

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7713
Summary Calendar

JOYCE E. CALVERT,

Plaintiff-Appellant,

versus

BURNS INTERNATIONAL SECURITIES
SERVICES, INC. and LEWCO, INC.,
formerly Lewis Grocery Co.,
presently Valu Stores, Inc.,

Defendants-Appellees.

* * * * *

JOYCE E. CALVERT,

Plaintiff-Appellant

versus

LEWCO, INC., formerly d/b/a
Lewis Grocer Co., a/k/a Super
Value Stores, Inc.,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Mississippi
(CA-90-210 cons/w 90-241)

(June 9, 1994)

Before POLITZ, Chief Judge, HIGGINBOTHAM and DeMOSS, Circuit
Judges.

PER CURIAM:*

Joyce E. Calvert appeals adverse judgment based on the granting of defendants' Fed.R.Civ.P. 41(b) motions at the close of her evidence in her Title VII,¹ Equal Pay Act,² and state law claims against Burns International Security Services, Inc. and Super Valu Stores, Inc. Finding no error, we affirm.

Calvert was employed as a security guard by Burns and assigned to the Super Valu food distribution warehouse in Indianola, Mississippi. Upon her arrival at work on September 20, 1989, Calvert's supervisor, Chris Chrismond, cautioned her to watch her "p's and q's" because the president of Super Valu had caught a Burns security guard sleeping on duty the prior night. A senior executive unexpectedly visited the plant that evening. Calvert opened the window of the guard shack, checked the vehicle and occupant, and waved the executive through. Later, when the president's administrative assistant and a co-worker approached the front gate Calvert was not seen. The vehicle and occupants went through the gate unchecked and unchallenged. The next day Super Valu officials ordered Burns to remove from service on its premises the security guard on duty the prior evening when this breach of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹42 U.S.C. § 2000e *et seq.*

²29 U.S.C. § 206(d).

security occurred. Super Valu had this prerogative under their security agreement with Burns. Chrismond suspended Calvert. Approximately two weeks later Burns offered Calvert a position elsewhere; Calvert declined the offer. After satisfying administrative prerequisites Calvert filed a federal suit against Burns, invoking Title VII and the Equal Pay Act. She also sued Super Valu in state court for intentional interference with her contract with Burns. The state action was removed and the cases were consolidated for trial. Upon completion of the presentation of Calvert's case-in-chief the district court granted Rule 41(b) dismissals in favor of both defendants. Calvert timely appealed.

The gravamen of Calvert's complaint is that she was relieved of duty while the male security guard caught sleeping on the job the evening before was not disciplined. Calvert cannot prevail on that claim. The decision to remove her was made by Super Valu personnel who, according to the uncontradicted evidence adduced during her case-in-chief, did not know the gender of the offending guard who, if present, did not make her presence known when the president's administrative assistant drove through the gate. By complying with Super Valu's directive to remove Calvert from the Super Value premises, Burns was merely fulfilling its contractual obligation. Although the outcome understandably appeared unfair to Calvert, especially considering the treatment accorded the guard who fell asleep the night before, the decision was not motivated by discriminatory animus.

Recasting a time-barred failure-to-promote claim as an Equal

Pay Act claim, Calvert contended that she should have received the same pay as a male who was promoted to a sergeant position she wanted. The dismissal of that claim likewise was proper. Calvert presented virtually no evidence that the positions entailed equal skill, effort, and responsibility.

We further agree with the district court that Calvert could not establish her state law claim against Super Valu. An essential element of a claim for wrongful interference with contract under Mississippi law is that the wrongdoer acted without "right or justifiable cause."³ The evidence presented abundantly established justifiable cause for Super Valu's action: its concern about the quality of security provided by the Burns personnel. The dismissal of that claim was proper.

AFFIRMED.

³E.g. **Cenac v. Murry**, 609 So.2d 1257, 1268-69 (Miss. 1992).