

One Dollar for Damages but \$250K for Punishment is Just Fine With the Court

by Dennis J. Merley - Tuesday, April 23, 2019



A Federal Appeals Court approved a jury verdict that awarded a harassment claimant one single dollar for actual damages but a whopping \$250,000 for punitive damages because the employer did not take the issue of racial harassment seriously. We suspect they might do things a bit differently from now on

Adrian Bryant worked for four years as a deckhand on a barge operated by Jerry Sand Co. Throughout his employment, Bryant's supervisor Jerry Skaggs taunted and harassed Bryant with frequent racial slurs and derogatory names. Skaggs also assigned Bryant to more difficult tasks, including one occasion when Skaggs made Bryant paint rails in the hot sun and would not allow him to drink water or come into the air conditioned room. When Bryant complained that he felt sick, Skaggs made him continue working and racially insulted him. Bryant ended up suffering a heart attack and missing two weeks of work.

Many Days Late, Many Dollars Short

The company had no human resources personnel, nor any harassment or anti-discrimination policies. Bryant complained twice to his manager and four times to the company president but nothing was done. When another employee submitted an anonymous complaint on Bryant's behalf, the employer did investigate and confirmed the racist comments by Skaggs but still did nothing about them. A short time later, Bryant was fired for absenteeism.

Bryant sued in federal court claiming a racially hostile work environment and retaliatory termination. The district court dismissed the retaliation claim but allowed the harassment claim to go to a jury, who found in Bryant's favor. Since they determined that Bryant suffered no

actual monetary damages, the jury gave him a nominal award of compensatory damages of just \$1.00. However, they awarded him \$250,000 in punitive damages.

The employer **appealed** the punitive damages award to the Eighth Circuit Court of Appeals (which covers Minnesota), offering two arguments: (1) there was insufficient evidence to justify an award of punitive damages; and (2) the amount of \$250,000 violates due process because it is excessive and disproportionate to the compensatory damages award.

Jury's Award Was Right on the Money

As for the contention that there was no basis for awarding punitive damages, the court essentially responded "You must be joking." They noted that an award of punitive damages requires a showing that the employer's discriminatory practice was perpetrated with malice or a reckless indifference to the employee's legal rights. They then found that Bryant met his burden by demonstrating that the employer took no action to protect Bryant from Skaggs' behavior despite frequent complaints, as well as corroboration from other employees.

In addition, the company had no policies designed to inform employees of their rights and responsibilities in regard to harassment and discrimination in the workplace. The Court therefore had no problem affirming the jury's determination that the employer acted with reckless indifference to Bryant's right to work in an atmosphere free from illegal racial harassment.

The court also ruled that Bryant's punitive damage award was not excessive or disproportionate to the actions in the case. They explained that while the amount may seem a bit top-heavy, "the degree of a party's reprehensibility is the most important factor in the due process analysis." Because Skaggs' conduct was severe and went unchecked despite several complaints by Bryant and a second employee, the court felt they should "decline to place undue weight on the mathematical ratio between compensatory and punitive damages." They therefore concluded that the damage award did not violate the employer's right to due process.

Bottom Line

The import of this case is pretty simple. Have an anti-harassment policy, follow it, don't ignore complaints or evidence of wrongdoing and take timely and appropriate action to prevent and stop harassment. The employer in this case probably would have fared much better had they even followed just some of these suggestions.