

U.S. AIRWAYS EMPLOYEE COMPLAINS OF FACEBOOK PHOTO, ALLEGES RETALIATION



U.S. AIRWAYS Reputed threats, allegations and a sexually explicit photo: Just another day at the airport. A woman employed in customer service at U.S. Airways' New Orleans Airport learned that a co-worker had posted a picture of her on his Facebook page. The picture showed the woman leaning over, exposing a portion of her underwear. She complained to the HR manager, who investigated and eventually disciplined three employees – though none were fired or suspended. The woman also filed a charge with the EEOC, alleging sexual harassment. About a month later, the woman went on medical leave for an injury unrelated to work. During the leave, she received a call from her supervisor, who was also her union rep. The union president reportedly told the supervisor to convince the woman to drop the EEOC charge, adding that an investigation would lead to terminations and that the woman was not “squeaky clean.” She spoke with the union president, who confirmed that one of the disciplined employees said that the woman had sent him via cell phone a sexually explicit photo. The man ultimately reported the picture, accompanied with a sexually explicit text, to HR. Upon returning from leave, the woman met with the HR rep, a superior, her supervisor/union rep and her attorney. The HR rep said that the man who posted the photo on Facebook intended to apologize, but the woman would not discuss the apology. She further acknowledged that the sexually explicit picture had been sent from an old phone number of hers, but denied sending it. The HR rep claims that the woman was “uncooperative and belligerent” at the meeting, which the woman denied in court. Due to the photo sent, the woman was put on a 12-day paid suspension. She subsequently filed a second charge with the EEOC, alleging that the



investigation into the picture was sexual and racial discrimination, as well as retaliation over her initial EEOC complaint. Shortly thereafter, a company-wide reduction in force was initiated. It complied with the union's Collective Bargaining Agreement, in which employees were selected based on their time at the company. The woman was then furloughed – temporary unpaid leave – and she responded with a third EEOC charge, again claiming retaliation over the two prior EEOC charges. Approximately one month later, she filed a lawsuit, alleging retaliation in violation of Title VII of the Civil Rights Act, 42 U.S. Code § 1981 and Louisiana's anti-discrimination and whistleblower statutes. She also filed state law claims of interference with an employment contract and intentional infliction of emotional distress. The district court initially dismissed the claim of interference and later granted summary judgment in favor of U.S. Airways. On appeal, the woman challenged only the claims of retaliation. She tried to support a causal link between her suspension and the phone calls during her medical leave, as well as the HR rep's discussion of the Facebook photo at the meeting. But the calls did not involve the HR rep, who suspended the woman, and the rep referenced none of the complaints at the meeting. The suspension also took place four months after the second EEOC charge and prior to the third charge. As for the furlough, the woman's arguments failed to directly contest the grant of summary judgment. The district court's ruling was accordingly affirmed.