on May 29, 2010, following an observation review. It was noted that one instance of discipline was insufficient to show a pattern between her making a complaint and the discipline. Further, it was determined that the period of time between Young's May 17, 2010 complaint and her suspension and probation on March 3, 2011 was not unusually suggestive of a causal link between Young's protected activity and the materially adverse action. In the end, it was determined that J.B. Hunt responded consistently to workplace and safety-related incidents Young was involved in and J.B. Hunt was not motivated by her complaint. As a result, the Court found that Young failed to establish a *prima facie* case of retaliation and dismissed her Complaint.

Kelly Young v. J.B. Hunt Transport, Inc., United States District Court for the Eastern District of Pennsylvania, Civil Action No. 5:11-cv-05518

Christina M. Rogers-Spang concentrates her practice on employment law matters and the defense of commercial motor vehicle companies and their insurers. She is experienced in the area of employment litigation and provides counseling to clients on employment matters arising under numerous state and federal statutes including the FMLA, ADA, ADEA, Title VII, NYSHRL, PHRA and NJLAD. Christina has represented public and private sector clients in federal and state court, as well as before administrative agencies. She earned her J.D. from Pace University School of Law in 1996 and her B.S., *cum laude*, from the State University of New York at Albany in 1993. She is admitted to practice in the state courts of Pennsylvania, New York and New Jersey as well as the U.S. District Court for the Eastern District of Pennsylvania, the U.S. District Court for the District of New Jersey and the U.S. District Courts for the Southern, Eastern, Northern and Western Districts of New York.

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