

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

KAMAU WEAVER AND
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 07 BEM 01201

WINDY CITY PIZZA,

Respondent

Appearances: Pamela S. Khun, Esq., for Complainant Weaver

James S. Dilday, Esq., for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about April 24, 2007, Kamau Weaver (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Respondent discriminated against him on the basis of race and retaliated against him for complaining about alleged racial harassment in violation of M.G.L. c. 151B, sec. 4 (1) and (4). The MCAD issued a split decision on December 24, 2008, determining that there was probable cause for proceeding on the claim of race discrimination but not on the claim of retaliation. The case was certified for public hearing on August 31, 2009.

A public hearing was held on December 3, 2010. The following individuals

testified at the public hearing: Michael Seltzer, Robert Bronske, Muzo Bayturk, Mohammed Sepha Aabdulai, and Complainant. Neither side submitted post-hearing briefs.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Kamau Weaver grew up in Boston MA where he graduated from Boston Latin Academy High School in 1995.
2. Respondent Windy City Pizza is a fast food restaurant in Dorchester, MA. The restaurant is owned by Muzo Bayturk. It employed approximately 15-17 individuals on a full or part-time basis between 2004 and 2006.
3. After high school but prior to working for Respondent in 2004, Complainant worked as a janitor at Boston Bowling for several months in 1996, at Au Bon Pain as a cashier in 1997, as a City Year counselor for approximately 6 months in 1998, at Filenes as a sales associate for several months in or around 2000, as a maintenance person for the National Park Service on Cape Cod, and as a janitor for the Boston Public Schools in 2004. Complainant testified that he “enjoyed” his janitorial job with the Boston Public Schools and is not sure why he left.
4. Complainant has received Mass Health medical insurance since age eighteen. He testified that he qualified for Mass Health based on a diagnosis of schizoaffective disorder, a condition which he describes as in the same “family” as bipolar disorder. At all times relevant to this dispute, Complainant also received Social Security Disability Income (SSDI). According to Complainant, all of his jobs

- have paid approximately \$7.00 per hour, an amount which allows him to earn some income while retaining his health insurance and disability payments.
5. In 2004, Complainant was hired by Respondent Windy City Pizza after an interview with manager Douglas Flores. Complainant worked on either of two shifts: 11:00 a.m. to 4:00 p.m. or 4:00 p.m. to 11:00 p.m. Complainant testified that he left the job after two or three months in 2004 because he had an opportunity to go Sweden to make a rap record. He also claims that he left Respondent because of race-based joking at the restaurant, which he states was not directed at him. I do not credit that race-based joking caused Complainant to leave his employment at Windy City Pizza in 2004.
 6. Complainant returned to the United States in 2005. He obtained a job as a cashier at McDonalds.
 7. Complainant re-applied to work at Windy City Pizza in 2005 after he heard that Respondent needed a cashier. He was re-hired by Respondent's owner Muzo Bayturk. Complainant testified that he left McDonalds because the hours were better at Windy City Pizza.
 8. In 2005-2006, Complainant's supervisors at Windy City Pizza were Douglas Flores and Chrissy Chorack. According to Complainant, he answered the phone and worked at the cash register from 2005 until Christmas Eve of 2006 when he was fired.
 9. Complainant testified that during his second stint at Windy City Pizza, his supervisor, Douglas Flores, would greet him when he arrived for his shift by saying, "What's up my nigger?" or "We're niggers, right?" or would call him

“macaco” and would try to make a special hand shake with him. According to Complainant, this was Flores’s attempt to be “street with me.” Complainant testified that he didn’t like being addressed in this manner, but he shook Flores’s hand and didn’t confront him because Flores was his boss. According to Complainant, Flores’s behavior was upsetting because it constituted a “street interaction” that was not appropriate in a professional setting. Complainant described the behavior as occurring on every shift. Complainant denied that he used the term “nigger” at Windy City except in interactions with Flores and in a CD of his rap music which he gave to co-workers. I do not credit the charge that Flores used offensive racial language in talking to Complainant.

10. Complainant testified that his co-workers consisted of drivers and cooks. He said that they made jokes referring to monkeys and would ask him about black guys. Complainant described his co-workers as constantly making fun of him and of each other. I do not credit this testimony.
11. Robert Bronske testified credibly that he worked with Complainant at Windy City and that Complainant used the term “nigger” all the time when he rapped and when he greeted people. According to Bronske, Complainant would say, “What’s up my Nigger?” Bronske testified that Flores did not use the term “Nigger.”
12. Respondent’s owner Muzo Bayturk testified credibly that Complainant seemed fine for the first 9-10 weeks after he returned to work in 2005, but then his personality seemed to change and he became very agitated.
13. Complainant testified that on December 23, 2006, he arrived at work at 4:00 p.m. and at some point during his shift he went downstairs to use the bathroom. He

asserts that as he was using the bathroom, someone knocked loudly on the door. Complainant testified that he responded by calling out that he was using the bathroom. He claims that he heard several people talking, laughing, and banging on the door. According to Complainant, he went upstairs and asked who had been banging on the door, to which Flores responded that no one had been at the door. Complainant claims that he said, "That's not cool to be banging on the door." Complainant asserts that Chrissy Chorack tried to defuse the situation by telling him to go home and offering to change his schedule so that he wouldn't have contact with Flores but that he was subsequently fired for using the word "nigger" in front of customers. I do not credit Complainant's version of this incident.

14. Bayturk was not at Windy City on December 23, 2006, but he heard about the incident from Chorack and Flores. According to Bayturk, on the following Monday or Tuesday, Complainant asked to keep his job but Bayturk said that "wasn't going to happen" because Complainant had confronted Flores and had subsequently screamed in front of customers. I credit Bayturk's testimony.
15. Complainant's co-worker Mohammed Shepha Abdulai testified that he worked at Windy City Pizza as a cook from 2005 to 2007. He stated that he and Complainant were the only black men who worked at the restaurant. According to Abdulai, someone from the MCAD contacted him about Complainant's charges. He testified that he told the individual that it was Complainant who used the term "nigger" not Flores or anyone else. I credit Abdulai's testimony. The fact that Abdulai speaks quickly and has an accent may explain why the MCAD intern who interviewed him over the phone mistakenly thought that Abdulai

accused Flores of using the term “nigger.” Abdulai denied at the public hearing that he ever described Windy City as having a racially-charged atmosphere. I credit Abdulai’s testimony.

16. Complainant’s co-worker Michael Seltzer testified credibly that he worked at Windy City as a cook from 2006 to 2007 and that during this time, he never heard anyone use the term “nigger” at Windy City except Complainant. I credit this testimony.

III. CONCLUSIONS OF LAW

Racial Harassment

In order to establish a claim of racial harassment, Complainant must prove that he is a member of a protected class; that he was the target of speech or conduct based on his membership in that class; that the speech or conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment; and that the harassment was carried out by a supervisor or a co-worker under circumstances in which Respondent knew or should have known of the harassment and failed to take prompt remedial action. See College-Town, Division of Interco v. Massachusetts Comm'n Against Discrimination, 400 Mass. 156, 162 (1987); Beldo v. Univ. of Mass. Boston, 20 MDLR 105, 111 (1998), *citing* Richards v. Bull H.N. Information Systems, Inc., 16 MDLR 1639, 1669 (1994).

Complainant is a black man who asserts that his supervisor at Windy City Pizza, Douglas Flores, subjected him to a racially-hostile work environment by virtue of uttering offensive racial epithets. Complainant testified that during his second stint at Windy City Pizza, Flores would greet him when he arrived for his shift by saying,

“What’s up my nigger?” or “We’re niggers, right?” or would call him “macaco” and would try to make a special hand shake with him. Complainant testified that he didn’t like being addressed in this manner but would still shake Flores’s hand and not confront Flores because Flores was his boss. According to Complainant, Flores’s behavior upset him because it constituted a “street interaction” that was not appropriate in a professional setting. Complainant also testified that his co-workers made fun of him, made jokes referring to monkeys, and asked him inappropriate questions of a racial nature. He claims that he was unfairly fired for reasons involving racial animus. None of these charges are substantiated by the credible evidence presented at the public hearing.

In contradiction to Complainant’s accusations, Complainant’s co-workers Robert Bronske, Mohammed Shepha Abdulai, and Michael Seltzer testified credibly and consistently that it was not Flores who used a racial epithet in the workplace but, rather, Complainant. According to their testimony, Complainant used the term “nigger” all the time when he “rapped” at work and when he greeted people. Although an MCAD student intern interviewed Abdulai over the phone during the investigatory stage of the proceeding and thought that Abdulai accused Flores of using racial epithets, Abdulai credibly denied at the public hearing that he had ever made such an accusation. The fact that Abdulai speaks quickly and has an accent may explain why the MCAD intern mistakenly thought that Abdulai had accused Flores of using the term “nigger.”

Muzo Bayturk was not at Windy City on December 23, 2006, but he received reports about the “bathroom incident” from managers Chorack and Flores. According to Bayturk’s credible testimony, he determined that Complainant could not continue to work at Windy City Pizza because Complainant had confronted Flores in an argumentative

manner and subsequently screamed in front of customers when he returned to the restaurant several days later to ask if he could keep his job. The reasons for Complainant's discharge, as presented by Bayturk's credible testimony constitute legitimate, job-related matters that were not motivated by racial animus.

Complainant, acknowledged at public hearing that he had used the term "nigger" in greeting Flores. Complainant also admitted that he gave his co-workers a rap CD in which he repeatedly used the term "nigger." These admissions corroborate Respondent's version of the relevant incidents.

IV. ORDER

For the reasons set forth above, the complaint is dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 5th day of April, 2011.

Betty E. Waxman, Esq.,
Hearing Officer

