



Case of the Teenager's Mother

[By James Kilpatrick]

Hell hath no fury like an angry mother. You could ask the owners of a Burger King franchise in Milwaukee. They are about to be stuck for a big bundle because of a case decided last month in the U.S. Court of Appeals for the seventh Circuit.

Judge Richard Posner's opinion provides a lesson for employers everywhere: Bad managers are bad for business. This is the story:

Two years ago a high school student named Samekiea Merriweather went to work after school and weekends for Burger King. She had recently turned 16. It was her first paying job. The general manager of the restaurant was a 35-year-old bachelor named Tony Wilkins. Judge Posner tells the tale:

"Wilkins was having sexual relations with several of the female employees at the restaurant, and he began making suggestive comments to Merriweather. He would also rub against her and try to kiss her. She rebuffed his advances but he persisted. She felt as though she were working with 'a stalker all around.' He told her he wanted 'a young girl' because of 'their body. You know, it's not all used up.'

"Later he said, 'I want to take you to the hotel. You can have anything you want, I'll pay you what — \$500, \$600.' When she said she wasn't interested in him, that she had a boyfriend ... he turned hostile to her. Eventually he fired her, ostensibly though implausibly because she missed an afternoon of work. Later he rehired her, and the harassment continued."

The teenager complained repeatedly to Burger King's shift supervisor. She spoke to Wilkins' assistant manager. She asked him for a phone number that she could call to talk to someone about the harassment. He first gave her a run-around, then gave her a wrong number. When she asked what else she could do, he said he didn't know.

At about this point, Merriweather's mother roared into action. She went to the restaurant, intending to speak directly to Wilkins. He wasn't there, so she gave a piece of her mind to a shift supervisor named McBride. He professed ignorance, but he reported the unpleasantness to Wilkins as soon as he returned — whereupon Wilkins fired the young woman, this time for good. He was offended because "she had involved her mother in the matter rather than handling it like a lady."

So much for the facts. Merriweather's mother went to the Equal Employment Opportunity Commission with a complaint of sexual harassment. Then she went into U.S. District Court in Milwaukee. Without reaching the element of harassment, Judge Rudolph T. Randa dismissed the suit on two findings: In his summary judgment, the young woman had failed to invoke Burger King's procedure for complaints, and her mother's intervention was impermissible "third-party retaliation."

Judge Posner's panel in the 7th Circuit summarily reversed him. In harassment cases such as these, "the employer's liability is strict." Consideration must be given to the age and experience of employees. In this case, Burger King's business plan was to employ teenage girls often working at their first jobs. The company's lawyers "surprised us by telling us that an employee's age and education are irrelevant to the adequacy of the grievance machinery established by the employer ..."

Burger King's complaint procedures were "likely to confuse even adult employees." A handbook briefly instructed offended employees to complain to their "district

manager," but the handbook identified no one with that title. The handbook provided a telephone number that young Merriweather might have called. It would have given her a recorded message. The system apparently required an employee to complain to the "general manager," but in this case, Wilkins WAS the general manager. Theoretically, he would then have turned himself in, "which of course Wilkins did not do."

Posner rubbed it in: It would have cost very little for the company to have created a clear path for complaints of illegal harassment. Burger King could have posted a notice informing employees of a toll-free number they could call to complain. Instead, the company's manual provided a complaint procedure confusing not only for adolescents but also for grown-ups. As for counsel's objection to the mother's intervention, "The mother is not a lawyer and cannot reasonably be expected to have done more than she did."

There's bound to be a moral to this story. Perhaps this is a lesson for employers everywhere: If a horny manager provokes a teenager's mother, consequences will surely ensue. Burger King is about to learn this the hard way.

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