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EEOC v. JA & P Restaurants, Inc. dba Crechale's Restaurant

Judge Keith Starrett

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EEOC v. JA & P Restaurants, Inc. dba Crechale's Restaurant

Keywords

EEOC, JA & P Restaurants, Crechale's Restaurant, Consent Decree, 2:05cv2182KS-JMR, Disparate Treatment, Retaliation, Sexual Harassment, Termination, Sex, Female, Hospitality, Employment Law, Title VII

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY]	
COMMISSION,]	
]	
Plaintiff,]	CIVIL ACTION #
]	2:05cv2182KS-JMR
vs.]	CONSENT DECREE
]	
JA & P RESTAURANTS, INC.]	
dba CRECHALE’S RESTAURANT]	
]	
Defendant.]	
]	

The Equal Employment Opportunity Commission (“EEOC” or “Commission”) filed this action against JA & P Restaurants, Inc. dba Crechale’s Restaurant. (“Crechale’s” or “Defendant”) on December 14, 2005, in this Court, to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Complaint, the Commission alleged that, in violation of Title VII, Crechale’s discriminated against and harassed Laura Quinn, Christina King, Kathleen McCann, Andrea Powell and Stephanie Usry (Quinn, King, McCann, Powell and Usry) and a class of similarly situated women on the basis of their sex, female, and, in some instances, discharged them after they complained about the discrimination.

Crechale’s denies all allegations raised in the complaint, nor does anything in this decree constitute an admission of liability on the part of Crechale’s.

The Parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law. Venue is appropriate in the Southern District of Mississippi (Hattiesburg Division). The parties agree that this Consent Decree is fair, reasonable, and equitable and does not

violate the law or public policy. The rights of Quinn, King, McCann, Powell and Usry, Crechale's and the Commission are protected adequately by this Decree.

In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the Commission and Crechale's have agreed that this action should be finally resolved by entry of this Consent Decree.

It is **ORDERED, ADJUDGED AND DECREED:**

1. This Decree resolves all claims arising out of the issues between the Commission and Defendant Crechale's in this lawsuit including, without limitation, back pay, compensatory and punitive damages, injunctive relief, costs, and attorney fees.

2. Defendant and its officers, agents, employees, successors, and assigns both at the time that this Decree becomes effective and for the duration of this Decree agree to comply with Federal law and agree not to : (a) discriminate against any employee on the basis of sex, (b) harass any employee based on sex; (c) retaliate against any employee because he or she: (i) opposes or opposed discriminatory practices made unlawful by Title VII; (ii) files or filed a charge of discrimination, or assists, assisted, participates, or participated in the filing of a charge of discrimination; or (iii) assists, assisted, participates or participated in an investigation or proceeding brought under the federal or state laws prohibiting discrimination or retaliation; and (d) alter the terms and conditions of any employee's employment because of sex to the extent required by Federal law.

MONETARY RELIEF

3. Crechale's shall pay, by check or money order, the total amount of Twelve thousand five hundred dollars and zero cents (\$12,500.00) within thirty (30) days from the date of the entry of this Decree to Laura Quinn, Christina King, Kathleen McCann,

Andrea Powell and Stephanie Usry. Crechale's will not condition the receipt of individual relief on Quinn's, King's, McCann's, Powell's or Usry's agreement to (a) maintain as confidential the terms of this Decree, or (b) waive their statutory rights to file a charge with any federal or state anti-discrimination agency. Crechale's will issue applicable United States Internal Revenue Service Forms to Quinn, King, McCann, Powell and Usry for all such payments on or before January 31, 2007.

4. The checks or money orders provided for in paragraph 3 of this Decree shall be mailed directly by Crechale's to the attorney for Quinn, King, McCann, Powell and Usry at the addresse supplied by him. Within three business days of the issuance of the checks, Crechale's shall submit a copy of the checks and related correspondence to the United States Equal Employment Opportunity Commission, Regional Attorney, Birmingham District Office, 1130 22nd Street South, Suite 2000, Birmingham, Alabama, 35205-2886.

OTHER RELIEF

5. Defendant will institute and carry out policies and practices at its Mississippi restaurants that help assure a work environment free from sex-based discrimination, harassment and retaliation for its employees; that allow employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived or actual, made unlawful by Title VII; and that provide procedures for employees to report incidents of sex-based discrimination, and harassment.

6. To assist Defendant in achieving and maintaining compliance in the area of anti-discrimination and equal employment opportunity, within thirty (30) days of the entry of the Decree, Defendant will designate an appropriate and qualified employee to be

responsible for: (a) reviewing and revising Defendant's anti-discrimination policies; (b) reviewing and revising Defendant's procedures with respect to responding to and keeping records regarding complaints received; (c) receiving and investigating complaints of discrimination; (d) evaluating and, if appropriate, disciplining or terminating employees for violation of Defendant's anti-discrimination policies; (e) evaluating employees in the area of anti-discrimination/equal employment opportunity policies; and (f) preparing reports to the Commission, as required by this Decree.

7. Annually for the duration of this Decree, Defendant will provide mandatory training which shall explain: (1) what constitutes sex-based discrimination, retaliation, and harassment; (2) that Title VII prohibits this misconduct; (3) how to prevent this misconduct; (4) to whom employees may complain if they feel they have been subjected to this misconduct; and (5) that managers will be evaluated on their enforcement of Crechale's anti-discrimination policies. Training will also include an explanation of Crechale's policies regarding sex-based discrimination, harassment and retaliation; the importance of maintaining an environment free from harassment; and the discipline that may be taken against any employee found to have harassed or retaliated against other employees and the managers or supervisors who are found to have allowed the harassment or retaliation to occur.

a. Defendant will arrange and be financially responsible for a consultant/lecturer(s), who will provide consultation and a training session for all of its employees in Mississippi. The training session(s) shall be provided by the consultant/lecturer(s). Defendant shall submit to the EEOC the name and resume of the consultant at least sixty days prior to the first training session. EEOC may advise

Defendant in writing of any objections to the selected consultant. Defendant may videotape the session for those employees who cannot attend the live session.

b. During the live training session(s), the chief executive officer of each facility will speak to the employees about discipline that can be taken against supervisors, managers and employees who commit acts of discrimination, harassment or retaliation or allow discrimination, harassment or retaliation to occur in the workplace; the importance of maintaining an environment free of discrimination; and Defendant's anti-discrimination policies.

c. The seminar training session shall be at least two (2) hours in length, plus an additional thirty (30) minutes for questions and answers. All of Defendant's employees, including managers, shall register for and attend the seminar session. Employees who are unable to attend the session may watch a videotape of it.

d. Employees shall sign a registry when they attend the training or watch the videotape. Defendant shall keep, for the duration of the Decree, this written record of all employees who attend the training or watch it on video and shall forward a copy of same to the EEOC on an annual basis.

e. The first seminar training session shall be held within three (3) months of the Consent Decree being entered.

f. Crechale's will also provide a one-hour training session, to Crechale's managers and supervisors within six (6) months of the execution of this Agreement which shall discuss sex-based discrimination, harassment and retaliation. Crechale's will notify the Commission when this training session has been completed.

8. Within thirty days of the entry of this Decree, Defendant will review and

revise its written policies concerning discrimination and retaliation to conform with the law. Defendant's written policies must include, at a minimum:

- a. A clear and strong commitment to a workplace free of sex-based discrimination, harassment and retaliation;
- b. A clear and strong message of encouragement to persons who believe they have been discriminated against to come forward and complain;
- c. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;
- d. An assurance of non-retaliation for persons who believe they have been discriminated against and for witnesses;
- e. That discrimination on the basis of sex by anyone, including management officials, supervisors, vendors, suppliers, third parties and customers, is prohibited and will not be tolerated;
- f. The identification of specific alternative individuals, including managers with their telephone numbers, to whom employees who have been subjected to sex-based discrimination, harassment or retaliation can report the discrimination and who have the authority to investigate allegations of discrimination in a neutral and confidential manner;
- g. A written statement that an employee may report the harassment to a designated person outside of his or her chain of management should the employee prefer to do so;

- h. Assurances that Defendant will investigate allegations of sex-based discrimination, harassment and retaliation promptly, fairly, reasonably, effectively and as confidentially as possible under the circumstances, by appropriate investigators and that appropriate corrective action and appropriate follow-up will be taken by Defendant to make victims whole and to eradicate the discrimination; and
- i. Information regarding the employee's right to file a charge of discrimination with the EEOC, including contact telephone numbers, TDY/TDD and addresses for the EEOC.

9. These policies shall be posted in a prominent location, frequented by employees, at Defendant's restaurant in Hattiesburg, Mississippi. These policies shall also be distributed to each current employee within thirty days of the entry of the Decree, and distributed to all new employees when hired.

10. Defendant shall promptly and appropriately investigate all complaints of sex-based discrimination, harassment or retaliation. The investigation must include: (1) a finding of whether discrimination occurred; (2) a credibility assessment; (3) interviews of all potential victims and witnesses identified; and (4) concurrent notes of the investigation. Defendant shall take immediate appropriate corrective action to make victims of discrimination whole, to discipline violators, and to eradicate the discrimination. Defendant shall follow up with complainants at appropriate intervals to ensure that the harassment, discrimination or retaliation does not reoccur.

NOTICE

11. Defendant will post the Notice attached as Attachment A at Defendant's restaurant in Hattiesburg Mississippi. The Notice will be posted in an appropriate place frequented by employees, for the duration of this Decree.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

12. In addition to the reporting specified throughout the Decree above, Defendant shall report in writing and in affidavit form to the Regional Attorney of the Commission's Birmingham District Office at 1130 22nd Street South, Suite 2000, Ridge Park Place, Birmingham, Alabama, 35205-2886, beginning six months from the date of the entry of this Decree, and thereafter every six months for the duration of the Decree confirmation that: (i) the Notice required in paragraph 12 of this Decree was posted and the location(s) where it was posted; and (ii) the policies required in paragraph 9 were distributed to each current and new employee and posted.

13. The parties shall bear their own attorneys' fees and costs incurred in this action up to the date of entry of this Decree.

FORCE AND EFFECT

14. The duration of this Decree shall be forty-eight (48) months from its entry. This Court shall retain jurisdiction over this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that defendant has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered. Noncompliance which would give rise to enforcement under this provision includes, without limitation, any failure to pay the amounts due to be

paid to Quinn, King, McCann, Powell and Usry under paragraph 3 of this Consent Decree. Absent extension, this Decree shall expire by its own terms at the end of 48 months from the date of entry, without further action by the Parties.

15. The parties agree to the entry of this Decree subject to final approval by the Court.

16. The parties agree that upon entry of this Decree, they will sign and submit a joint motion to dismiss this action, with prejudice, subject to this Decree.

ORDERED and ADJUDGED this 8th day of March, 2007.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE

APPROVED AND CONSENTED TO BY:

s/ Nick Crechale
CORPORATE OFFICER
JA & P Restaurants, Inc.

s/ C. Emanuel Smith
C. EMANUEL SMITH (MS 7473)
Regional Attorney

s/ F. Douglas Montague
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Senior Trial Attorney
EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
Birmingham District Office

1130 22ND Street South, Suite 2000
Birmingham, Alabama 35205
(205) 212-2054
Attorneys for Plaintiff

ATTACHMENT A

**NOTICE TO ALL EMPLOYEES OF
JA & P RESTAURANTS, INC.**

It is unlawful under federal law, Title VII of the Civil Rights Act and state law to discriminate against an employee on the basis of sex, including sexual harassment, in the recruitment, hiring, firing, compensation, assignment, or other terms, and conditions or privileges of employment. Sexual harassment includes unwelcome or offensive sexual advances or touching, requests for sexual favors, or other verbal or physical conduct directed at a person because of her/his sex. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

JA & P Restaurants, Inc. shall not discriminate against any employee on the basis of sex, including sexual harassment, and shall not retaliate against any employee for complaining about sexual discrimination or harassment.

If you believe you have been discriminated against or sexually harassed JA & P Restaurants, Inc. encourages you to report any concerns of harassment, discrimination or retaliation to any management official.

You also have a right to seek assistance from:

EEOC
1130 22ND Street South, Suite 2000
Birmingham, Alabama 35205
Telephone: (205) 212-2100
TTY: (205) 212-2112
Website (national): www.eeoc.gov; or

You have the right to file a charge with the EEOC if you believe you are being discriminated against, retaliated against or sexually harassed.

No Retaliation Clause. It is against the law for any action to be taken against you by any supervisory or management official of JA & P Restaurants, Inc. for: (1) opposing sexual harassment or other discriminatory practices made unlawful by federal or state law; (2) filing a charge or assisting or participating in the filing of a charge of discrimination; or (3) assisting or participating in an investigation or proceeding brought under Title VII. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC at the addresses or telephone numbers listed above.