

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DIANE R. WILLIAMS, :  
Plaintiff, :  
v. : Civil Action No. 74-1086  
BENJAMIN R. CIVILETTI, :  
Defendant. :

DEFENDANT'S  
PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

A. FINDINGS OF FACT

1. In late 1971, plaintiff was interviewed for a GS-9/11 level position in the Public Information Office of the Community Relations Service (CRS), Department of Justice by the Public Information Officer of that agency, Harvey Brinson.
2. Although plaintiff had little experience in the field, Mr. Brinson offered her the position at the GS-9 level on a temporary appointment basis (at the GS-7 level) until her name could be certified as qualified for the position by the United States Civil Service Commission.
3. Plaintiff commenced her employment under the temporary appointment at the GS-7 level on January 4, 1972.
4. The Civil Service Commission certified plaintiff as qualified only for a GS-7 level position in the Public Information area.
5. Despite this, Mr. Brinson retained plaintiff and obtained for her a GS-8 level position as a career conditional employee, subject to a probationary period of one year.
6. Plaintiff worked directly for Mr. Brinson in the Public Information area during her entire employment with CRS.
7. At the beginning of her employment, plaintiff's work was satisfactory and she and Mr. Brinson got along well in the office context.

8. Although plaintiff disputes this, it is clear from Mr. Brinson's testimony, which is credible on this point, and the totality of the circumstantial evidence, that plaintiff and Mr. Brinson had a sexual affair of several months duration during the late winter and spring of 1972.

9. It seems clear from the evidence that this affair was mutually agreed upon by plaintiff and Mr. Brinson and that they shared each other's company and some of the expenses required for the conduct of their sexual activities.

10. Sometime in the late spring-early summer of 1972, Mr. Brinson ended the affair between himself and plaintiff.

11. Although Mr. Brinson attempted to get along on a professional basis with plaintiff after he ended their sexual affair, plaintiff became exceedingly uncooperative, nasty and bent on embarrassing her immediate superior, Mr. Brinson.

12. Although Mr. Brinson tried to make the best of the situation, and even tried to find plaintiff an advantageous position outside of his supervision, the situation became worse and it became impossible for Mr. Brinson to effectively supervise plaintiff or to operate the Public Information Office of CRS with her pressure.

13. Finally, Mr. Brinson proposed the separation from the service of plaintiff during her probationary period because of his inability to either transfer her away from his supervision or to supervise her effectively and continue to run the CRS Public Information Office with her there.

14. After the proposed dismissal was issued, Benjamin Holman, the Director of the Community Relations Service, in an attempt to save plaintiff's job, requested a meeting with plaintiff to suggest an alternative to discharge.

15. Mr. Holman asked plaintiff what she wanted, and plaintiff responded that she wanted Mr. Brinson's job or, in the alternative, to report directly to Mr. Holman, avoiding the supervision of the Public Information Officer, Mr. Brinson.

16. When Mr. Holman said that this was not possible, that Mr. Brinson was, after all, the Public Information Officer of the agency, and suggested that plaintiff be placed in the Communications Section at the same grade level and with the same promotional opportunities but away from Mr. Brinson's supervision, plaintiff became very abusive with respect to Mr. Brinson's character and abilities and indicated that this entire meeting with Mr. Holman was a waste of time.

17. Importantly, it is clear from Mr. Holman's testimony, that plaintiff did not mention or even consider any charge of sexual harassment at this time. It was only after her discharge, in an apparent effort to totally discredit Mr. Brinson and obtain for herself the job of Public Information Officer, that plaintiff invented the story of sexual harassment and her "heroic" stand against it.

18. The totality of the credible evidence, and all of the circumstantial evidence, indicates that Mr. Brinson did not make sexual advances to plaintiff and that she did not "heroically" refuse such advances. Rather, the preponderance of the evidence suggests that Mr. Brinson and plaintiff did have a sexual affair and that once it was ended, by Mr. Brinson, plaintiff went on a campaign of vendetta against Mr. Brinson and ultimately invented the sexual harassment story as part of that campaign.

B. CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action under and plaintiff's exclusive right of action is provided by Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e-16 et seq. See Brown v. General Services Administration, 425 U.S. 820 (1976).

2. This entire matter has been considered de novo in the District Court pursuant to Chandler v. Roudebush, 425 U.S. 840 (1976), and the holding of the Court of Appeals in Williams v. Bell, 587 F.2d 1240 (D.C. Cir. 1978).

Respectfully submitted,

CHARLES F. O. RUFF  
United States Attorney

3. It is the Court's conclusion that plaintiff has failed to present even a prima facie case that her discharge was based on any refusal on her part to acquiesce in her supervisor's alleged demands for sexual favors. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

4. Even assuming, arguendo, that plaintiff's case-in-chief did establish a prima facie case that her discharge from employment was based on her refusing the sexual advances of her supervisor, defendant, by a preponderance of the evidence, articulated a legitimate, non-discriminatory reason for her discharge, namely her poor job attitude and poor job performance; and plaintiff failed to demonstrate through any credible evidence that such articulation was merely pretextual. As such, defendant has plainly met and defeated any prima facie case established by plaintiff. See McDonnell Douglas Corp. v. Green, supra; Furnco Construction Co. v. Waters, 438 U.S. 567, 576-79 (1978); Board of Trustees v. Sweeny, 439 U.S. 24 (1978); see also International Brotherhood of Teamsters v. United States, 431 U.S. 324, 358 (1977).

5. In light of all the evidence, the Court concludes that plaintiff has failed to establish that her discharge was based in any part on her refusing the sexual favors she alleges were sought by her supervisor. Indeed, the evidence does not make it more likely so than not so that any sexual favors were sought by Mr. Brinson. Since plaintiff here, as in any civil action, must bear the ultimate burden of establishing by a preponderance of the evidence that her contentions are true, the Court must conclude that judgment should be entered for the defendant in this matter. See McDonnell Douglas Corp. v. Green, supra at 802-804; Furnco Construction Co. v. Waters, supra; see also Caro v. Schultz, 521 F.2d 1084 (7th Cir. 1975), cert. denied, 426 U.S. 919 (1976), and Sperling v. United States, 515 F.2d 645 (3rd Cir. 1975), cert. denied, 426 U.S. 919 (1976).

Respectfully submitted,

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United States Attorney

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ROYCE C. LAMBERTH  
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*David H. Shapiro*  
DAVID H. SHAPIRO  
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Defendant's Proposed Findings of Fact and Conclusions of Law has been mailed this 14th day of March, 1980 to plaintiff's counsel, Michael D. Hausfeld, Esquire, Kohn, Milstein & Cohen, 1776 K Street, N.W., Washington, D. C., 20006.

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Harvey Brinson.  
1. Plaintiff's employment under the temporary appointment at the GS-7 level on January 9, 1979.  
2. The Civil Service Commission certified plaintiff as qualified only for a GS-7 level position in the public information area.  
3. Despite this, Mr. Brinson retained plaintiff and obtained for her a GS-8 level position as a career conditional employee, subject to a probationary period of one year.  
4. Plaintiff worked directly for Mr. Brinson in the public information area during her entire employment with CRS.  
5. At the beginning of her employment, plaintiff's work was satisfactory and she and Mr. Brinson got along well in the office context.