
Retaliation Charges

Sumitomo Shoji America, Inc. v. Avagliano, 457
US 176 - Supreme Court 1982

8-8-1984

Equal Employment Opportunity Commission Determination of P. Incherchera's Charge

Lewis M. Steel '63



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1501
NEW YORK, NEW YORK 10007

Palma Incherchera
2866 Philip Avenue
Bronx, NY 10461

Charge No. 021-83-1382

Charging Party

Sumitomo Corporation of America
345 Park Avenue
New York, New York 10154

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met.

Charging Party alleges that she was denied equal terms and conditions of employment, and that she was denied promotion in retaliation for having filed a previous Title VII charge with this Commission, and for her persistence in pursuing her rights protected by Title VII of the Civil Rights Act of 1964, as amended.

Respondent denies the allegations.

It is undisputed that Charging Party has been employed by Respondent since 1972. The record shows that Charging Party filed a sex and national origin discrimination charge with this Commission in January 1982. The record further shows that she subsequently commenced a private Title VII action in Court. Charging Party alleges that she was denied equal terms and conditions of employment after her filing of her charge, in that she was harassed and pressured to settle her case and that she was isolated from the other employees. She alleges that Respondent further retaliated against her by not promoting her in January 1983.

Investigation shows that Respondent was aware that Charging Party was represented by counsel at the time the alleged intimidating conversation occurred. Charging Party alleges that Respondent's officials sought her out to have a conversation with her as to why she had filed the discrimination charge. She alleges that she was pressed with dropping her charge and her attorney. Respondent admits having a conversation with Charging Party, but denies applying pressure in an attempt to achieve a settlement. Respondent states that discussions concerning her case came up in meetings designed to listen to Charging Party's grievances concerning her heavy workload and other non-Title VII related working conditions.

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Investigation reveals that Respondent's official did ask Charging Party to drop her counsel in this meeting. The record supports Charging Party's intimidation allegation, as evidenced by statements submitted by Charging Party including a letter of protest by her attorney. Respondent subsequently cancelled a scheduled meeting with Charging Party.

Charging Party's isolation allegation is supported by two confidential witnesses who stated that their friendship with Charging Party had met with Respondent's disapproval. In one case, the confidential witness stated that this witness had been warned by a supervisor to stay away from Charging Party and not to get into trouble. Although Respondent states that it was not afforded the substance of the statements of the confidential witnesses to allow it to formulate a response, we see no reason not to credit the statements from these witnesses.

With respect to the promotion issue, Respondent states that Charging Party was not promoted in January 1983 because she was not one of the best performers warranted promotion. It further states that a better performer who, like Charging Party, met the two-year requirement as a senior secretary was also not promoted.

Examination of Charging Party's evaluations indicates that she had been given very good evaluations in 1980 and 1981. The record shows that her evaluation dropped substantially in 1982, after she had filed her previous Title VII charge.

Respondent states that Charging Party was given a lower numerical score in her 1982 evaluation because her heavy workload, which had awarded her good evaluations in the two previous years, declined after it hired an extra employee. It further states that Charging Party began developing negative attitude towards her job. Respondent's contention regarding the workload was rebutted by a credible witness who stated that Charging Party's workload has remained the same. Respondent's evaluation of her negative attitude is subjective and is not supported by record. Respondent's retaliatory practice of given lower evaluation was likewise practiced on another Charging Party who had filed similar charges with the Commission. I, therefore, conclude that there is reasonable cause to believe that Charging Party was not promoted to administrator in January 1983 because of retaliation.

Having determined that there is reasonable cause to believe that the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A "Notice of Conciliation Process" is enclosed for your information. A


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representative of this office will be in contact with each party in the near future to begin the conciliation process.

On behalf of the Commission:

AUG - 8 1984

Date


Edward Mercado
District Director

Enclosure:
Notice of Conciliation Process