

EMPLOYEE FIRED FOR \$23 BREAKFAST ON EXPENSE REPORT



After a man's employment was terminated, he promptly sued his former bosses. The man, a homosexual, alleged that the reason he had been fired was due to his sexual orientation. The company, however, stated that its reason was far simpler (and nondiscriminatory) – a charge for breakfast on an expense report. The man had worked at Roche Laboratories, Inc., which markets and sells pharmaceutical medications. In March 2010, he was fired, and he brought action against the company in the Miami-Dade County Circuit Court, alleging discrimination on the basis of his sexual orientation, retaliation for engaging in a protected activity (a complaint of discrimination), and a violation of the Florida Whistleblower Act. The company, which removed the case to the U.S. District for the Southern District of Florida, claimed that it had terminated the employee for violating a zero-tolerance policy – he had falsified his expense report when he submitted a \$23 charge for his partner's breakfast for reimbursement. The district court granted summary judgment in favor of Roche, noting that the former worker had neither established a *prima facie* case – one deemed strong enough to proceed to trial – of discrimination or retaliation, nor showed that the reason for his firing was pretextual. The plaintiff appealed, asserting that the summary judgment was “inappropriate” because the district court had resolved disputed facts in favor of the company; evidence proved that heterosexual employees received preferential treatment by being allowed to correct expense report mistakes, whereas the man had not; the retaliation claim was supported by temporal and non-temporal evidence (evidence occurring prior to and closer to the time of his termination); and there was sufficient proof of pretext with regard to his firing.



Appellate judges saw no preference of the company's factual assertions from the district court, citing that all such assertions made by the plaintiff were undisputed, immaterial or unsupported by the record. They also believed that he not proven different treatment for other employees because he presented no evidence that another Roche worker had made an error on an expense report, had not acknowledged the error, and was not fired due to the error. In order to show favorable treatment, he needed to show action relating to similarly situated employees. The appeals court likewise saw no causation for the purported retaliation. He did not challenge the district court's finding that the company had initially considered termination prior to the man's complaint of discrimination, which would negate any argument claiming that the termination was the direct result of his complaint. Lastly, the plaintiff had not shown any evidence of pretext. Simply alleging discrimination and retaliation does not show the reason for the job loss, and discriminatory comments which the plaintiff claimed were made were not made by a decision-maker and were not related to his termination. As the man was unable to prove discrimination or retaliation, or any corresponding reason for being fired, the appeals court affirmed the grant of summary judgment in the company's favor.