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Appeals Court Says Firefighter Is Owed a Trial (N.Y. Times)

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Man Contended He Was Victim of Harassment

By ARNOLD H. LUBASCH

A Federal appeals court has ruled that a volunteer firefighter is entitled to a trial on his complaint that he has been harassed for exercising freedom of speech, including some foul language, in the firehouse.

The firefighter, John C. Donahue, filed a Federal lawsuit after he was suspended by the Volunteer Fire Department in Windsor Locks, Conn. His case was summarily dismissed in Federal District Court, but that decision was reversed Wednesday by the appeals court in Manhattan.

"Although Donahue's complaint raises mostly smoke," the appeals court ruled, "it also reveals a flame that should have precluded summary judgment against him."

The lower court granted summary judgment "too hastily" in dismissing Mr. Donahue's First Amendment claims, Judge Irving R. Kaufman said in the appellate decision, which he wrote with the concurrence of Judge Lawrence W. Pierce and Judge Roger J. Miner.

Challenging the Department

Mr. Donahue, a member of the Volunteer Fire Department for more than 17 years, publicly challenged department practices in two incidents and complained that the department had harassed him because he had expressed his views.

The dispute began in 1978 when his wife sought to join the department, which had no female members. Her application was rejected, prompting Mr. Donahue to complain that the rejection was based on sex discrimination.

In the second incident, Mr. Donahue complained in 1983 that a closed meeting of the Board of Fire Commissioners had violated the state's Freedom of Information Act. That complaint was upheld by the Connecticut Freedom of Information Commission.

Mr. Donahue contends that the two incidents caused the department's top officials to harass him, restrict his freedom of speech and try to pressure him into resigning as a firefighter.

Using 'Foul Language'

In the 16-page decision for the United States Court of Appeals for the Second Circuit, Judge Kaufman wrote that Mr. Donahue "refused to relinquish his position in the firehouse in the face of this retaliation."

Another incident took place in 1984, the judge said, when Mr. Donahue used profane language during an argument with a lieutenant in the firehouse, resulting in a formal complaint against him.

"The use of foul language was certainly commonplace in the fire station," Judge Kaufman observed, "but Donahue received a suspension of 20 days. He asserts that a firefighter had not been officially disciplined for using profanity since 1969."

Judge Kaufman said the firefighter's "claims of gender-based discrimination and Freedom of Information Act violations fall within the First Amendment's protective ambit."

"That the underlying events were primarily of significance to Donahue and his wife," he added, "neither diminishes the public importance of the these concerns nor strips his speech of protection."