

FORMER OMNICARE DRIVER CLAIMS RETALIATION FOR COMPLAINT OF RACISM



A driver delivering pharmaceuticals and medical supplies for Omnicare was fired for insubordination. He responded with a lawsuit, alleging that the real reason he was terminated was in retaliation for a complaint of perceived racial animosity. The man, an African American, was offended by a string tied with a slipknot – like a noose – hanging on a co-worker’s bulletin board. He considered it racist and wrote a formal letter of complaint, submitted to several facility managers. The General Manager (GM) removed the noose and told the driver that she had “handled it.” She also informed the Area Director (AD) and an HR rep of the incident. The AD decided to meet with the man, and the others agreed not to approach the driver regarding the situation until she could speak with him. Three weeks later, the meeting was held. The AD said that sensitivity or diversity training should be implemented, but the driver believed the discipline should be more severe, suggesting a termination. He called the AD that same evening, testifying later that he merely reiterated his belief that someone should be fired. The AD claimed he was insubordinate, but decided against discipline at that time due to his good record and because she believed he was upset over the incident. The man’s supervisors argued that a “communication breakdown” ensued, which the man denied but did admit that he had not responded to voicemails from his direct supervisor and the GM. The voicemails set a meeting, but the driver asserted that he received no notification, either by phone or facility mailbox. On the morning of the proposed meeting, the man said he had no time to meet and was told that he could either speak with the supervisors – and specifically the AD – or go home. He opted for home. The following day, he was terminated. He filed federal and state-law claims of a hostile work environment based on race and retaliation for his complaint of the noose. He ultimately abandoned the former claim and retained the retaliation claim, which was subsequently dismissed by the district court’s grant of summary judgment in favor of Omnicare.



On appeal, judges noted that the AD’s reason for termination was insubordination – not simply because he’d refused to speak with her. The man’s arguments of potentially retaliatory behavior from his supervisors were futile because the AD had made the final decision. Judges likewise found his assertion of the “cat’s paw” theory – that the supervisors had influenced the AD’s choice – unpersuasive. One of the three appellate judges, however, dissented – formally disagreed with her peers. Emails between the man’s former supervisor and the GM seemed to indicate that investigating the complaint took a backseat to finding fault in his manner of submitting the letters of complaint. The judge also believed that the AD determined that the man was being insubordinate because she had been told – by the supervisor and GM – that he would not meet with her, when he had not received notice of any meeting. This would support the “cat’s paw” theory and is further strengthened by the fact that the AD said the man would not have been fired had he spoken with her. But as the judge’s opinion was in the minority, the district court’s ruling was affirmed.