



Elizabeth Cadle
Director

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Charge No.: 165-2002-00789

Olin Singletary

Charging Party

Eastman Kodak Company
343 State Street
Rochester, New York 14650

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue the following determination on the merits of this charge. Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, and timeliness, deferral and all other requirements for coverage have been met.

Charging Party alleged that throughout his employment, he and other black employees have received less pay for the same work as white counterparts, have repeatedly been denied promotions, have been given lesser job classifications and less desirable work assignments and have been subjected to racial harassment based on their race, black. Charging Party alleged he and others joined together to complain about the disparate treatment, and he was subsequently retaliated against for complaining.

Respondent denied the allegations and stated it is not aware of any facts indicating that the Charging Party was treated differently from others with respect to pay, promotions or terms of conditions of employment based on race. Respondent further states that the Charging Party has not been retaliated against and he has not made any allegations of harassment, intimidation or retaliation since his participation as ADR Panelist. Lastly, Respondent stated it has a long-standing policy of fair treatment, which prohibits discrimination, and any specific complaint brought to management's attention is handled in a swift manner with appropriate corrective actions.

Respondent's position fails to withstand scrutiny. Since October 1999, the EEOC Buffalo Local Office has received multiple charges of discrimination against Respondent alleging similar issues and bases. This investigation has been on-going as a systemic analysis since 1999. Black employees also brought their concerns to the Rochester Chapter of the NAACP. Shortly thereafter, Respondent instituted an Alternative Dispute Resolution (ADR) Panel in an attempt to address and resolve employee concerns. The ADR Panel heard complaints from hundreds of employees in various departments. At present, a new coalition of employees has formed, numbering approximately 1000, called Employees Committed to Justice.

With respect to the pay issue, the EEOC observed that from 1990 through 2001, weekly pay rates for white employees were consistently higher, on average, than weekly pay rates for black employees. In or around 1999, Respondent conducted its own internal wage and promotion analysis. Respondent acknowledged a disparity in pay and promotions for black employees in some departments. Respondent gave black employees in some departments an upgrade, along with a lump sum payment, called the Do The Right Thing award. There was a reduction in mean pay differences between 1998 through 1999, consistent with the Do The Right Thing award, however, the yearly mean pay differences were statistically significant. White employees, on average, occupy higher wage grades than black employees. The net advantage for white employees is approximately one additional wage grade. In most years, the proportion of black employees is inversely related to grade level. The evidence indicates that Kodak varied its pay adjustments from division to division. It made no major adjustments in Logistics, and fairly substantial adjustments in the Skilled Resource Division, and intermediate adjustments in the other divisions. Respondent failed to provide equitable relief. Some employees did not receive appropriate relief, while others were over-compensated, and still others received nothing at all.

With respect to the promotion issue, the EEOC analysis showed that black employees are promoted at a rate lower than white employees. The EEOC analysis concluded that in 1996, 1997 and 1998, there was a uniform deficit in promotions awarded to black employees. In 1999, there was a surplus of promotions awarded to black employees. Beginning in 2000, the number of promotions awarded to black employees decreased significantly, though statistically it still showed a surplus. By 2001, the number of promotions to black employees had dropped again to a deficit level. Although the EEOC recognizes the Respondent's efforts via the Do The Right Thing Award, Respondent did not rectify the problem. In fact, the EEOC analysis determined that although the Respondent showed improvements with respect to the pay and promotion issues in 1999 and 2000, data indicates that as early as 2001, Respondent began to backslide into old patterns of disparate treatment.

With respect to the harassment issue, testimony from the Charging Party and other witnesses provides collaborative evidence of a hostile work environment. The investigation revealed that prior to 1999, Respondent had no consistent policy to address harassment complaints. Complaints of racial harassment often went unanswered, and consequently the harassment itself was unabated and in some circumstances condoned by management. Respondent stated that in 1999, it established the ADR Panel to resolve employee complaints. ADR Panelists provided information that although the ADR Panel was an effective tool for employees to bring complaints to management, it failed to resolve the issues. Panelists complained that management failed to take the appropriate remedial action recommended by the Panel. Consequently, egregious incidents of harassment continue today. Although the EEOC acknowledges the Respondent's efforts, Respondent has failed to effectively stop the harassment.

The Charging Party also alleged he was subjected to different terms and conditions of employment than his white counterparts. The Charging Party provided numerous examples in the form of collaborating evidence to show disparate treatment. The Charging Party consistently described how white employees were given higher code job assignments that allowed them to move ahead, while black employees were held back. The Charging Party described how black employees were given less desirable, "dirty," more dangerous tasks, while white employees were not.

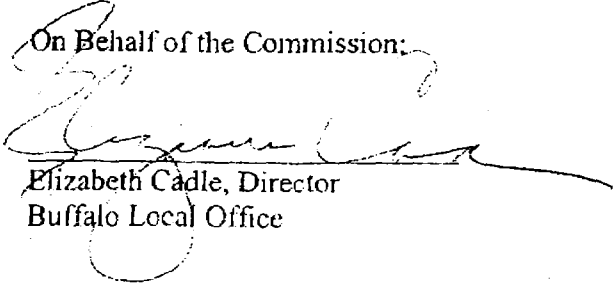
The Charging Party alleged he was subjected to retaliation based on his participation as an ADR Panelist, and for protesting discriminatory practices. The investigation determined that the Charging Party participated in protected activities. The Charging Party complained internally, filed complaints with the NAACP, and served as an ADR Panelist. Respondent is aware of these protected activities. The investigation revealed employees alleged their own specific adverse action. Each individual's experiences, taken together, provided collaborative anecdotal evidence to support a retaliation basis.

The EEOC draws an adverse inference from the Respondent's failure to respond specifically to the allegations of retaliation. Historically, Respondent has answered each allegation against it specifically. Respondent has denied retaliating against the Charging Party, but it has failed to support a legitimate, non-discriminatory reason for taking the adverse actions complained of by the Charging Party and the other employees identified during the investigation.

Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices through informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution to this matter. The confidentiality provisions of Commission Regulations apply to information obtained during conciliation.

When the Respondent declines to discuss settlement or when, for any reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission:


Elizabeth Cadle, Director
Buffalo Local Office

FEB 06 2004

Date

cc: Clayborne E. Chavers, Esq.
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