

WERE BANANAS THROWN ONTO UPS FREIGHT TRUCK "RACIALLY MOTIVATED?"



A driver who had formerly worked for UPS Freight brought action against the company, claiming a racially-influenced hostile work environment. The bulk of the alleged conduct from other employees revolved around bananas periodically on the man's truck, but was it racist behavior? The courts had differing opinions on the matter. The man, an African American, first experienced what he considered racial harassment during his first week, when he was a trainee. The Caucasian driver training him said, "I know how to train you Indians." He informed the other driver that he was not Indian, but the driver said that, regardless, he'd "trained [his] kind before." The man told his supervisor of the incident but did not submit a requested written statement. The supervisor later testified that she'd been told only of "issues," but did not know that the incident was of a racist nature. The man then started finding bananas, peels or broken in half, on his delivery truck parked at a terminal during his off-hours (not the terminal where he was employed). The bananas were located either on the flatbed trailer or the steps to the cab. After a third occurrence, he informed his supervisor, who reported the complaint to an HR manager and suggested to the driver reporting the incidents to the terminal manager. He did so, but the terminal manager asserted that the bananas were being thrown by children, not racially-compelled employees. The man also noted what could be conceived as racial harassment – workers wearing confederate attire. Less than a week later, the driver was allegedly approached by two men and questioned about the bananas and reporting the Confederate flag or any such adornment. The man stated that the encounter made him nervous because one of the men was brandishing a crowbar. He told the supervisor of the incident, but she later testified that she knew nothing about it. They had a conference call with the HR manager, who was out of town but



said he would look into it. The driver found more bananas on his truck after the conference call, and the supervisor emailed the HR manager regarding the latest occurrence. That same day, she informed the HR rep that the driver had submitted his resignation. The man testified in court that he had indeed resigned but not on the same day as the complaint. He also said that he worked the entire two weeks of his notice period, but the supervisor claimed that the driver stopped working shortly after his resignation. The resultant lawsuit cited a violation of the Civil Rights Act with a hostile work environment. The district court ruled in favor of UPS Freight, not finding the frequency of bananas on the man's truck as "racially motivated." It further stated that, while the man may have perceived the incidents as severe, his view was not "objectively reasonable." Appellate judges, however, disagreed. They noted seven incidents of racial harassment within a year, four of which occurred within two weeks. They believed a jury might reasonably conclude a hostile work environment with an "escalation" of events, as well as the probability of the threat from the crowbar-toting employees. The appeals court vacated the judgment and remanded the case for further proceedings.