

Katie Claimant v. Callahan Auto Parts, Inc.
U.S. District Court for the Eastern District of Indiana

INDIANA CHAMBER OF COMMERCE
HUMAN RESOURCES CONFERENCE

April 23, 2019

Presented by:

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Witness List and Counsel

Plaintiff, Katie Claimant

Plaintiff's First Supervisor, Ima Friend

Plaintiff's Second Supervisor, Tommy DeCad

Plant Manager, Frank Fiat

Plaintiff's Counsel, Terry Belle Tiger

Defendant's Counsel, Chaiza Champion

District Court Judge, Hugh G. Goe

Exhibit List

Exhibit 1 - Claimant's 2016 Performance Evaluation

Exhibit 2 - Claimant's 2017 Performance Evaluation

Exhibit 3 - Final Written Warning to Claimant

Exhibit 4 - Company's Anti-Harassment Policy

Exhibit 5 - E-Mail Exchange Between DeCad and Fiat

Exhibit 6 - Written Warning to Claimant

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Exhibit 8 - Company's Progressive Discipline Policy

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 1

**Callahan Auto Parts
2016 Employee Evaluation**

Employee Name: **Katie Claimant**

Job Title: **Machine Operator**

Department: **Brake Pads**

EMPLOYEE RATINGS

3 = Consistently Exceeds Expectations - **Consistently exceeded achieving most or all job expectations mutually agreed upon by the supervisor and employee.**

2 = Meets Expectations - **Achieved most or all job expectations mutually agreed upon by the supervisor and the employee.**

1 = Needs Improvement - **Failed to achieve most or all expectations mutually agreed upon by the supervisor and the employee.**

| | |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | 1. JOB KNOWLEDGE: Exhibits proper knowledge of procedures, materials, equipment and techniques required for current job. |
| 3 | 2. QUALITY: Maintains proper quality of parts produced. |
| 3 | 3. PLANNING/ORGANIZING: Maintains sufficient raw materials to maintain machine operation, coordinates with supervisor and other Machine Operators to maintain flow of production, establishes appropriate priorities, and utilizes available resources. |
| 3 | 4. PRODUCTIVITY: Consistently produces the volume of parts based on the resources available to accomplish department/unit goals and priorities. |
| 3 | 5. INITIATIVE/INNOVATION: Shows self-starting ability, resourcefulness, and creativity to formulate and propose innovative solutions and improvements to the duties of the position. |
| 3 | 6. TEAMWORK/COOPERATION: Maintains positive working relationships with other co-workers, supervisors, and managers to solve problems, improve work processes, share information and resources, and accomplish specific tasks in a professional and ethical manner. |
| 3 | 7. DEPENDABILITY: Is consistently punctual, regular in attendance, meets deadlines, and performs work without close supervision. |
| 3 | 8. COMMUNICATION: Communicates with co-workers, supervisors and managers to ensure efficient machine operation and to maintain a positive work environment. |

OVERALL PERFORMANCE SUMMARY

Please use this space to describe the overall performance rating. The overall rating should be a reflection of the performance factors, behavioral traits and supervisory factors.

Katie is performing at a high level and is a pleasure to work with

EMPLOYEE COMMENTS

I have been advised of my performance ratings. I have discussed the contents of this review with my supervisor.

Supervisor's Signature: *Ima Friend* Date: 12/31/16

Employee's Signature: *Katie Claimant* Date: 12/31/16

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 2

**Callahan Auto Parts
2017 Employee Evaluation**

Employee Name: **Katie Claimant**

Job Title: **Machine Operator**

Department: **Brake Pads**

EMPLOYEE RATINGS

3 = Consistently Exceeds Expectations - **Consistently exceeded achieving most or all job expectations mutually agreed upon by the supervisor and employee.**

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OVERALL PERFORMANCE SUMMARY

Please use this space to describe the overall performance rating. The overall rating should be a reflection of the performance factors, behavioral traits and supervisory factors.

Katie continues to perform very well and gets along well with everyone.

EMPLOYEE COMMENTS

I have been advised of my performance ratings. I have discussed the contents of this review with my supervisor.

Supervisor's Signature: *Ima Friend* Date: 12/31/17

Employee's Signature: *Katie Claimant* Date: 12/31/17

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 3

Disciplinary Report

Date Issued: 03/15/2018

Supervisor: Ima Friend

Employee Name: Katie Claimant

Department: Brake Pads

Plant Manager: Frank Fiat

Discipline Type: Final Written Warning / Probation

Incident Description: On March 12, 2018, Katie Claimant was assigned to operate the MN50 brake pad machine. This was Katie's normal job assignment; she had been properly trained on the MN50 and had over two years' of experience running the machine. The same machine had been operated on the previous shift without incident. Sometime early in Katie's shift, the machine malfunctioned and began to produce brake pads that were far out of specifications. Katie failed to notice the machine indicators flagging the faulty brake pads and continued to run the machine for the duration of her shift. This resulted in the production of thousands of brake pads that had to be scrapped. More importantly, had the issue not been caught in a Quality Control audit, the pads would have been shipped for use by our customers, potentially resulting in very dangerous driving conditions and liability to the company. As a result of this error, Katie will be placed on a final written warning and a 60-day probationary period. In addition, Katie will be transferred to the Accessories Department.

Employee Comments: This was my fault. I don't know why I didn't see the machine indicator. I'm just happy nobody was hurt using the brake pads.

Manager Signature: *Ima Friend*

Employee Signature: *Katie Claimant*

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 4

**Callahan Auto Parts
Harassment Policy and Complaint Procedure**

The Company will not tolerate unlawful harassment. All employees are prohibited from unlawfully harassing any employee or other person in the course of employment.

In general, ethnic or racial slurs, jokes and other verbal or physical conduct relating to any of the following characteristics are harassment when they unreasonably interfere with the person's work performance or create an intimidating work environment: race, color, age, sex, national origin, ancestry, creed, religion, disability, genetic information or any other prohibited basis of discrimination under applicable local, state or federal law.

Sexual harassment has been defined by federal and state regulations as a form of sex discrimination. It can include unwelcome sexual advances, asking for sexual favors, or other physical or verbal conduct of a sexual nature by management or others in the workplace.

Sexual harassment under this policy exists when:

- (a) Supervisors or managers make submission to such conduct either an explicit or implicit term or condition of employment (including hiring, compensation, promotion, or retention);
- (b) Submission to or rejection of such conduct is used by supervisors or managers in making employment-related decisions such as promotion, performance evaluation, pay adjustment, discipline, work assignments, etc.

Sexual harassment under this policy may also exist when co-workers (or non-employees, such as vendors) participate in such conduct, when the conduct unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

It is important to note that sexual harassment does not have to include conduct of a sexual nature to violate this policy. For example, abusive, offensive or demeaning behavior that is directed to members of one gender only (whether male or female) may violate this policy. This is the case even if the conduct was not motivated by sexual desire or gratification. In addition, harassment of a male by another male or female by another female also is a violation of this policy.

Examples of the types of conduct that are prohibited by our Company policy include, but are not limited to, the following:

- Sexually suggestive touching
- Unwanted deliberate touching, leaning over, cornering or pinching
- Lewd, off-color or sexually oriented comments or jokes
- Making sexual gestures with hands or through body movements
- Questions about another's sex life or experiences
- Stories about your sex life or experiences
- Multiple requests for dates or other activities
- Sexually suggestive profanity
- Unwanted pressure for sexual favors
- Whistling at someone or cat calls
- Looking a person up and down (elevator eyes)
- Display of sexually suggestive software
- Referring to an adult as a girl, hunk, doll, babe or honey
- Any of the above through any type of communication (in person, electronically including social media communication, texting and the like)

COMPLAINT PROCEDURE:

STEP 1: If you have a complaint about harassment, you should immediately ask the person doing the harassing to stop if you are comfortable doing so. You should also report the problem to your supervisor.

STEP 2: If your supervisor is not an appropriate person, or if you are not satisfied with your supervisor's handling of the complaint, bring the matter to the attention of any other supervisor or manager with whom you feel comfortable.

STEP 3: If you still are not satisfied with the handling or outcome of your complaint or if you feel more comfortable skipping the other steps, take your complaint directly to the Plant Manager or the Human Resources Manager at your location, or any other Company officer with whom you feel comfortable.

All complaints will be thoroughly investigated and will be treated as confidentially as possible. However, in order to conduct a thorough investigation, the Company may not be able to keep a complaint completely confidential. If the investigation shows that unlawful harassment has occurred, the harasser will be disciplined up to or including termination from employment.

Retaliation against an individual for bringing harassment claims to our attention is prohibited.

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 5

From: Frank Fiat
To: Tommy DeCad
Date: March 29, 2018, 1:46 p.m.
RE: Katie Claimant

I understand your position. Once I receive the written warning from you, I will process Katie's termination.

Frank Fiat
Plant Manager
Callahan Auto Parts

From: Tommy DeCad
To: Frank Fiat
Date: March 29, 2018, 1:45 p.m.
RE: Katie Claimant

I just don't think I can let this go. Again, she did all this where everybody could see and hear her. I won't be able to supervise the other employees going forward if I just let her get away with this. I don't know about firing her, but I do intend to issue a written warning.

Tommy DeCad
Supervisor, Accessories Department
Callahan Auto Parts

From: Frank Fiat
To: Tommy DeCad
Date: March 29, 2018, 1:30 p.m.
RE: Katie Claimant

Tommy, that's fine if you want to write her up. It sounds like she was out of line and we have written up other employees in the past for similar incidents. You should know, however, that Katie is on probation from a serious error she made in the Brake Pads Department before transferring to Accessories. The company's policy is that if an employee is on probation and receives any form of discipline (even a written warning), then the employee is terminated.

Frank Fiat
Plant Manager
Callahan Auto Parts

From: Tommy DeCad
To: Frank Fiat
Date: March 29, 2018, 11:15 a.m.
RE: Katie Claimant

Frank – As you know, Katie Claimant was transferred to my department two weeks ago after she made a completely boneheaded move that resulted in about \$20,000 worth of scrap. She also could have gotten somebody killed with the defective brake pads she was making.

Anyway, she came up to me this morning and asked to take a week of vacation in the middle of June. She is just ditzy enough to think that nobody else would want to take vacation in June. I told her other employees already requested that week in June and whoever asks first gets that week for vacation. Well, then she got hysterical and started screaming at me, claiming I was lying, and dropping f-bombs. She did all this right in front of all the other department employees. I can't have one of my employees challenge me this way in front of everyone else without any consequences. I would like your approval to write Katie up for her emotional outburst.

Tommy DeCad
Supervisor, Accessories Department
Callahan Auto Parts

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 6

Disciplinary Report

Date Issued: 03/30/2018

Supervisor: Tommy DeCad

Employee Name: Katie Claimant

Department: Accessories

Plant Manager: Frank Fiat

Discipline Type: Written Warning

Incident Description: On March 29, 2018, Katie Claimant approached me on the production floor and requested to take a week of vacation in June. I explained to Katie that another employee already requested that week and vacation dates are decided on a first come first serve basis. When I told her I could not approve her requested vacation week, she became irate and verbally abusive, including directing very vulgar language at me and shouting at the top of her lungs. All of this occurred within the sight and hearing of other employees in the Accessories Department. As a result of this inappropriate conduct, I am issuing this Written Warning to Katie and directing her to refrain from similar conduct in the future.

Employee Comments: Yes, I lost my temper, but only because I thought this was just another example of Tommy DeCad harassing me like he did when I was in the Brake Pads Department. I should have never been transferred to his department based on his previous harassment of me.

Manager Signature: *Tommy DeCad*

Employee Signature: *Katie Claimant*

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 7

Disciplinary Report

Date Issued: 04/2/2018

Supervisor: Tommy DeCad

Employee Name: Katie Claimant

Department: Accessories

Plant Manager: Frank Fiat

Discipline Type: Termination

Incident Description: On March 15, 2018, Katie Claimant was issued a Final Written Warning and placed on probation for 60 days as a result of poor job performance. On March 30, 2018, Katie received a Written Warning for engaging in verbally abusive conduct towards her supervisor. Per company policy, an employee on probation who receives any additional form of discipline is subject to immediate termination. As a result, Katie's employment is terminated effective as of the date of this notice.

Employee Comments:

Manager Signature: *Frank Fiat*

Employee Signature: *Refused to sign*

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

Trial Exhibit 8

**Callahan Auto Parts
Progressive Discipline Policy**

The Company hopes and expects that each employee will perform to a high level of achievement and behave in an appropriate and responsible manner. In circumstances where that is not the case, resort to disciplinary action may be required.

DISCIPLINARY PROCEDURES

Purpose and Scope: These procedures are designed to help and encourage all employees to anticipate, achieve and maintain acceptable standards of conduct, attendance and job performance, and to encourage fair and consistent treatment for all. Resort to these procedures may not be appropriate in all circumstances; certain conduct may immediately result in a final written warning or dismissal.

Employees may be subject to the following actions, depending on the conduct or performance at issue: verbal warning, written warning, final written warning, suspension (with or without pay), or dismissal.

The above disciplinary procedures are guidelines only, and are not a guarantee of a specific level of progressive discipline for any given behavior. The Company retains the discretion to use or to forego progressive discipline. Nothing in this policy in any way changes or limits the Company's policy of employment "at will."

MOCK TRIAL

Katie Claimant v. Callahan Auto Parts, Inc.

JURY INSTRUCTIONS

Introduction

In this case, Plaintiff, Katie Claimant, claims that the Defendant, Callahan Auto Parts, Inc., (1) subjected her to unlawful sexual harassment; and (2) terminated her employment in retaliation for complaining about sexual harassment. I am going to discuss the evidence that each party must put forth to either establish or defend these claims.

Burden of Proof

The Plaintiff bears the burden of proof as to all of her claims of unlawful conduct by Defendant. As a result, Plaintiff must prove by a preponderance of the evidence that the Defendant acted unlawfully as to each of her claims. When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all of the evidence in the case, you must be persuaded that it is more likely true than not true.

Sexual Harassment

Title VII of the Civil Rights Act of 1964 prohibits employers from subjecting employees to harassment based on sex. Plaintiff claims that she was sexually harassed by Tommy DeCad. To succeed on this claim, Plaintiff must prove six things by a preponderance of the evidence.

1. Tommy DeCad was Plaintiff's supervisor. A supervisor is someone who can affect the conditions of Plaintiff's employment. By this I mean someone who has the power to hire, fire, demote, promote, transfer or discipline Plaintiff;

2. Plaintiff was subjected to verbal comments and physical gestures by Tommy DeCad;

3. The conduct was unwelcome;

4. The conduct occurred because Plaintiff is female;

5. The conduct was sufficiently severe or pervasive that a reasonable person in Plaintiff's position would find Plaintiff's work environment to be hostile or abusive. To decide whether a reasonable person would find Plaintiff's work environment hostile or abusive, you must look at all the circumstances. These circumstances may include the frequency of the conduct; its severity; its duration; whether it was physically threatening or humiliating; and whether it unreasonably interfered with the Plaintiff's work performance. No single factor is required in order to find a work environment hostile or abusive.

6. At the time the conduct occurred, Plaintiff believed the conduct made her work environment hostile or abusive.

If you find that the Plaintiff did not prove by a preponderance of the evidence each of the things required of her, then you must find for the Defendant. If, on the other hand, Plaintiff has proved each of these things, you must go on to consider whether Defendant proved two things by a preponderance of the evidence:

1. Defendant exercised reasonable care to prevent and correct any harassing conduct in the workplace.

2. Plaintiff unreasonably failed to take advantage of opportunities provided by Defendant to prevent or correct harassment, or otherwise avoid harm.

If you find that Defendant has proved these two things by a preponderance of the evidence, your verdict should be for Defendant. If you find that Defendant has not proved both of these things, your verdict should be for Plaintiff.

Retaliation

Plaintiff alleges Callahan Auto Parts, Inc. retaliated against her by terminating her employment after she complained of harassment by Tommy DeCad to her previous supervisor, Ima Friend, and after she complained of harassment in the Employee Comments section of the March 30, 2018 Written Warning issued to her by Tommy DeCad.

To succeed on this claim, Plaintiff must prove by a preponderance of the evidence that Defendant terminated her either because she complained about harassment to Ima Friend *or* because she complained about harassment in the Written Warning documentation.

To determine that Plaintiff was terminated because of either complaint about harassment, you must find that Defendant would not have terminated Plaintiff if she had not made either complaint of harassment, but everything else had been the same. To find in favor of Plaintiff on this claim, you need only find that she was terminated for *any one* of these reasons; you need not find that she was terminated for *all* of these reasons.

If you find that Plaintiff has proved any of her retaliation claims by a preponderance of the evidence, then you must find for Plaintiff. However, if you find that Plaintiff did not prove either of these retaliation claims by a preponderance of the evidence, then you must find for the Defendant.

Closing

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. You will then discuss the case with your fellow jurors to reach agreement if you can do so. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. All of you must agree on a verdict.

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JURY INTERROGATORIES

I. COUNT ONE – Sexual Harassment

1. Did Plaintiff prove by a preponderance of the evidence each of the six elements of sexual harassment as set forth in the jury instructions?

No (End here; verdict for Defendant)

Yes (Proceed to Interrogatory No. 2)

2. Did Defendant prove by a preponderance of the evidence that:

a. It exercised reasonable care to prevent and correct any harassing conduct in the workplace; and

b. Plaintiff unreasonably failed to take advantage of opportunities provided by Defendant to prevent or correct harassment, or otherwise avoid harm.

No (Verdict for Plaintiff)

Yes (Verdict for Defendant)

III. COUNT TWO: Retaliation

1. Did Plaintiff prove by a preponderance of the evidence that she engaged in legally protected activity – that is, that she complained about unlawful harassment?

No (End here; verdict for Defendant)

Yes (Proceed to Interrogatory No. 2)

2. Did Plaintiff prove by a preponderance of the evidence that there was a causal connection between her protected activity and her termination?

No (Verdict for Defendant)

Yes (Verdict for Plaintiff)

NOTES

NOTES