

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1651
Summary Calendar

CLEMENT BERNARD,

Plaintiff-Appellant,

v.

CITY OF DALLAS and CITY OF DALLAS WATER DEPARTMENT,
(Dallas Water Utilities)

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Texas
(3:90-CV-1783-P)

(April 7, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

On appeal from the trial court's grant of summary judgment against his claim of racial discrimination in employment, appellant Bernard raises two issues. He contends there were genuine issues of material fact regarding whether the City of Dallas water department in which he works was charged by a racially hostile environment and whether he was denied a promotion because

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

of discrimination. Although our analysis differs somewhat from that of the district court, we affirm the grant of summary judgment.

1. The promotion claim.

Bernard asserts that he was discriminated against in his attempts to be promoted to the rank of T-9 Instrument Technician, but he did not present sufficient admissible evidence that this was based on racial animus. Harry Ketter, a coworker, could not directly influence this decision. Further, Bernard did not pass the required test for promotion. He was, however, promoted to T-9 Mechanic Technician. He did not bring forth enough evidence to create a genuine fact issue concerning this claim.

2. The hostile environment claim.

We disagree with the district court's conclusion that Bernard did not produce sufficient evidence of a racially hostile working environment. His coworker Ketter, who substituted as supervisor occasionally, engaged in racially insulting conduct and displayed materials derogatory of blacks (and religion) in the workplace. This activity apparently went on for some time, but management did not take action to stop it until Bernard complained in October, 1988. At that time, management began regularly to enforce its policy of preventing displays of offensive material. Management also counseled regularly with Bernard and Ketter in order to stem Ketter's offensive conduct and insure that everyone could work together. In January, 1989 Ketter was transferred to

another part of the plant where he would not encounter Bernard. Later, Ketter was permanently transferred.

While the circumstances, including Bernard's summary judgment affidavits of coworkers, suggest that a racially hostile working environment may have existed, they also demonstrate that the managers of the water plant took prompt remedial action when informed that Bernard found Ketter's conduct offensive. Within three months of Bernard's first complaint, Ketter was transferred to another part of the plant. During that interval, management counseled Ketter on several occasions to shape up.

Management's handling of this situation after Bernard complained never suggested that Ketter's offensive conduct was tolerated or excusable, nor did management ever advise Bernard to ignore Ketter's behavior. Bernard's summary judgment evidence did not contest the facts concerning the city's handling of Ketter's misbehavior. The city's uncontroverted actions constituted a prompt remedial response to Bernard's complaints.

Because there was no genuine issue of material fact raised in the foregoing particulars, the district court's judgment is **AFFIRMED**.