

## ELECTRICIAN SUING FOR SEXUAL HARASSMENT APPEALS DECLARATION OF MISTRIAL



A mistrial ended a male employee's lawsuit against his employer – alleging gender discrimination, sexual harassment, retaliation and a state law claim of intentional infliction of emotional distress. The district court then granted the company's motion for judgment as a matter of law. The worker appealed the decision. The man worked as an electrician at Illinois Central Railroad, where he was still employed at the time of the appeals court's ruling. On a day in 2007, he was speaking with two co-workers, when a supervisor approached and discussed his sexual exploits with a woman. The electrician reported the incident to the facility manager and was asked to submit a written statement, which he did. All four workers were interviewed, and the supervisor admitted to his inappropriate conduct. The man met with the manager and a union official and was told that the supervisor was prepared to give him an apology, but the man declined the apology. The manager discussed the matter with his supervisor and a manager in the HR department, and they ultimately decided to fire the supervisor in question. The electrician testified at trial that co-workers "teased" him about the incident and allegedly made improper comments, but he reported so such comments to a supervisor. A month after the supervisor's termination, the man filed a charge of discrimination with the EEOC (Equal Employment Opportunity Commission), alleging sex discrimination and sexual harassment due to the incident and claiming co-worker harassment. He later filed a complaint against the company, asserting the same claims. The district court saw "genuine issue of fact" with each of the man's claims and denied the company's motion for dismissal. At the close of the plaintiff's proofs, the judge granted a motion for judgment as a matter of law with regard to the retaliation claim, but reserved ruling on the remaining claims. The three-day trial concluded with the jury unable to reach a verdict. After each juror was polled at the behest of the plaintiff's counsel, the judge declared a mistrial. The company's motion for judgment was granted, and the plaintiff's motion for a new trial was denied. Appellate judges reviewed the case and noted that the plaintiff had failed to show that he was targeted because of his sex, unable to cite complaints made by or similar comments made to a female employee. He likewise couldn't prove a hostile work environment. He admitted in court that the initial incident was the only time that a supervisor made a sexually inappropriate comment to him, and he indicated only three comments made by co-workers – and couldn't specify the time or date the comments were made. Most significantly, he was unable to show that his work performance was affected in any way. The plaintiff further asserted that he was entitled to a new trial based on the jury's fragmentary note: "We the jury are confident that we are unable to reach a unanimous." He deemed the note unclear and stated that the judge should have given an Allen charge – by which the judge would strongly encourage the jury to continue deliberations until reaching a verdict. But appellate judges believed that the jurors' open poll was sufficient to show that they were deadlocked. The appeals court affirmed the district court's ruling on the motions from both sides.