1973

Employee Relations: Final Examination (May 1973)

William & Mary Law School

Repository Citation
Millie East was a hardworking yet somewhat erratic assembly line worker for Ford Motor Company in Dearborn, Michigan. Ford had tried her on many different jobs over an 18-month period, none of which Millie could ably perform, and Ford had just about decided to terminate her employment when the following events occurred. Millie arrived late for work and was reprimanded by her supervisor, Ted Baxter, who told her that her time was getting short at Ford Motor Co. Feeling unfairly discriminated against she stormed over to her place in the assembly line and began working. The more she thought about the incident, the more enraged she became until suddenly she exploded with a barrage of obscene language that sent her fellow workers scurrying. Being a woman of no small stature (6'2", 220 pounds), she bounded over to Ted Baxter and had no trouble picking him up and holding his head within inches of a stamping machine. Ted’s hair practically turned white from fear but he was able to hang on until several workers pulled Millie away. Later that day he suffered a heart attack while walking through the plant. He was hospitalized for two weeks and was required to rest for four weeks. The attending physician said that he was 20 percent disabled but could still perform most of the same functions he had prior to the attack.

As fate would have it he (along with 350 other employees) was laid off three weeks after he had returned to work. As the prospects for unemployment appeared dim to him, he decided to move to California, the land of sunshine, fun, and other motor companies. Shortly after he moved to California, he discovered that the labor market was very tight and he was unable to find employment except as a strike replacement at a struck General Motors plant as a supervisor or as a barber in a neighborhood shop (he had learned the trade while he was in the army).

Ted was thinking seriously of taking the GM job and was discussing his plans with his neighbor, Rod Steele, who had been employed as an assembly worker at GM for 40 years, but was now working then due to the strike. Rod told him that the plant was nothing but a "sweat box" and he advised Ted against taking the job. The next day by coincidence Rod received a letter from GM stating that pursuant to the collective bargaining agreement "you are retired under the provision calling for mandatory retirement at age 65."

After a two-day period of joint commiseration, Ted and Rod file for unemployment compensation. The state statute reads that no compensation will be paid to those who "voluntarily quit without good cause." Assuming all of the above facts to be true and constant (i.e., only those two jobs mentioned above are available for Ted) - advise Ted on the following:

(a) As to the legal obstacles if any he must overcome to collect unemployment compensation. Explain fully and reach a definite conclusion.

(b) Assuming he files in time, may Ted collect a worker's compensation benefit from Ford Motor Co. due to his 20 percent disability? Explain fully.

(c) Also, advise Rod on what legal obstacles he may need to surmount before he may collect unemployment compensation. Be definite and reach a conclusion.

(d) State in a short paragraph whether Millie (who was fired the same day as the incident) is able to collect unemployment compensation. The applicable unemployment compensation statute reads the same as the one above.
II. (35 Minutes)

The A2Z Rental Co. is a multi-state corporation which rents practically every type of home use tool. It has a central warehouse from which tools are sent to the 27 branch stores which are located in a three state area. It does an annual business of about $3 million and is centrally administered in Richmond, Virginia. A personnel question arose recently dealing with the janitors at the warehouse. They are paid for what if any is the liability of A2Z Rental Co. in terms of overtime payments due each week? State the specific amount of the weekly paycheck and explain your reasons.

The Personnel Director, Henry Zimmerman, consults you as to whether there are any F.L.S.A. problems if A2Z Rental Co. requires the janitors without any change in compensation to open the warehouse at 7:45 A.M. and stay at the warehouse until 5:15 P.M. when it will be closed.

Advise Zimmerman as to whether A2Z Rental Co. is: (a) covered by the F.L.S.A.; (b) whether the opening and closing of the warehouse is compensable time; and (c) assuming arguendo that it is compensable time what if any is the liability of A2Z Rental Co. in terms of overtime payments due each week? State the specific amount of the weekly paycheck and explain your reasons.

III. (35 Minutes)

During the spring of the 1972-73 academic year, the U. of Clark Law School (a Methodist-sponsored school) interviewed several applicants for an opening on its faculty. One of the applicants was Ms. Elsa King, a Caucasian, and a graduate of a leading law school. She was not offered the job and feels that it was due to invidious considerations, namely, her sex. As she consults with you she tells you that she among other things was required to list on an application any arrests or convictions she may have had in the past ten years. She felt this was especially damaging in her case because as the facts turned out she had five years earlier filed a rape charge against a man who won the case and subsequently had her arrested when he filed a charge of malicious prosecution against her. That case however, was dropped before any trial resulted. As part of her explanation of that incident she admitted to the Dean of the Law School during her interview with him that she later had a "lovely but illegitimate" child as a result of that incident. The Dean was very understanding but later informed her that even though she certainly was qualified the faculty decided to continue their hiring practice of giving preference to U.S. Supreme Court clerks in hiring law professors (by January, 1972, four women had served in this capacity). Also the Dean said they preferred to hire Methodists and he noted Ms. King was not Methodist.

Ms. King has called the Dean and told him that she intends to file charges with the EEOC. The Dean calls you for your legal opinion of the problem and he tells you that if push becomes shove he will (although he disagrees with it) invoke the University policy of "not hiring women with illegitimate children" and use that as an additional basis for refusing to hire Ms. King. Briefly, sketch the probable legal arguments of Ms. King before the EEOC, the Law School's response, and advise the Dean on the outcome, reaching and stating definite conclusions.
IV. (35 Minutes)

Harry Axel, a Negro, was employed by Kamm Mfg. Co. for over three years. He had advanced to a trainee's position in the drill department. He had been awarded this position on June 11, 1970, after having been employed for over two years by appellee, and had held this same position until he was discharged on September 29, 1971. The reason assigned was Axel's poor performance as a drill press trainee, as evidenced by his accumulations of excessive amounts of scrap.

The collective bargaining agreement provided that an employee who believed Kamm Mfg. Co. had not complied with the agreement (including a non-discrimination clause) could lodge a protest within five days of the asserted breach. Axel filed his grievance, and it was denied by Kamm. Further pursuant to the Union Agreement provision for the adjustment of grievances, the matter was submitted to arbitration. The arbitrator concluded the discharge was for just cause following a series of progressive industrial disciplinary practices. The issue of racially-motivated discriminatory employment practices was presented to the arbitrator and rejected. His opinion was rendered January 30, 1972.

Axel had filed a formal complaint of racial discrimination with the State Civil Rights Commission prior to the arbitration hearing. That Commission failed to act on the complaint and Axel filed a charge of discrimination with the EEOC 20 days later on December 4, 1972. On March 15, 1973, the EEOC informed Axel that the facts did not constitute a Title 7 violation and dismissed the charge.

Axel seeks your advice on the primarily procedural issues of whether he may sue under Title 7 of the 1964 Civil Rights Act in federal court. (a) If he can, explain why and what legal obstacles he will face; if he cannot, explain why not. State as definite a conclusion as you can. (b) May he also at this point in time bring a § 1981 (Civil Rights Act of 1866) suit? Why or why not?