

THE EMPTY MEAT COUNTER

Background

Leslie Parks, a black Market Manager for Bruneo's Inc., is demoted after over 2 years of service in the job because of a result of claims that he failed to perform the job efficiently. Specific events such as a failure to order and maintain a variety and/or quantity of meats in the meat case, allowing the counter to go bear during holiday weekends, and overall failing to perform the position adequately were given to Mr. Parks prior to and at the time of his termination.

Park's Position

Mr. Parks recalls that from the start he was warned that the store personnel were rednecks and racists. During his first day on the job, the store manager told him that he did not want him and that if he did not do a good job he would be transferred out of the store.

Parks states that it is not unusual for a counter to go bear because of the number of variables that cannot be predicted, and that the events given for his demotion are isolated and overall his performance was satisfactory. Further, Parks questions that if his skills in ordering stock were so weak why did the Company not caution him or even assist him in improving his performance. In addition, Parks points out that for the five months preceding his

demotion he had exceeded the budget gross profits and averaged for the 5 months period 108.28% of targeted gross profits. This, Parks claims, creates question to his inability to perform the job effectively. As a result Parks is alleging that his termination as Market Manager was arbitrary and capricious and based in part on his race.

Lastly, Parks points to the employee handbook where the Company writes that employees who are promoted and then within one year are demoted should be returned to the store from which they were in prior to being promoted. Parks claims that this implies that after one year on the job the employee should have job tenure and the policy would act as a job guarantee.

The Company's Position

The Company claims that Parks has no evidence of discriminatory treatment and that if the Store Manager had had a plan to get rid of Parks that he would have initiated this plan long before the 2 year period. Moreover, that Parks claim of these events being isolated was just not true, but instead that he consistently did not perform the job. The Company further claims and provides evidence that Parks was warned and told he must improve. Further, Parks' performance evaluations had typically ranked his performance poor and unsatisfactorily although these were not provided as evidence.

Further, the Company states that the profit margin does not reflect the performance of a worker but that too many other variables go into a department's gross profit margin.

10. THE EMPTY MEAT COUNTER

1. What do you see as the central issue in this case? Explain why?
2. Describe how Parks is using Race in the case.
3. Discuss how profit margins were used and if this is sound logic.
4. How would you decide? Why?

PUT IT IN THE WANT-ADS

Background

Mary Letson worked with the San Francisco Newspaper Agency as a voluntary telephone salesperson in the Classified Advertising Department from August, 1978 until January, 1979. She left the agency at that time because her husband was transferred. Approximately three months later, she applied for another position in the Classified Department. The agency again hired her as a voluntary telephone salesperson. Her duties in this position were to accept advertisements from customers and assist employees at the "sale desk" as needed.

Letson's employment in this department extended over three years, during which time she substituted for outside salespersons on a vacation relief basis. During the three year time span, she accumulated approximately two month's experience as an outside salesperson.

On August 27, 1983, the agency advertised four outside sales positions. Letson applied for one of these, along with numerous other employees. Letson was selected as one of eighteen "internal" applicants to be interviewed. She received average ratings on her interview evaluation and was not hired into the position. She then filed a grievance against the agency on September 19, 1983, in which she claimed she had not been given "special consideration" because of her race (she was black) as called for in the company's policy manual.

On September 22, 1983, the agency again announced an opening in outside sales. Letson filed another application, was again interviewed and rated as average, and did not receive the job. She did not file a grievance in this instance.

Through a Settlement Agreement between Letson and the agency, she was given a trial period in the outside sales area. The trial was to last for 13 weeks, after which time Letson could be permanently assigned to the position or returned to voluntary telephone sales, depending on her performance.

Letson was given the Vacation Relief/Special Projects Territory as her assignment.. The person who held the position prior to Letson had been promoted to a geographical territory. While Letson was working her trial period, two permanent outside salesperson positions became available, but Letson was not moved into either one.

At the end of the thirteen weeks, Letson was returned to the voluntary telephone sales position. Her supervisors felt she had not adequately proven her abilities. She argued the agency had violated the terms of the Settlement Agreement and had not given her "special consideration".

The Agency's Position

In order to settle the original grievance filed by Letson, the agency made enormous efforts to assist her in promotional opportunities. Interviewers who talked with Letson about the outside sales positions prior to the agreement had recommended

certain areas which needed improvement if she wished to be a success in her endeavors. These included further training, increased knowledge of sales techniques, and improvement in persuasive speech.

Through the terms of the Settlement Agreement, Letson was given an opportunity to increase her abilities in these areas. She was to work with other outside salespersons in order to learn more about sales techniques and styles. She was also given the opportunity to develop her own initiative and creativity through sales meetings.

Letson missed several outside sales meetings, demonstrated a lack of knowledge in sales techniques and approaches, received low test scores, experienced difficulty in making sales presentations, and generally showed little, if any, improvement during her trial period. She also began experiencing medical problems, which she blamed on the pressure and stress associated with the outside sales position. Due to these facts, the agency felt justified in returning Letson to her former position.

Letson's Position

Letson felt that the agency had passed her by for a promotion into the outside sales positions because of her race. She was black, and felt the agency was definitely acting out of discrimination toward her. She filed the original grievance and won a chance to prove her abilities through the Settlement Agreement.

The agency was to give her a 13 week trial period in outside sales. She then was to be moved into a permanent position. Unfortunately, the territory she received did not please her and she

was unable to meet the standards of her supervisor.

She felt that the agency had violated the Settlement Agreement by placing her in the Vacation Relief/Special Projects Territory. Other outside salespersons had regular geographical territories. Because of this, Letson felt she was again being discriminated against. She said the agency had given her an assignment which was "programmed for failure" because of her race.

11. PUT IT IN THE WANT-ADS

1. Was Letson given "special consideration"? Why should she? Explain.
2. Was the company policy referred to in the case, legal?
3. Did the agency take enough steps to remedy the situation?
4. Could the other employees have claimed reverse discrimination or preferential treatment?
5. How would you find in this case? Explain.

YES, I DID OFFICER

Background

Marvin Summers and George Hillsdale were both employed by Peninsular Steel Company. Hillsdale is a black man, Summers a member of another minority. As such, they were both protected by company policy. All employees were made aware of Peninsular Steel's position on racial harassment and the resulting disciplinary action. The company believed that it had no choice but to uphold racial protection, since the matter was mandated by the Federal government.

On Monday, May 13, 1985, Hillsdale opened his locker at work and discovered that it had been vandalized over the weekend. Someone had placed industrial soap in his shoes. He also found a note pinned to his uniform, which read "Go to hell nigger, So, you'll try to get rid of the union." Hillsdale took the note to his supervisor, who took no action. He then took it to the General Manager of the plant, who notified the local police department.

The representative from the police department provided the company with information about a handwriting specialist. By comparing sign-out slips, this specialist determined that there was sufficient evidence to place blame for the note on Summers. Despite the fact that the policy against racial harassment stated termination would be the ensuring remedy, Summers admitted to writing the note. The company asked Summers to resign. When he

refused, he was terminated.

The Company's Position

Peninsular Steel had a stated policy against racial harassment in the work place. All employees were made aware of the policy and its consequences.

Despite this fact, Summers wrote and placed the note in Hillsdale's locker. The occurrence of the racially-based event was never denied. To remain consistent in its actions, and to prevent being guilty of probable disparate treatment allegations, the company had no other options but dismissing Summers. Further, Summers' personnel record clearly showed him to be a "problem employee". No other prior actions were considered in the decision.

Summers' Position

Summers acted as the Union steward for Peninsular Steel. He expressed on several occasions that he felt his termination was strictly related to this fact. He brought forth a witness who stated that company officials had issued instructions to get him out of his job, and he argued that was the only evidence against him. He considered this action a clear example of employer retaliation.

Summers readily admitted to writing the note. However, he claimed racial slurs were accepted "shop talk", and no one took offense to them and if management used such language as a basis for termination that this was not just cause. He also used as a defense that he was a member of a minority himself, and had several black

friends. He stated that this should prove he was not a bigot involved in racial harassment, but rather a victim of the company's vendetta to eliminate union members from it employ.

12. YES, I DID OFFICER

1. Are racial terms ever acceptable "shop talk"? Is so, when do they become unacceptable?
2. Is a written comment more prosecutable than a verbal comment? Explain.
3. What constitutes racial harassment?
4. How would you decide in this case? Explain.

MANAGEMENTS' USE OF RACE AS A SUBJECTIVE SELECTION FACTOR

Background

Hyatt Regency Oakland had two classifications of non-supervisory engineers: utility engineers and stationary engineers. Utility engineers performed more preventive maintenance and minor repairs while stationary engineers were responsible for the plumbing and electrical work and equipment. Because of the greater responsibility and training required, stationary engineers were paid more.

Clark Hammond was hired on June 8, 1983, as a utility engineer. On August 22, 1988, Hyatt promoted Lee Pott to an available stationary engineering job. Pott's seniority date is June 20, 1983.

Although there is some dispute if Hyatt posted the job properly (the notice cannot be found), there is no dispute in that Hammond did not apply for the new stationary engineering position. The supervisor heard however that Hammond was interested and reviewed his personnel file. However, because the supervisor had supervised both Hammond and Pott, he was familiar with both men's work record.

Pott was considered to be an exceptional employee requiring little to no supervision and willing to any job assigned. Moreover, Pott had taken classes in blueprint reading, carpentry, and mechanics. As evidence of Pott's work skills, he was awarded the "Spirit of Excellence" award on three occasions.

Hammond was seen as a trouble-maker. His record shows a history of failure to complete work, taking shortcuts, and absence from worksite. Hammond had been warned in writing on three occasions of these policy violations.

The company had a policy of promoting based on seniority when the candidates were determined to be equal but the supervisor in this case felt Pott was more superior and he awarded the job to Pott.

Hammond's Position

Clark Hammond claims he was denied promotion to stationary engineering due to racial discrimination. Hammond admits to being an outspoken black man who expects to be treated fairly and with respect. Because of his temperament he had in the past engaged in a disagreement with co-workers and his supervisor although Hammond alleges this conduct was always provoked.

Hammond testifies that the organization knew of his interest in the available position because of a comment made by Hammond to his supervisor just before the position was made available. Moreover, although Hyatt Regency does not have a policy of promoting based on seniority, Hammond believes that when competing applicants are substantially equal, seniority should be the deciding factor. Hammond adds that he is a good worker and although Pott's evaluations are more favorable, this was because of racial discrimination against him.

The Organization's Position

Hyatt argues that the available stationary engineering job was posted properly and if Hammond had wanted the job he should have made application. But even if Hammond had applied, the use of seniority would not be an issue not only because of a lack of a policy regulating such treatment but also because Hammond and Pott were not substantially equal. Pott's work and performance evaluations had always been superior to Hammond's.

Management adds that although Hammond's supervisor found fault with his work, each of his earlier supervisors had also rated Hammond's performance poor.

As a result of the unsatisfactory work record of Hammond and the superior work history of Pott the decision was not based on race.

13. MANAGEMENT'S USE OF RACE AS A SUBJECTIVE SELECTION FACTOR

1. What should be looked at to determine racial bias?
2. Has the organization used subjective criteria in selection?
Explain.
3. How would you decide the case? Explain your opinion.