

4th Cir.: Employer's Harassment Investigation Inadequate

By Linda H. Evans 7/31/2015

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An employer's response to multiple racially motivated threats was neither prompt nor reasonably calculated to identify the perpetrator or to stop future incidents, the 4th U.S. Circuit Court of Appeals held, allowing the threatened employee's harassment claim to proceed to trial.

In January 2011, Renee Pryor, a black flight attendant, received a threatening note in her United Airlines' company mailbox located at Dulles International Airport. The note claimed to be a federal "hunting license" declaring that the holder was licensed to hunt and kill n----- and purported to give the holder permission to hunt day or night, with or without dogs. There was also a hand-drawn image of a person hanging from a pole on one corner of the document, along with the words "this is for you." Employee mailboxes were in a secure space at the airport, accessible only to United employees and others with company authorization.

Shaken and afraid, Pryor immediately went to her supervisor. He said there was not much he could do since there were no security cameras in the area. He had her fill out a report.

United had a policy in place outlining steps to be taken in the event an employee made a claim of harassment or discrimination. The policy included the requirement that the supervisor immediately contact the Employee Service Center (ESC) so that an investigation could begin. The supervisor did not contact the ESC but called a second supervisor, who was out of the office. The second supervisor later called a manager, but again no one contacted ESC.



Corporate security was called but did not conduct any interviews, preserve any evidence or create any written reports about its investigation. When security closed its investigation, it never informed Pryor. And, although the note could be a possible hate crime and a crime that involved a threat of violence at a major airport, United never reported it to the police.

Both the second supervisor and the manager were aware that this was not the first incident of racism reported at United's Dulles facility. There had been rumors of racially discriminatory comments circulating in the 1990s, and they had started up again in 2009-10. Additionally, both knew that a few months before Pryor received the threatening note, an apartment advertisement had appeared in the break room with a racist message. A short time after the advertisement was removed, another identical one appeared. No reports or actions were taken.

After Pryor called ESC herself to find out the status of the investigation, a human resource manager began making inquiries. Pryor also reported the incident to the police, who noted that the company was not cooperative. Nearly three months later, United sent a vague e-mail to employees instructing them to notify a manager if they had knowledge regarding inappropriate or offensive material.

Months later, Pryor received a second, identical racist death threat in her United mailbox at Dulles. Around this time, nine other senior black flight attendants received the same threat in their mailboxes. Reports were made to ESC and to the police, and temporary security cameras were installed. Ultimately, no suspects were identified.

» Pryor filed an Equal Employment Opportunity Commission charge alleging that United's actions amounted to unlawful discrimination. The district court concluded that Pryor had been subjected to a racially hostile work environment but granted summary judgment to United after deciding that the company was not liable for the offensive conduct. On appeal, the 4th Circuit disagreed and remanded the case for further proceedings.

The court found that although an employer is not strictly liable for acts of harassment in the workplace, and anonymous conduct poses unique challenges to companies, the employer still maintains a responsibility to carry out reasonable duties of investigation and protection. United did not meet its duty.

Pryor v. United Airlines Inc., 4th Cir., No. 14-1442 (July 1, 2015).

Professional Pointer: At a minimum, a company must have a policy in place for investigating claims of harassment and must follow that policy. In this case, a more immediate and robust response to the first threatening note might have increased the chances of identifying the suspect while possibly deterring the later notes.

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