

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF)	
)	
REGINA KIMBROUGH,)	
)	Charge No. 1997CF1540
Complainant,)	ALS No. 10397
)	EEOC No. 21B990907
and)	
)	
SCHOOL DISTRICT OF MARKHAM/ CHATEAUX ELEMENTARY SCHOOL and WARREN FORTINEAUX,)	
)	
Respondents.)	

ORDER AND DECISION

August 10, 2004

Presiding: Marti Baricevic, James Maloof and Rozanne Ronen

For the Complainant: Uche O. Asonye
Asonye & Associates

For the Respondent: William C. Kling, Margret Kostopolous & Stephanie A. Benway
Ancell, Glink, Diamond, Bush, Dicianni & Rolek, P.C.

For the Commission: James E. Snyder, General Counsel
Matthew Hammoudeh, Asst. General Counsel

This matter comes before the Commission pursuant to a Recommended Order and Decision issued by Administrative Law Judge Nelson E. Perez and exceptions filed thereto.

For the reasons set forth herein, the recommendations of Judge Perez are sustained in part and modified in part.

IT IS HEREBY ORDERED THAT:

The Recommended Order and Decision is sustained, subject to the following modification: The emotional distress damage award is reduced to \$5,000.00.

I. Nature of the Case:

In October of 1996, the Complainant Regina Kimbrough was hired as a substitute lunchroom assistant by the School District of Markham/Chateaux Elementary School (Respondent School District). On December 18, 1996, the Complainant was made a permanent assistant lunchroom hostess.

Warren Fortineaux (Respondent Fortineaux) was employed by the Respondent School District as one of a number of substitute custodians for the Chateaux Elementary School. On October 29, 1996, Respondent Fortineaux stuck his hand into the Complainant's shirt and pulled her breast out of her jogging suit. The Complainant complained about Respondent Fortineaux to Ms. Denise Julius (Julius) the school principal on October 30, 1996 and in December of 1996.

On December 17, 1996 the Complainant left work and did not return. On January 10, 1997, the Complainant informed Julius that the reason she was not coming back to work was because of the incident involving Respondent Fortineaux in which he pulled out her breast. Contrary to their sexual harassment policy, the Respondent School District never registered the Complainant's complaint nor did they conduct an investigation into the matter.

The Complainant filed a charge with the Department of Human Rights and the Department subsequently filed a civil rights complaint with the Commission alleging sexual harassment and constructive discharge.

II. Commission Proceedings

Following a public hearing, Administrative Law Judge Nelson E. Perez issued a Recommended Liability Determination on October 7, 2002, and a Recommended Order and Decision on January 10, 2003.

Judge Perez found that Respondent Fortineaux sexually harassed the Complainant. He also found that the Respondent School District had notice of the sexual harassment and failed to take corrective action, thereby creating a hostile working environment in which the Complainant was forced to resign. We agree.

We agree with Judge Perez's recommendation to award back pay and attorney fees and costs. In contrast, we disagree with Judge Perez's recommendation that the Complainant be awarded \$10,000.00 as compensation for emotional damages.

Actual damages in context of the Illinois Human Rights Act (Act) contemplates compensation for emotional harm and mental suffering caused by violation of the Act,

however an award of damages under such circumstances must be kept within reasonable parameters. *Village of Bellwood Bd. of Fire and Police Comm'n v. Human Rights Comm'n*, 184 Ill.App.3d 339, 541 N.E.2d 1248 (1st Dist 1989).

Judge Perez did not make a finding of fact relating to the emotional harm suffered yet he concluded that the Complainant suffered emotional damages as a result of the Respondent's actions.

The Commission does not assume that emotional distress damages are recoverable in every case; there must be evidence to support such an award. In this case, the Complainant testified that she sustained emotion harm as a result of the Respondent's conduct. The Complainant did not however, present any additional evidence of physical symptoms of emotional distress or clinical evidence of a psychological injury. Therefore, the Complainant is entitled to a reasonable emotional damage award of \$5,000.000.

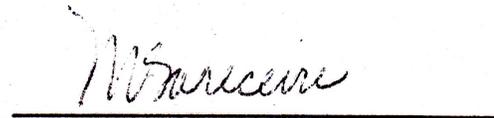
IT IS HEREBY ORDERED THAT:

The Recommended Order and Decision issued in this case is sustained in part and modified in part and is incorporated herein as our Order and Decision subject to the following modification: The emotional distress damage award is reduced to \$5,000.00.

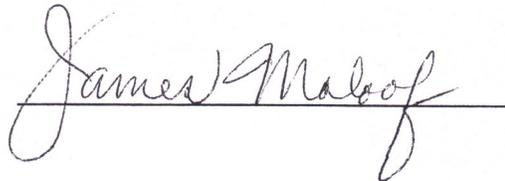
STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 10th day of August 2004.

Commissioner Marti Baricevic



Commissioner James Maloof



Commissioner Rozanne Ronen

