

A True Story of Harassment

By Olivia Goodkin, Esq.

The Players

Hugh Hardage worked as a sales manager for a television station in Seattle¹. He was supervised by Patty Dean, the general sales manager, who in turn was supervised by Kathy Sparks, who worked in the company's office in Tacoma. Hardage alleged he was the victim of sexual harassment both in and out of the workplace.



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The In-Office Harassment

Hardage said that Sparks repeatedly flirted with him and made inappropriate comments during Sparks' visits to the Seattle office. But Hardage also admitted to flirting, including calling Sparks, "Sparkalicious," "Baskin Robbins 32nd Flavor" and "Driving Ms. Sparky." He also said his love life was the topic of office discussion.

The Harassment That Occurred Out of the Office

Hardage alleged that there were five occasions of harassment outside of the office. The first occurred when a group of employees went drinking. Sparks put her arms around Hardage's waist and said he had a "cute ass." Underneath a table, she slipped off her shoe and put her foot in his crotch. She asked if she could spend the night at his apartment, to which he responded, "no," which angered her.

Days later, Sparks confessed her sexual feelings to Hardage and asked if he felt the same way. He said he did not want to damage his career by having a relationship with her.

The third incident occurred when Hardage and Sparks flew on the same flight to visit their families, and Sparks made physical and verbal sexual advances. Hardage told her nothing physical would happen between them.

About two months later, Hardage and Sparks took clients to a baseball game. This was the only alleged instance of harassment outside of the workplace that occurred during a work-related event. Sparks began rubbing Hardage's leg with her foot while at the game, and he told her to cut it out. She also tried to reach for his crotch underneath a rain poncho.

Nevertheless, Hardage invited Sparks to join him for drinks with his friends after the game. When introducing her to his female friends, Sparks shouted, "Who haven't you f---ed in here?" Hardage pointed to one woman and replied, "I haven't f---ed anyone in here, you know, but hopefully she's next." This angered Sparks, who then shouted obscenities to Hardage and told him he was "finished."

The Report Made by Hardage of the Alleged Harassment

The day after the last incident, Hardage told his boss, Patty Dean, that things "had gone too far" and that Sparks had lost her temper. But, he did not tell Dean that Sparks had been sexual with him. Dean promptly told an executive vice president about the report, such as it was, who in turn had a human resources department representative contact Hardage the same day of his complaint, and arranged to meet with him the following week.

During the meeting, Hardage did not give Paul Falcone, the human resources representative, any of the details of the alleged harassment. Instead, he said that Sparks had made unwanted sexual advances that were denied and that he was uncomfortable. Falcone offered to talk to Sparks and treat the complaint as anonymous, but Hardage insisted on handling the situation by himself. Falcone followed up two weeks later. Hardage said nothing new had happened, and he still wanted to handle it himself.

Hardage's Performance Review, Resignation and Lawsuit

Around the same time, Hardage's work performance was at issue, including failure to meet sales goals, and his insubordination in failing to return to work after attending a charity event. On August 6, 2001, Hardage was given a memo that said there would be a formal meeting to reevaluate his performance in 30 days, and that if his performance did not improve, he could be terminated.

On August 31, 2001, Hardage resigned. He sued Sparks and his employer, CBS Broadcasting Inc, and its related affiliates, for sexual harassment, in federal court in Washington State. The trial court ruled in favor of defendants on motions for summary judgment. The appellate court (the Court of Appeals for the Ninth Circuit) affirmed the decision.

Why Did the Court Find in Favor of the Defendants?

In a case such as this, where no tangible employment action was taken (e.g., demotion or termination), an employer can successfully defend against liability if it can show that it exercised reasonable care to prevent and correct harassment and that the plaintiff unreasonably failed to take advantage of preventive or corrective opportunities.

The Defendants Adopted an Anti-Harassment Policy and Took Prompt Corrective Action

With respect to the first requirement, the court held it was undisputed that CBS had a written anti-harassment policy, with which Hardage was familiar as a supervisor himself. The Court found that CBS fulfilled its duty to take preventive measures by "adopting and promoting awareness of its anti-harassment policy."

In addition, CBS took steps to correct Hardage's situation promptly. The evidence showed that Dean immediately reported what Hardage said to her supervisor, who turned the matter over to the human resources department. Falcone, from human resources, promptly scheduled a meeting with Hardage. At that meeting, Falcone told Hardage what his options were, and Hardage chose to handle the matter himself. Falcone followed up with Hardage two weeks later.

Hardage alleged that this was not enough, and that Falcone should have disciplined Sparks. The court held that because Hardage did not share the details of the alleged harassment, there was no duty to conduct a more thorough investigation. When the only notice of harassment is by the employee, she or he must present evidence that enough information was given to the employer to think that the harassment took place.

Hardage Failed to Take Advantage of the Corrective Opportunities

The second component of the defense asserted by defendants is that Hardage unreasonably failed to take advantage of preventive or corrective opportunities. Hardage failed complain to Dean until about six months after the first alleged incident of harassment. In addition, after making the complaint, he told the company not to investigate it.

Lessons for Employers

Make sure that you have a written anti-harassment policy, and that it is repeatedly brought to the attention of your entire workforce. If a complaint is made, it should promptly be investigated and documented. The defendants in the Hardage case were able to defeat the lawsuit of a disgruntled, non-performing employee because they followed these procedures.

1. The names in this article are true. The article discusses the case of Hugh Hardage v. CBS Broadcasting Inc., et al., published on January 6, 2006 by the United States Court of Appeals for the Ninth Circuit.

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