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US Equal Employment Opportunity Commission v. Pro-Pak Industries, Inc.

Judge Robert Gettleman

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US Equal Employment Opportunity Commission v. Pro-Pak Industries, Inc.

Keywords

EEOC, Pro-Pak Industries Inc., 01 C 0552, Hostile Work Environment, Termination, Retaliation, Race, Manufacturing, Title VII, Employment Law

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

_____)
)
**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**)

Plaintiff,)

and)

KWAKU OWARE AND KOFI ASAMOAH)

Intervenors)

v.)

PRO-PAK INDUSTRIES, INC.)

Defendant.)
_____)

DOCKETED
SEP 23 2002

No. 01 C 0552

Judge Robert Gettleman

CONSENT DECREE

THE LITIGATION

1. Plaintiff Equal Employment Opportunity Commission ("EEOC") filed this action alleging that since at least 1998 Defendant, Pro-Pak, Inc. ("Defendant" or "Pro-Pak"), violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et. seq.*, ("Title VII") by discriminating against Charging Party Kwaku Oware and class member Kofi Asamoah ("Complainants") on the basis of their race. Specifically, EEOC alleges that Defendant, at its West Chicago, Illinois facility violated Title VII by subjecting Complainants to a racially hostile work environment and terminating them in retaliation for complaining about harassment. Pro-Pak denies the allegations of the Complaint.

2. In the interest of resolving this matter, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally

resolved by entry of this Consent Decree ("Decree"). This Decree fully and finally resolves any and all issues and claims arising out of the Complaint filed by EEOC in this action.

FINDINGS

3. Having carefully examined the terms and provisions of this Decree, and based on the pleadings, record, and stipulations of the parties, the Court finds the following:

a. This Court has jurisdiction of the subject matter of this action and of the parties.

b. The terms of this Decree are adequate, fair, reasonable, equitable, and just. The rights of Complainants and the public interest are adequately protected by this Decree.

c. This Decree conforms with the Federal Rules of Civil Procedure and Title VII and is not in derogation of the rights or privileges of any person. The entry of this Decree will further the objectives of Title VII and will be in the best interests of Kwaku Oware, Kofi Asamoah, Pro-Pak, EEOC and the public.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

NON-DISCRIMINATION

4. Pro-Pak, its officers, agents (including management personnel), successors, and assigns are enjoined from discriminating on the basis of race and, in particular, from maintaining or permitting a racially hostile work environment.

5. Defendant acknowledges its responsibility under Title VII to maintain a work environment which is not racially hostile.

NON-RETALIATION

6. Pro-Pak, its officers, agents, employees, successors, assigns, and all persons acting in concert with it shall not engage in any form of retaliation against any person because such person has opposed any practice made unlawful under Title VII, filed a Charge of Discrimination under Title VII, testified or participated in any manner in any investigation, proceeding, or hearing under Title VII, or asserted any rights under this Decree.

EFFECT OF DECREE

7. By entering into this Consent Decree the opposing parties do not admit each other's claims or defenses.

MONETARY RELIEF FOR COMPLAINANTS

8. The total amount of money to be paid by Defendant is fifty-five thousand dollars (\$55,000) for settlement for the damages claimed in this case.

9. Within five (5) business days after entry of this Decree, Defendant will mail to Intervenor's attorneys, the Law Offices of Elisabeth Shoenberger, 770 North Halstead Street, Suite 205, Chicago, Illinois 60622, a copy of release agreements. Intervenor's attorneys represented them in negotiating release agreements with Defendant. EEOC has not participated in the negotiation of the release agreements nor prepared them.

10. Within five (5) business days after receipt by Intervenor's attorneys of the release agreements, Intervenor's attorneys shall mail the signed release agreements to Robert J. Kartholl, Schirott & Luetkehans, P.C., 105 East Irving Park Road, Itasca, Illinois 60143.

11. Within five (5) business days after receipt of the release agreements, Defendant will tender to the Law Offices of Elisabeth Shoenberger a Pro-Pak check payable to Elisabeth Shoenberger, Kwaku Oware and Kofi Asamoah ("Payees") in the amount of twenty-seven

thousand five hundred dollars (\$27,500).

12. Within three (3) months after receipt of the release agreements, Defendant will issue and tender to the Law Offices of Elisabeth Shoenberger a Pro-Pak check payable to Payees in the amount of four thousand five hundred eighty-three dollars and thirty-three cents (\$4,583.35).

13. Within six (6) months after the Receipt of the release agreements, and every three (3) months thereafter for the duration of the Consent Decree, Defendant shall issue and tender to the Law Offices of Elisabeth Shoenberger a Pro-Pak check payable to Payees in the amount of four thousand five hundred eighty-three dollars and thirty-three cents (\$4,583.33). Pro-Pak shall issue an I.R.S. Form 1099 to the Law Offices of Elisabeth Shoenberger.

14. Darrell Holmes shall personally guarantee full payment of the agreed monetary relief as delineated in Paragraphs 8 and 11-13 above.

POSTING OF NOTICE

15. Within five (5) business days after entry of this Decree, Pro-Pak shall post a same-sized copy of the Notice attached as Exhibit A to this Decree at its facility, in a conspicuous location easily accessible to and commonly frequented by employees of Pro-Pak. The Notice shall remain posted for eighteen (18) months from the date of entry of this Decree. Pro-Pak shall take all reasonable steps to ensure that the posting is not altered, defaced or covered by any other material. Pro-Pak shall certify to EEOC in writing within ten (10) business days after entry of the Decree that the Notice has been properly posted. Pro-Pak shall permit a representative of EEOC to enter Pro-Pak's premises for purposes of verifying compliance with this Paragraph at any time during normal business hours without prior notice.

RECORD KEEPING

16. For a period of eighteen (18) months following entry of this Decree, Pro-Pak shall maintain and make available for inspection and copying by EEOC records (including name, age, social security number, address, telephone number, complaint and resolution of the complaint) of each person complaining about discrimination on the basis of race and/or retaliation.

17. Pro-Pak shall make all documents or records referred to in Paragraph 16, above, available for inspection and copying within five (5) business days after EEOC so requests. In addition, Pro-Pak shall make available all persons within its employ whom EEOC reasonably requests for purposes of verifying compliance with this Decree and shall permit a representative of EEOC to enter Pro-Pak's premises for such purposes on five (5) business days advance notice by EEOC.

18. Nothing contained in this Decree shall be construed to limit any obligation Pro-Pak may otherwise have to maintain records under Title VII or any other law or regulation.

REPORTING

19. Pro-Pak shall furnish to EEOC the following written reports every six (6) months for a period of eighteen (18) months following entry of this Decree. The first report shall be due six (6) months after entry of the Decree. The final report shall be due eighteen (18) months after entry of the Decree. Each such report shall contain:

a. A description of each complaint of racial harassment, race based discrimination, retaliation, and the resolution of such complaint, occurring within the six (6) month period preceding the report;

b. A certification by Pro-Pak that the Notice required to be posted in Paragraph 15, above, remained posted during the entire six (6) month period preceding the report.

**ADOPTION AND DISTRIBUTION OF NEW POLICY AGAINST RACIAL
HARASSMENT**

20. Pro-Pak shall create a new anti-discrimination policy ("Policy") to be distributed to all current and future employees within thirty (30) days after entry of this Consent Decree. The Policy shall clearly define prohibited conduct and specifically prohibit racial insults and jokes. The Policy shall provide that complaints of racial harassment may be made to any person in the chain of command above an employee or directly to human resources personnel; employees who make complaints of harassment or provide information related to such complaints will be protected against retaliation; employees will not be required to complain of harassment to a person against whom they allege harassment; the employer will protect the confidentiality of harassment complaints to the extent possible; the employer will take immediate and appropriate corrective action if and when it determines that harassment has occurred; employees who violate the policy are subject to discipline up to and including discharge pursuant to the Policy.

21. The Policy shall be distributed to all of Defendant's employees and management staff and shall be included in any relevant policy or employee manuals kept by Defendant's business. The Policy shall also be kept and maintained in a conspicuous and accessible place for all employees and printed in a font that is easily legible (at least 12 point font).

22. A copy of the Policy shall be distributed to each new permanent or temporary employee on the day the employee is hired.

TRAINING

23. Defendant shall provide training to all Pro-Pak employees, including management, on equal employment opportunity laws (including race harassment) and the new Policy within sixty (60) days of entry of this Decree. Pro-Pak shall conduct separate training

sessions for its workers and management staff.

24. Within ten (10) calendar days of the completion of the training, Pro-Pak shall notify EEOC of the dates the training was conducted, the name and job title of the person(s) who conducted the training, and the name and job title of each person who received the training. Pro-Pak shall utilize outside consultants to conduct this training.

25. Pro-Pak agrees to provide EEOC with any and all copies of pamphlets, brochures, outlines or other written materials provided to the participants of the training sessions.

DISPUTE RESOLUTION

26. In the event that any party to this Decree believes that another party has failed to comply with any provision(s) of the Decree, the complaining party shall notify the other party of the alleged non-compliance and shall afford the alleged non-complying party ten (10) business days to remedy the non-compliance or to satisfy the complaining party that the alleged non-complying party has complied. If the alleged non-complying party has not remedied the alleged non-compliance or satisfied the complaining party that it has complied within ten (10) business days, the complaining party may apply to the Court for appropriate relief, which shall not exceed the terms of this decree.

DURATION OF THE DECREE AND RETENTION OF JURISDICTION

27. All provisions of this Decree shall be in effect (and the Court will retain jurisdiction of this matter to enforce this Decree) for a period of eighteen (18) months immediately following entry of the Decree, provided, however, that if, at the end of the eighteen (18) month period, any disputes under Paragraph 26, above, remain unresolved, the term of the Decree shall be automatically extended (and the Court will retain jurisdiction of this matter to enforce the Decree) until such time as all such disputes have been resolved.

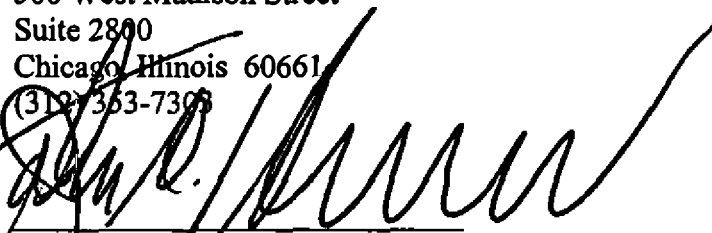
MISCELLANEOUS PROVISIONS

28. Each party to this Decree shall bear its own expenses, costs and attorneys' fees.

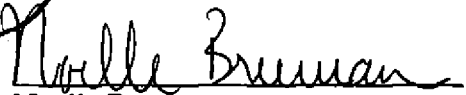
29. The terms of this Decree are and shall be binding upon the present and future representatives, agents, directors, officers, assigns, and successors of Pro-Pak.

30. When this Decree requires the submission by Pro-Pak of reports, certifications, notices, or other materials to EEOC, they shall be mailed to: Pro-Pak Settlement, c/o Lauren Dreilinger, Trial Attorney, Equal Employment Opportunity Commission, 500 West Madison Street, Suite 2800, Chicago, Illinois 60661. When this Decree requires submission by EEOC of materials to Pro-Pak, they shall be mailed to: Robert Kartholl, Schirott & Luetkehans, P.C., 105 East Irving Park Road, Itasca, Illinois 60143.

For the EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION
500 West Madison Street
Suite 2800
Chicago, Illinois 60661
(312) 353-7300



John C. Hendrickson
Regional Attorney

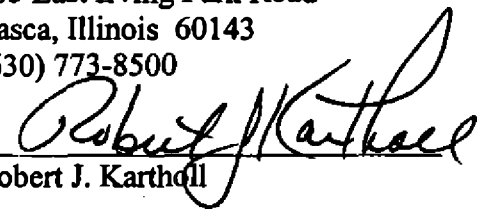


Noelle Brennan
Supervisory Trial Attorney




Lauren G. Dreilinger
Trial Attorney

For PRO-PAK INDUSTRIES, INC
and DARRELL HOLMES
Robert J. Kartholl
Schirott & Luetkehans, P.C.
105 East Irving Park Road
Itasca, Illinois 60143
(630) 773-8500



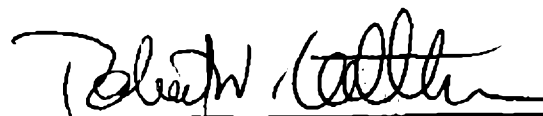
Robert J. Kartholl

For KWAKU OWARE and KOFI ASAMOAH
Elisabeth E. Shoenberger
The Law Offices of Elisabeth E. Shoenberger
770 North Halsted Street, Suite 205
Chicago, Illinois 60622


Elisabeth E. Shoenberger

DATE: September 18, 2002

ENTER:


The Honorable Robert Gettleman
United States District Court Judge

For KWAKU OWARE and KOFI ASAMOAH
Elisabeth E. Shoenberger
The Law Offices of Elisabeth E. Shoenberger
770 North Halsted Street, Suite 205
Chicago, Illinois 60622

Elisabeth E. Shoenberger

DATE: 9/18/02

ENTER:

Robert W. Gettleman

The Honorable Robert Gettleman
United States District Court Judge

EXHIBIT A**NOTICE TO ALL PRO-PAK EMPLOYEES**

This Notice is being posted pursuant to a Consent Decree entered by the federal court in EEOC v. Pro-Pak Industries, No. 01 C 0552 (N.D. Ill.) settling a lawsuit filed by the Equal Employment Opportunity Commission ("EEOC") against Pro-Pak Industries, ("Pro-Pak").

In its suit, EEOC alleged that Pro-Pak subjected Complainants Kwaku Oware and Kofi Asamoah to a racially hostile work environment, subjected Complainants to discriminatory terms and conditions of employment because of their race, and terminated Complainants in retaliation for their complaints of discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et. seq., ("Title VII"). Pro-Pak denies the allegations made by EEOC.

To resolve the case, Pro-Pak, EEOC, Kwaku Oware and Kofi Asamoah have entered into a Consent Decree which requires, among other things, that:

- 1) Pro-Pak will pay monetary relief;
- 2) Pro-Pak will not discriminate on the basis of race in the future;
- 3) Pro-Pak will not retaliate against any person because he opposed any practice made unlawful by Title VII, filed a Title VII charge of discrimination, participated in any Title VII proceeding, or asserted any rights under the Consent Decree.

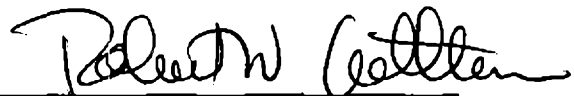
EEOC enforces the federal laws against discrimination in employment on the basis of disability, race, color, religion, national origin, sex, and age. If you believe you have been discriminated against, you may contact EEOC at (312) 353-8195. EEOC charges no fees and has employees who speak languages other than English.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for eighteen (18) months from the date below and must not be altered, defaced or covered by any other material. Any questions about this Notice or compliance with its terms may be directed to: Pro-Pak Settlement, EEOC 500 West Madison Street, Suite 2800, Chicago, Illinois 60661.

Date:

9/18/02



The Honorable Robert Gettleman
United States District Court Judge