



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Ivy Miller on behalf of Ebony Barnes
Complainant,
v.

Stony Sub, Inc. and Syed A. Hafeez
Respondent.

Case No.: 05-E-150

Date Mailed: January 26, 2009

TO:

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FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on January 21, 2009, the Chicago Commission on Human Relations issued a ruling in favor of Respondents in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby **DISMISSED**.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek review of this Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner



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FINAL RULING

I. INTRODUCTION

Complainant Ivy Miller on behalf of Ebony Barnes, a minor, contends that Respondents Stony Sub, Inc. ("Stony Sub"), and its owner, Syed A. Hafeez, sexually harassed Barnes and constructively discharged her from her employment with Stony Sub. Barnes alleged she was sexually harassed by Hafeez between November 22 and November 23, 2005, the only two days she was allegedly employed by Stony Sub. Barnes claims that the Respondents' actions are in violation of Chapter 2-160-040 of the Chicago Municipal Code. Respondents deny that Barnes was ever employed at Stony Sub or was ever sexually harassed by Hafeez.

II. PROCEDURAL HISTORY

On December 19, 2005, Miller, on behalf of Barnes, filed a Complaint with the City of Chicago Commission on Human Relations ("the Commission") alleging that Stony Sub and Hafeez sexually harassed Barnes in violation of Chapter 2-160 of the Chicago Municipal Code. On March 20, 2006, Miller, on behalf of Barnes, filed an Amended Complaint also alleging that Stony Sub and Hafeez constructively discharged Barnes in violation of Chapter 2-160 of the Chicago Municipal Code. In response to the Complaint, on January 26, 2006, Stony Sub and Hafeez signed and filed a Verified Response denying all violations.

On December 13, 2007, the Commission entered an Order Finding Substantial Evidence and

Setting a Conciliation Conference. After conciliation failed, a pre-hearing conference was held on May 19, 2008. An administrative hearing was conducted on July 28, 2008. Both Complainant and Respondent submitted post-hearing briefs.¹

III. FINDINGS OF FACT

1. Barnes is female. Tr. 3. At the time of her alleged employment with Stony Sub, Barnes was sixteen years old. Tr. 4.
2. Hafeez is the owner, president, and operator of Stony Sub. Tr. 3. Hafeez is male. Tr. 3. Hafeez has the authority to hire, terminate, discipline, set work schedules, and assign job duties and tasks to Stony Sub employees. Tr. 4-5.
3. Miller is Barnes' mother. Tr. 50. At the relevant time period, Barnes did not live with her mother; she lived with her boyfriend and his family. Tr. 29, 35.
4. On November 21, 2005, Barnes went to Stony Sub to buy sandwiches because she was hungry. Tr. 14. While Barnes was at Stony Sub, either Hafeez approached Barnes and asked her if she wanted to work at Stony Sub (Tr. 15) or Barnes approached Hafeez to request a job at Stony Sub. Tr. 71, 90. Either way, it was agreed that Barnes would return to Stony Sub on November 22, 2008 to begin work.
5. Stony Sub does not require potential employees to fill out an employment application. Tr. 4. Stony Sub does not maintain personnel files or work schedules of its employees. Tr. 4. Stony Sub does not maintain any written sexual harassment policy or written sexual discrimination policy. Tr. 4. Barnes was never required to submit an employment application for Stony Sub and no records exist of her working for Stony Sub. Tr. 32.

¹ Neither party timely filed the post-hearing brief. The hearing officer ordered the Complainant's brief to be filed no later than 21 days following transmittal of the transcript, which was received by the hearing officer on August 20, 2008. Accordingly, the Complainant's brief should have been filed by September 10, 2008, but was not received until September 26, 2008. The Respondent's brief was to be filed 21 days following the filing of the Complainant's brief. However, the hearing officer did not receive that brief until November 21, 2008. No objections were submitted by either party to the late filings. As a result, notwithstanding the late filings, the hearing officer considered both post-hearing briefs.

6. Stony Sub maintains a record of its employees including the employee's name, position, sex, birthdate, address, and dates of employment. Tr. 81, Complainant's Ex. 1.
7. Barnes never received a paycheck from Stony Sub. Tr. 29. During the two days that Barnes claims she worked for Stony Sub, she did not expect to get paid because she was training. Tr. 16, 42. Barnes did not know how long her training would last. Tr. 17. Barnes claims that on November 23 before she left Stony Sub, Hafeez gave her \$5.00 from the cash register. Tr. 29. Hafeez did not testify to any payment.
8. Barnes did not know what hours she would work for Stony Sub or what her schedule would be. Tr. 18-19. Barnes did not know what, if any, benefits she would receive. Tr. 17.
9. On November 21, Hafeez testified he asked Barnes about her experience and when she asserted she had experience, he said, "I need somebody's help for this job. If you want, you may come tomorrow." Tr. 71
10. When Barnes returned on November 22, Hafeez testified he asked her if she had brought an identification card and, when she answered in the negative, he told her to return the next day with identification. Tr. 72, 93. Hafeez claims that, because Barnes did not have the identification card, he did not hire her. Tr. 72.
11. Barnes claims Hafeez never asked her about her age or requested any identification. Tr. 31-32. She did not ever provide any identification or furnish to Hafeez her address or phone number. Tr. 93.
12. Barnes claims that she showed up to Stony Sub on November 22 at around noon to work, but that Hafeez told her to come back around 3:00 p.m. Tr. 15. Barnes claims that when she returned to Stony Sub around 3:00 p.m., Hafeez put her to work; he showed her how to make Italian beef sandwiches, told her how to use the deep fryer, showed her where the storage was, and explained where to find fries and meat. Tr. 16.
13. When Barnes returned to Stony Sub on November 23, according to Hafeez, since she still did

not have identification, he told her "I can't hire you." Tr. 93.

14. Barnes claims that when she came in to work on November 23, she again went to work; she started putting on fries, cooking, and working the cash register. Tr. 21. She claims that when she then went to wash her hands, Hafeez was there. She testified he asked her if she was feeling comfortable and when she responded that she was nervous, he motioned for her to sit on his lap. Barnes claims that she resisted at first but then she gently let him set her down. Barnes claims that she immediately stood up and Hafeez, sensing she was uncomfortable, started to rub her back Tr. 22.
15. Barnes claims that after the incident where she sat on Hafeez's lap, she asked Hafeez if she could leave early. Tr. 23. Barnes testified that Hafeez said she could leave, but that he first asked her if she liked him. When Barnes said that she did not like him in that way, he said "Well, I like you a whole lot." Tr. 24. Barnes claims that Hafeez then asked her if she had a boyfriend and when she responded that she did, Hafeez told her that her boyfriend would not have to know if they did anything. Tr. 24.
16. Barnes also claims that on November 23, Hafeez touched her on her buttocks a couple of times when she was standing at the cash register. Tr. 25.
17. Barnes testified that while she was working on November 23, another employee was also working, but Barnes did not know her name or anything else about her. Tr. 40. Barnes believes that it was that other employee's first day. Tr. 41.
18. Barnes never returned to work at Stony Sub after November 23, 2005. Tr. 27.
19. Barnes claims that she thereafter informed her boyfriend and her boyfriend's family what had happened at Stony Sub. Tr. 29, 38. She did not immediately inform Miller. Tr. 30.
20. Miller went to Stony Sub between November 25 and November 28, 2005, to visit Barnes. When Miller found out that Barnes was not working, she then went to Barnes' residence. Barnes informed her that "she didn't feel comfortable there, that he was touching on her and

stuff." Tr. 54.

21. Miller subsequently returned to Stony Sub with Barnes that same day to confront Hafeez about Barnes' allegations. Tr. 55. Hafeez told them that he was just trying to "help" her. Tr. 56-57. According to Miller, Hafeez stated he did not know Barnes was a minor. Tr. 57. Hafeez stated he told Miller he had not hired Barnes "because she never brought in her ID." Tr. 88.
22. Miller talked to her sister-in-law, a police officer, about Barnes' allegations, but she never made an official complaint with the police. Tr. 60.

IV. DISCUSSION

Section 2-160-040 of the Chicago Human Rights Ordinance ("CHRO") prohibits sexual harassment in the workplace. It states:

No employer, employee, agent of an employer, employment agency or labor organization shall engage in sexual harassment. An employer shall be liable for sexual harassment by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. Chicago Muni. Code §2-160-040.

Sexual harassment is defined in the CHRO as "any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment." Chicago Muni. Code §2-160-020(1).

However, in order for Barnes to be covered by the protections of Section 2-160-040 of the CHRO, she must first establish that an employment relationship existed at the time of the alleged sexually harassing conduct. To meet that burden, Barnes must demonstrate that she "engaged to work in the City of Chicago for or under the direction and control of another for monetary or other

valuable consideration.” Chicago Muni. Code §2-160-020(d). Barnes has not met that burden.

Barnes has presented no evidence, other than her own testimony, that she ever worked for Stony Sub. There is no documentation of such employment. Although Stony Sub does not obtain employment applications or utilize time clocks, it does maintain a record of employees' names, position, birthdates, period of employment, and reason for termination of employment. Respondents provided such information to Complainant for four individuals employed during calendar year 2005.

The existence of this information lends credence to Hafeez' testimony that he sought, but did not obtain, such information from Barnes and, as a result, did not hire her.

Although Barnes testified that on the two days she allegedly worked for Stony Sub, she learned to make sandwiches, locate supplies, operate the cash register, and make french fries, Barnes presented no witnesses who saw her perform that work for Stony Sub. Barnes apparently told Miller that she was working for Stony Sub, but Miller never witnessed her working there. Barnes also testified that on one of the days she worked, there was another employee working, but Barnes did not know that employee's name and there is no indication that Barnes attempted to obtain confirmation of Barnes' employment from that individual.

Barnes never claimed she provided Hafeez with any information or identification showing her age, address or phone number. She was never paid (except for the controverted \$5.00 from the cash register) nor does she testify that she was told of her hours, pay rate, nature of employment, benefits, or any other employment details. Nor, contrary to Hafeez' testimony, did she assert she had any employment experience. To find that an employment relationship existed in these circumstances, even with a employer as small and informal as Stony Sub and an employee as unsophisticated as Barnes, is problematic.

There was also no explanation as to why the individuals with whom Barnes lived and had a close relationship took no action after learning of Barnes' alleged sexual harassment. Miller claims that she told her sister-in-law, a police officer, that Barnes had been sexually harassed by her boss, a

man thirty years her senior. Yet no police report was ever filed and no police officer testified at the hearing to confirm that police had been informed of the alleged sexual harassment. Moreover, Miller was not told by Barnes about the alleged sexual harassment until several days after it occurred, and then only because Miller demanded to know why Barnes was not at work.

Even more significantly, although Barnes asserted that she told her boyfriend and her boyfriend's family about what happened at Stony Sub with Hafeez, none of those potential witnesses came forward at the hearing to confirm that Barnes provided them with that information.²

VI. CONCLUSIONS

Barnes did not meet her burden of demonstrating by a preponderance of the evidence that she was in an employment relationship under the CHRO. Nor did Barnes demonstrate, on this evidence, that submission to sexual conduct by Hafeez was made either explicitly or implicitly a term or condition of future employment. See, e.g., *McDuffy v. Jarrett*, CCHR No. 92-FHO-28-4778 (May 19, 1993); *Harris v. Craddieth*, CCHR No. 92-H-179 (Apr. 20, 1994); and *Bray v. Sandpiper Too et al.*, CCHR No. 94-E-43 (Jan. 10, 1996). Thus her claim for sexual harassment under the CHRO fails.³ Accordingly, Barnes is not entitled to any damages or other relief, because she has failed to prove a violation of the CHRO.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: January 21, 2009

² See *Blakemore v. Dominick's Finer Foods*, CCHR No. 01-P-51 (Oct. 18, 2006), affirming the Commission's use of the missing witness rule.