# CASE OF EMPLOYEE TERMINATION RESULTS IN "DREADFUL MUDDLE"

A woman working as a security supervisor at a mall in Alton, IL, was fired from her job and sued her former employers for sex discrimination and retaliation. The biggest question, however, wasn't the presence of discrimination but rather the termination itself. The plaintiff initially complained that her immediate supervisor was treating male co-workers more favorably, allegedly stating that he wanted an all-male staff and making sexually-charged comments in the company of female employees. Despite repeated complaints, the reputed inappropriate conduct continued, and the woman's supervisor gave her negative evaluations and accused the employee of serious transgressions, including theft. The regional manager – the immediate supervisor to the woman's immediate supervisor – informed the plaintiff that he had "abolished" her job in Alton and would be transferring her to a mall in another town. Though the manager assured the woman that she was not being fired, the transfer was viewed as demotion since it entailed a longer commute and was a line position in lieu of her current security supervisor status. The same day as the meeting with the manager, the plaintiff returned to work and was scheduled to work two days later. On that day, her supervisor saw her in uniform and told her to clean out her locker and to give him the office keys. She assumed that she was being fired, and as such, filed a lawsuit claiming a violation of the Civil Rights Act by discriminating her due to her gender and retaliating against her for her complaints.

Her case first went in front of a jury, which was to rule on whether or not the plaintiff had been fired. They believed that she had but answered "No" to the question of whether the supervisor was a company "decisionmaker" – a specific term used by the judge in instructions to the jury and to which the plaintiff's lawyer had objected. Appellate judges later suggested that the jury may have been responding to the question of the supervisor as the sole decisionmaker. Regardless, the plaintiff lost her case, and the judge stated that she had failed to prove a "cat's paw" theory of employer liability. On appeal, the judges referred to the jury case as "dreadful muddle." The cat's paw theory is derived from the fable, "The Monkey and the Cat", in which a monkey convinces a cat to retrieve roasting chestnuts: the monkey gets the chestnuts, and the cat only gets a burned paw. The theory in relation to employment discrimination, which the appellate judges admitted was "confusing," refers to an employer still being held liable even if the "motivating factor" for discrimination is false information from another party – in this instance, the alleged theft. The appeals court stated that the plaintiff had never made a claim that would incite the cat's paw theory of liability. She merely asserted that she had been fired by the supervisor, which the company had denied. Appellate judges said that the supervisor was the monkey of the fable and that his discrimination was by "his own paws." Most tellingly, the court stated: "Jurors are unlikely to understand legal concepts that judges have difficulty understanding." Referring to the judge's instructions and verdict form as "unsound," the appeals court reversed the prior ruling and remanded the case for a new trial.