

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Tracy Dixon,	:	
Complainant	:	
	:	
v.	:	PHRC Case No. 200002677
	:	
Circle Bolt & Nut Company,	:	
Respondent	:	
	:	
	:	
	:	

STIPULATIONS OF FACT

The parties hereby stipulate that the following facts are true and no additional proof thereof is required:

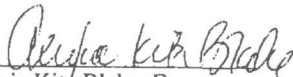
1. Complainant Tracy L. Dixon is an adult female.
2. At all times relevant, Respondent Circle Bolt & Nut Co., Inc. was an employer within the meaning of section 4 of the Pennsylvania Human Relations Act, 43 P.S. § 954.
3. Respondent hired Complainant on or about June 18, 2000 as an order inspector at its facility located in Pittston, Pennsylvania.
4. Complainant's employment with Respondent ended on or about September 1, 2000.
5. Complainant filed the captioned verified complaint with the Pennsylvania Human Relations Commission ("PHRC") on February 9, 2001.
6. A PHRC representative served a copy of the complaint on Respondent on April 30, 2001.
7. Respondent filed a timely verified answer to the complaint.
8. On or about December 6, 2005, the PHRC notified Respondent that it believed probable cause existed to credit the allegations of the complaint.
9. PHRC scheduled a conciliation conference for February 15, 2006.

10. Conciliation was not successful.
11. Complainant was employed by Respondent for eleven weeks.
12. During her eleven weeks of employment with Respondent, Complainant worked 391.5 regular hours and one overtime hour. That period included one unpaid holiday (July 4).
13. Complainant's final hourly rate of pay was \$8.50.
14. During the year 2000, Complainant received \$2424.00 in unemployment compensation benefits.
15. During the year 2001, Complainant received \$1878.00 in unemployment compensation benefits.
16. During the year 2002, Complainant received \$3356.00 in unemployment compensation benefits.
17. Beginning June 1, 2002, Complainant began to fully mitigate for any damages resulting from the termination of her employment with Respondent and Complainant does not seek any damages for the period June 1, 2002 to the present.
18. From October 19 through October 30, 2000, Complainant was employed by U.S. Metal Forms at an hourly rate of \$7.50.
19. Complainant had no other earned income between September 1 and December 31, 2000.
20. During the year 2001, Complainant had earned income in the amount of \$5,841.
21. During the year 2002, through May 31, 2002, Complainant had no earned income.
22. Complainant makes no claim for out-of-pocket expenses related to any loss of health insurance coverage.
23. Respondent paid discretionary monthly bonuses in varying amounts to warehouse employees, none of whom were guaranteed a bonus.

24. The following sets forth the number of employees eligible for the bonus and the total amount of bonuses paid to the employees in the corresponding month:

September 2000	21 employees	3025.00 bonuses
October 2000	21	2675.00
November 2000	20	2450.00
December 2000	20	2450.00
January 2001	18	2450.00
February 2001	18	2600.00
March 2001	18	2475.00
May 2001	17	2465.00
July 2001	17	2475.00
September 2001	17	2475.00
October 2001	16	2275.00
November 2001	15	2325.00
December 2001	15	2400.00
January 2002	15	2350.00
February 2002	15	2440.00
March 2002	15	2175.00
April 2002	15	2300.00
May 2002	12	2150.00

25. During her employment with Respondent, Complainant did not receive any such bonus payments.



Alexia Kita Blake, Esq.
For Respondent



Joseph Bednarik, Esq.
For Commission Staff

8/16/07

Date

8/16/07

Date

FINDINGS OF FACT *

1. Prior to June 2000, the Complainant, Tracy L. Dixon, (hereinafter "Dixon"), a single mother of three children, had worked for Pride Mobility Products for two and a half years. (N. T. 67, 93, 104).
2. In the summer of 2000, the Respondent, Circle Bolt & Nut Company, Inc., (hereinafter "Circle"), was a wholesale distributor of nuts and bolts from its single location in Wilkes-Barre, Pennsylvania. (N. T. 61, 62, 117, 118).
3. The husband and wife team of James Spurling and Mary Kay Spurling opened Circle in 1979. (N. T. 117).
4. Owner, James Spurling, is Circle's President and CEO and co-owner Mary Kay Spurling, is Circle's Secretary/Treasurer. (N. T. 117).
5. In the summer of 2000, Circle employed approximately 15 employees in Circle's warehouse. (N. T. 53, 108, 136).
6. While still an employee at Pride Mobility Products, Dixon was approached by Carl Bush, a Circle sales representative who told Dixon that Circle was looking to hire warehouse workers and that Dixon should apply. (N. T. 67).
7. Dixon did apply for a Shipping Clerk position with Circle and was initially interviewed by Edward Grant, (hereinafter "Grant"), Circle's Warehouse Manager. (N. T. 68, 95, 118, 140).

* The foregoing "Stipulations of Facts" are hereby incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N. T. Notes of Testimony
C. E. Complainant's Exhibit
R. E. Respondent's Exhibit
S. F. Stipulation of Fact

8. Grant testified that during Dixon's interview, he told her that the work environment is "very dominant male", and "if anybody said anything that she felt was inappropriate that she should report it to [Grant]." (N. T. 140).
9. Dixon was hired by Circle in mid-June 2000, as a boxer/sorter. (N. T. 69, 93).
10. At all relevant times, Mark Gubbiotti, (hereinafter, "Gubbiotti") was Circle's Operations Manager; Grant was the Warehouse Manager; and Bernie Chalawich, (hereinafter, "Chalawich") was the Assistant Warehouse Manager. (N. T. 17, 46, 118, 136, 152, 182).
11. During her employment with Circle, Dixon was the only female working in the warehouse. (N. T. 110).
12. Dixon performed a variety of jobs including: boxing; sorting; quality control; shipping; inventory; receiving; and stocking. (N. T. 69; 254).
13. Dixon worked 40 hours a week while employed by Circle. (N. T. 110).
14. After a 90 day waiting period, Circle warehouse employees became eligible for monthly bonus ranging from \$50.00 up to \$200.00. (N. T. 113, 114, 143, 201).
15. Circle's warehouse employees worked on two floors: an upper warehouse area and a lower warehouse area. (N. T. 53-54).
16. There was only one restroom in the lower warehouse area available for use by both male and female employees. (N. T. 41).
17. Dixon testified that she used a ladies restroom that was upstairs rather than use the lower warehouse area restroom. (N. T. 41).
18. For years, "nasty" graffiti was on the walls of the lower warehouse area bathroom. (N. T. 35).
19. During the time Dixon worked in Circle's warehouse, Circle also employed Gene Walker, (hereinafter, "Walker") as an order puller and forklift driver. (N. T. 17, 54, 70, 139, 167).
20. In 2000, Walker was in his early 20's. (N. T. 147).

21. Walker often picked on fellow co-workers. (N. T. 18, 33, 89).
22. Warehouse co-worker, Harold Gaskill, (hereinafter, "Gaskill") testified that Walker's harassment of others was constant and made it "pure hell" working everyday. (N. T. 18).
23. Gaskill testified that Walker kept telling Gaskill he was gay and that Walker would leave signs in Gaskill's work-area saying Gaskill was old, a drunk, and that he had to pay child support. (N. T. 19, 25, 70-72, 97).
24. Gaskill also testified that he spoke with Grant daily about Walker and that, while Grant would say he would take care of the harassment, Walker was continually allowed to get away with harassing Gaskill. (N. T. 21, 22, 27).
25. Dixon testified that, in effect, she was annoyed by Walker continually picking on others, especially older co-workers. (N. T. 74, 107).
26. Dixon also testified that she had observed Grant demeaning, criticizing, and embarrassing employees in front of everyone by doing things like calling employees "stupid idiots", saying to an employee "you're dumber than a box of rocks", or "you don't know what you're doing". (N. T. 74, 75, 91, 106).
27. Dixon indicated that while she felt that Grant had demeaned others he had not treated her poorly. (N. T. 74, 91).
28. Similarly, until an incident in mid-August 2000, Walker had not done anything to offend Dixon directly. (N. T. 93, 96).
29. However, in mid-August, Dixon heard Walker singing a song with lyrics of the song changed into sexually explicit lyrics that referred to young boys sucking on grown men's penises. (N. T. 72, 73).
30. Dixon testified that she asked Walker to stop but he just laughed and continued. (N. T. 72, 73).
31. Grant testified that Dixon did ask him to do something about Walker and that Walker had said something to Dixon but that Grant did not hear it. (N. T. 145)

32. Grant testified that Dixon only asked Grant to tell Walker to leave her alone and that he did not ask either Walker or Dixon what Walker had said. (N. T. 145).
33. Dixon offered that within 24 hours of Walker's sexually offensive song, she spoke with Gubbiotti telling him that she enjoyed her job and liked working there but she was having a problem and could not handle either sexually explicit songs or Walker continually picking on other employees, especially the older workers. (N. T. 73, 74, 106, 107).
34. Dixon also indicated that she informed Gubbiotti that she did not take her problem to Grant because she felt Grant demeans employees and that Grant just laughed at Walker's behavior. (N. T. 74, 107).
35. Dixon testified that Gubbiotti told her he would get back to her. (N. T. 75).
36. Later, the same day, Gubbiotti spoke with Dixon and asked her if she would like to work in Circle's purchasing department. (N. T. 75).
37. Gubbiotti testified that the position of Expeditor came open and that the position had to be filled relatively quickly. (N. T. 190).
38. Gubbiotti said that only Dixon was considered for the Expeditor position and that he understood Dixon's attitude and work performance in the warehouse had been "really good". (N. T. 190).
39. Gubbiotti specifically denied that Dixon had complained to him about either Walker or Grant prior to offering Dixon the Expeditor position. (N. T. 192).
40. Dixon accepted Gubbiotti's offer and beginning the following Monday, for three days, Dixon worked half a day in the warehouse and the remaining half day Dixon simply watched Carinne Pace, (hereinafter "Pace") and Krista Coolbaugh (hereinafter "Coolbaugh"). (N. T. 75-76, 96, 220).
41. Coolbaugh was the Expeditor that Dixon was to replace and Pace was the supervisor of the purchasing department. (N. T. 108, 190).

42. As Coolbaugh and Pace trained Dixon, by Monday of the second week, Dixon continued to take notes and also did some filing. (N. T. 76, 109).
43. On Tuesday of Dixon's second week in the purchasing department, Dixon was entering lists of parts inventories into the computer. (N. T. 76).
44. On Wednesday, Dixon began to make telephone calls to vendors and by Thursday of her second week, Dixon was by herself. (N. T. 76-77).
45. Neither Grant nor Chalawich had been involved in Dixon's transfer to the purchasing department. (N. T. 147, 163).
46. Chalawich testified that he did not know Dixon was transferred to purchasing and wondered what was going on and that he found the situation "curious". (N. T. 164).
47. By Friday of Dixon's second week in purchasing, Dixon was called into an office to meet with Gubbiotti and Mary Kay Spurling where she was terminated. (N. T. 77, 203, 225, 228, 231).
48. Dixon left and went home. (N. T. 79).
49. After her arrival home, Dixon received a telephone call from Gubbiotti informing Dixon of another job working for Circle at Pride Mobility Products' facility. (N. T. 79).
50. The job at Pride Mobility Products entailed removing boxes of nuts, bolts and fasteners from a pallet and emptying the boxes into bins. (N. T. 79-80).
51. Prior to Dixon, no Circle employee was assigned this job. (N. T. 207, 220).
52. After approximately one week, Gibbiotti terminated Dixon from the newly created position located in the Pride Mobility Products' facility. (N. T. 80).
53. Dixon's hourly rate of pay at Circle was \$8.50 per hour. (S. F. 11, 13).
54. At Circle's discretion some warehouse employees received bonus payments. (S. F. 23).
55. Bonus payments ranged between \$50.00 and \$200.00. (N. T. 64).

56. There was a 90 day waiting period before a new hire could receive a bonus. (N. T. 113, 201).
57. Following her termination from Circle, Dixon looked for employment in newspaper, on Career link, through word-of-mouth, and submitted applications to various places. (N. T. 81, 102).
58. For a period of two weeks in October 2000, Dixon worked at U. S. Metal Forms where she earned wages comparable to the wages she had earned with Circle. (N. T. 81, 99).
59. Dixon's initial assignment at U. S. Metal Forms was as a Shipping Clerk but shortly after beginning her employment there, Dixon was assigned to be a *Quality Inspector of parts for military aircraft*. (N. T. 83).
60. Feeling unqualified to inspect parts for airplanes, Dixon quit her job with U. S. Metal Forms. (N. T. 83, 99).
61. Dixon's next job began approximately 6 months later when Dixon took a job as a repair technician with Medex. (N. T. 84, 100).
62. Dixon worked with Medex until lack of work forced Medex out of business. (N. T. 86, 100).
63. While employed by Medex, Dixon earned the same rate of pay she had earned when employed by Circle. (N. T. 100).
64. *Between her job at U. S. Metal Forms and Medex, Dixon had looked in newspapers, and applied to between 20-30 potential employers.* (N. T. 86, 102).
65. By the end of May 2002, Dixon began to fully mitigate any damages that resulted from her termination from Circle and seeks no damages for the period of June 1, 2002 to the present. (S. F. 17).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a Public Hearing.
3. Dixon is an individual within the meaning of the PHRA.
4. Circle is an employer with the meaning of the PHRA
5. To establish a *prima facie* case of a hostile environment claim a Complainant must show:
 - (a) that she suffered intentional discrimination because of her sex;
 - (b) that actions were either severe or pervasive and regular;
 - (c) that a discrimination detrimentally affected her;
 - (d) that the reasonable person of the same sex would have been detrimentally affected; and
 - (e) respondeat superior.
6. Dixon failed to establish that conduct of a sexual nature was severe, pervasive and regular.
7. To establish a *prima facie* claim for retaliation a Complainant must show:
 - (a) that she engaged in protected activity;
 - (b) that the Respondent was aware of the protected activity;
 - (c) that subsequent to the protected activity the Complainant was subjected to an adverse employment action; and
 - (d) that there is a casual connection between the protected activity and the adverse employment action.

8. Circle offered legitimate non-discriminatory reasons for Dixon's twice leaving the employ of Circle.
9. Dixon proved that Circle's reasons were a pretext for unlawful discrimination and that the reason Dixon was twice terminated was in retaliation for her expression of opposition.

OPINION

The case arises on a complaint filed by Tracy L. Dixon (hereinafter "Dixon") against Circle Bolt & Nut Company, Inc., (hereinafter "Circle") on or about February 6, 2001, at PHRC Case Number 200002677. In her two count complaint, Dixon generally alleged sex-based discriminatory treatment in the form of a hostile work environment between June 2000 and September 1, 2000 and that on September 1, 2000, she was terminated in retaliation for expressing opposition regarding the work environment. Dixon's claims allege that Circle violated Sections 5(a) and (d) of the Pennsylvania Human Relations Act of October 27, 1955. P.L. 744, as amended, 43 P.S. §§951 *et. Seq.* (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit Dixon's allegations of discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. However, those efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on August 16, 2007, in Wilkes-Bare, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. Post-Hearing briefs were submitted by the parties at the end of October 2007.

Initially there is recognition that there are fundamental and glaring discrepancies in the versions of events that constitute the factual background that must be evaluated before the law can be applied to the facts present in this case. There is agreement on basic events, however, on important aspects surrounding several critical events, there is wide disparity between much of the testimony offered. Because of this, an initial assessment of credibility is imperative. Once

credibility has been assessed, the law can be applied to the versions of events found to be more credible.

In her complaint, Dixon alleged that throughout her employment between June 19, 2000 and September 1, 2000 she witnessed "crude, vulgar, sexually-explicit and offensive remarks" in the work place, that there was offensive sexual graffiti on the walls and beams in the warehouse, and that her supervisor Edward Grant, (hereinafter "Grant") "not only failed to do anything about the problem but had even joined in or laughed at the offensive behavior..."

During the Public Hearing, Circle's managers, Grant, Mark Gubbiotti, (hereinafter "Gubbiotti"), and Bernie Chalawich, (hereinafter "Chalawich") collectively testified that they were generally unaware of any harassing conduct. (N. T. 48-49, 53, 59-60, 140, 153, 185-186, 189). Dixon's testimony pointed principally to the conduct of Eugene Walker, (hereinafter "Walker") as the source of the offensive conduct. However, Walker generally denied committing any offensive conduct. (N. T. 170,171).

On the question of whether a manager was aware of purported offensive conduct, Harold Gaskill, (hereinafter "Gaskill") credibly testified that he had spoken with Grant many times about harassing conduct by Walker that he found offensive. (N. T. 20, 21, 27). Gaskill testified that Walker's constant harassment of him and others made it "pure hell" to work at Circle every day. (N. T. 18, 20, 22). Further, Gaskill offered that at times Grant was present when Walker harassed him and that generally Grant knew what was happening. (N. T. 20, 21).

During the Public Hearing, it became clear that the only incident of a sexual nature that had been allegedly directed at Dixon was Walker singing a sexually explicit song to Dixon. While Dixon's PHRC claim suggest the work environment

was generally polluted with sexually offensive remarks, the only incident visited on Dixon was a single cretinous vulgar display of crude behavior by Walker when he sang a song to Dixon in which he had substituted sexually offensive words for the song's actual words.

Walker denied doing this (N. T. 171), and Grant denied he overheard it (N. T. 59). Dixon offered that Walker both sang the song and that Grant overheard it and addressed the issue *right then*. (N. T. 93).

The testimony in this regard reveals that no one was entirely credible. First, Dixon's PHRC complaint claim that, in effect, there was constant sexually offensive comments in the workplace appears to be an exaggeration. Next, Walker clearly sang a sexually explicit song that would have offended most anyone who heard it. In this regard, Walker is found to lack credibility. As for Grant, it simply appears that he knew Walker had offended Dixon and just told Walker that that kind of language was not acceptable in the presence of women. (N. T. 73). Grant offered that Dixon had asked him to do something about Walker and that he had heard Walker say something to Dixon (N. T. 146). Grant submits that Dixon only asked that Grant tell Walker to leave her alone and he did. (N. T. 145).

Additionally, both Gubbiotti and Grant confirmed that there was graffiti in the warehouse restroom. (N. T. 57, 59, 187-188, 213). Gubbiotti offered that there was nothing sexual about the graffiti. (N. T. 187-188, 213). Grant offered that the graffiti was sometimes sexual. (N. T. 59). On this question of whether the graffiti was "sexually offensive" Gubbiotti's testimony lacked credibility.

Between Dixon and Gubbiotti, it is imperative that a conclusion be made regarding who was more credible. Critical evidence supportive of either Dixon or

Circle depends on who is found credible in several fundamental respects as the question of liability is evaluated.

Already, we have indicated that neither Gubbiotti nor Dixon are wholly credible. On the circumstance of the motivation for Dixon's transfer to purchasing, Dixon testified that within 24 hours of Walker's offensive song, she went to Gubbiotti to complain about Walker. (N. T. 73-74, 93, 105). Conversely, Gubbiotti testified that Dixon never complained to him. (N. T. 192). Dixon says that she told Gubbiotti that she could not handle sexually explicit songs and Walker continually picking on older workers. (N. T. 74, 106). Dixon also offered that she informed Gubbiotti that she had not gone to Grant because of embarrassing and demeaning comments Grant often made to employees like calling them "stupid idiot" or "you're dumber than a box of rocks" or asking an employee, "don't you know what you're doing?".

For several reasons, we find Dixon's version of her encounter with Gubbiotti more credible. First, Gubbiotti himself offered that he had limited interaction with Dixon. (N. T. 186). Gubbiotti suggested that during several conversations with Dixon, she had expressed an interest in a career with Circle, but there would have been no reason for Dixon to express an interest in an office position. All of Dixon's past experience had been warehouse work.

The record reveals that when an office position opens, Circle preferred to fill those openings with individuals from the warehouse. In Dixon's circumstance, she had only been with Circle for several months and her transfer to purchasing jumped over numerous warehouse workers with far more experience at Circle. Gubbiotti confirmed that no one else from the warehouse had even been considered for the open position. (N. T. 190). Added to this we find Chalawich's testimony that he

found the situation of Dixon's transfer "curious", (N. T. 164) and that he does not know why Dixon was transferred to purchasing. (N. T. 163).

We find that Gubbiotti is not credible when he says that Dixon did even not complain to him. Indeed, Dixon did complain to Gubbiotti and her complaint wholly motivated her transfer.

The next major area where critical testimony stands in stark contrast is the cause of Dixon's termination from the purchasing department. There are numerous discrepancies that collectively lead to the conclusion that Gubbiotti again lacks credibility.

In effect, Gubbiotti offered that Dixon was terminated because she had "snapped" at Corinne Pace, (hereinafter "Pace"), the woman who was training Dixon. Gubbiotti offered that Mary Kay Spurling told him there had been an incident involving Dixon snapping at Pace. (N. T. 193). However, Mary Kay Spurling testified that the first time she had spoken about Dixon was at the meeting where Dixon was terminated from the purchasing position. (N. T. 227).

For some reason, Gubbiotti attempted to divorce himself from the decision to terminate Dixon. Gubbiotti testified that he was only involved in "executing" the decision to remove Dixon, (N. T. 193), and that he did not make the decision to terminate Dixon, (N. T. 203), but only had input into the decision. (N. T. 194). Mary Kay Spurling offered that she did not observe Dixon's performance, (N. T. 225), and that she was not involved in the decision to remove her. (N. T. 225). Clearly, the decision to terminate Dixon from purchasing was wholly Gubbiotti's.

Gubbiotti testified that he had asked Pace about Dixon snapping at her, (N. T. 194), but Pace testified that she did not even recall an incident with Dixon, only that