

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-4641  
Summary Calendar

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JOSEPH E. VAUGHN,

Plaintiff-Appellant,

versus

CAMPBELL SOUP COMPANY,

Defendant-Appellee.

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Appeal from the United States District Court for  
the Eastern District of Texas  
(CA3 91 7)

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June 4, 1993

Before REAVLEY, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:<sup>1</sup>

Plaintiff Joseph E. Vaughn appeals a summary judgment in favor of Defendant Campbell Soup Company (Campbell) in this employment discrimination case. We affirm.

**I. BACKGROUND**

Vaughn was employed by Campbell from December 1966 to October 11, 1982, when he was suspended, and subsequently

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<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

discharged, for violating one of Campbell's Rules of Personal Conduct -- namely, conduct violating common decency or morality on the premises ("Rule 3"). Vaughn alleges that Campbell discriminated against him because of his race (Afro-American) when it terminated him for allegedly violating Rule 3. Vaughn contends that white males who violated Rule 3 in the past were not similarly terminated. The district court granted summary judgment in favor of Campbell on the ground that Vaughn had failed to establish a prima facie case of unlawful race-based discrimination.

## II. DISCUSSION

This court will uphold a summary judgment when the pleadings, depositions, admissions, and answers to interrogatories, together with all the inferences that reasonably could be drawn from them, considered most strongly against the moving party, demonstrate that no genuine issue of material fact exists. *Randolph v. Laeisz*, 896 F.2d 964, 969 (5th Cir. 1990). The district court based its summary judgment upon its determination that Vaughn failed to establish a prima facie case of race-based employment discrimination.

To establish a prima facie case of unequal application of Rule 3, Vaughn must show that: (1) he was a member of a protected group at the time of his discharge; (2) there was a company policy or practice concerning the activity for which he was discharged (*i.e.*, sexually assaulting or intimidating a co-employee on company premises); (3) non-minority employees were

not held to strict compliance with that policy or practice or were given the benefit of a more lenient policy or practice; and (4) he was disciplined in strict conformity with the company policy or practice, or was not given the benefit of the more lenient policy or practice. See *EEOC v. Brown & Root, Inc.*, 688 F.2d 338, 340-41 (5th Cir. 1982).

Campbell does not dispute that Vaughn is a member of a protected class. Nor does Campbell deny that Vaughn was discharged in compliance with Rule 3. Campbell does, however, challenge Vaughn's assertion that it applied Rule 3 disparately to him on the basis of his race -- especially in light of the fact that Vaughn was replaced by another Afro-American male, Roy Yates.<sup>2</sup>

Vaughn alleges, supported by the affidavit of Charlie Battle (a former union official at Campbell's Paris, Texas plant ("Campbell-Paris") where Vaughn was employed), that two current or former Campbell's employees -- Tom Maddox and "Hector" -- were discovered engaging in activity clearly in violation of Rule 3, and that neither were discharged. Vaughn's knowledge of the allegations against Maddox are purely second- and third-hand. Vaughn claims to have witnessed "Hector's" actions, but is unable to provide a certain last name or a reliable time frame in which the actions allegedly took place. Furthermore, Campbell's

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<sup>2</sup> But see *Brown & Root*, 688 F.2d at 340 ("If an employee is discharged under circumstances in which an employee of another [race] would not have been discharged, an inference of discrimination arises irrespective of the [race] of the employee's replacement.").

employee records revealed no Hector Gonzalez, Hector Gonzales, Hector Rodriguez, or Hector Hernandez -- the various names offered by Vaughn to identify "Hector" -- employed at Campbell-Paris since 1974. Battle claims "personal knowledge" of the "Hector" incident, but Vaughn's deposition testimony did not place Battle at the scene, creating a conflict in their testimony. Battle also claims "personal knowledge" of Maddox's case, due to Battle's involvement in the union grievance process that ensued. However, Battle's "knowledge" is limited to accusations made against Maddox, not facts, and neither Vaughn nor Battle indicate that Maddox was ever *found to have violated* Rule 3 -- only that he was accused. Furthermore, Battle does not give any time period for the allegations against Maddox, and the only reference in Maddox's employment files is a March 1970 evaluation indicating that he "had a problem with some female employees." The evaluation also indicated that, in the opinion of then-Plant Manager J.F. Rex, "Tom has overcome these problems and is now squared away."

To the contrary, Campbell offers company records indicating that all three Campbell-Paris employees *found to have violated* Rule 3 have been terminated.<sup>3</sup> Campbell also argues that Maddox's personnel file gives no indication that he was ever found to have violated Rule 3.

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<sup>3</sup> In addition to Vaughn, Campbell terminated Linda Hill, a white female, in 1980, and Richard Smith, a white male, in 1988. According to Campbell's records, these are the only three employees to "have been charged with and have been found to have violated Rule 3."

Vaughn's evidence regarding "Hector" is too unreliable to raise a genuine fact issue. As for Maddox, the March 1970 evaluation suggests that any problem must have occurred prior to that time, and Vaughn offers nothing to dispute this suggestion. While we neither adopt nor disclaim the district court's view that a plaintiff attempting to establish a claim based upon inconsistent application of a work rule or policy must show that "the policy was not consistently applied to [persons not within the protected class] during the *same period of time*," Op. at 6 (quoting *Connor v. Mobile Chem. Co.*, 741 F. Supp. 617, 619 (E.D. Tex. 1990) (emphasis added by the district court)), we distinguish Vaughn's and Maddox's cases on the ground that Vaughn was found by Campbell to have violated Rule 3 whereas Maddox was not. See *Chescheir v. Liberty Mut. Ins. Co.*, 713 F.2d 1142, 1148 (5th Cir. 1983) ("[I]f an employer is unaware that a nonminority employee is in violation of company policy, the absence of discipline does not demonstrate a more lenient policy" toward non-minority employees.); see also *id.* ("[I]f an employer applies a rule differently to people it believes are differently situated, no discriminatory intent has been shown.").<sup>4</sup>

### III. CONCLUSION

Following an internal investigation and a meeting with Vaughn, then-Campbell-Paris Plant Manager Edward Hernan

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<sup>4</sup> Furthermore, we question whether the application of Rule 3 to two white male employees (Maddox and Smith) 18 or more years apart is sufficient to create a "pattern or practice" of treatment of white male employees by Campbell from which Vaughn may claim disparate treatment, as he attempts to do in his brief.

terminated Vaughn for violating Rule 3 of Campbell's Rules of Personal Conduct.<sup>5</sup> Vaughn failed to offer the district court, and fails to offer this court, any legitimate reason to upset that decision. Vaughn's belief that he has been discriminated against will not, in and of itself, support a finding of discrimination. See *Elliot v. Group Medical & Surgical Serv.*, 714 F.2d 556, 567 (5th Cir. 1983), *cert. denied*, 467 U.S. 1215, 104 S. Ct. 2658 (1984).

Our review of the record indicates that no genuine issue of material fact exists that Campbell applied Rule 3 discriminatorily to Vaughn. As such, the district court correctly entered summary judgment in Campbell's favor.

AFFIRMED.

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<sup>5</sup> Campbell offered evidence of Vaughn's sexual harassment of Grace Easley -- the offense for which he was suspended -- as well as evidence of other sexually harassing behavior, in the form of signed statements by Easley and other employees, taken by then-Campbell-Paris Employee Relations Manager Ed Davis, copied from Campbell's files, and attached to the affidavit of Eleanor Maddox, Director of Human Resources for Campbell's Southwest Region. Vaughn counters that these statements are inadmissible hearsay. However, they are not offered to prove that Vaughn harassed Easley or any other woman. Rather, they are offered to establish that Campbell had a legitimate, good faith basis for finding Vaughn in violation of Rule 3; and, for such purpose, they are competent summary judgment evidence.