

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

KARLA BARNES,)
)
 Plaintiff,)
) CASE NO.: 1:0X-cv-XXXX DFH TAB
 v.)
)
 STATE UNIVERSITY and)
 LOUIS SANCHEZ,)
)
 Defendants.)
)

PLAINTIFF’S CONFIDENTIAL SETTLEMENT STATEMENT

Plaintiff, Karla Barnes, submits this statement in confidence to United States Magistrate Judge Tim A. Baker, per the Court’s August 25, 2009, Entry and in preparation for the September 18, 2009, settlement conference.

I. Factual Synopsis:

Plaintiff, Karla Barnes, for over five years had been a professor devoted to building Defendant State University’s counseling program when State University denied her a promotion and instead brought in Defendant Louis Sanchez¹ from an outside university to chair her department. Immediately, Sanchez changed the curriculum, parts of which Barnes had worked hard to develop. When Barnes expressed her concern, Sanchez placed unfair, negative, and patently false evaluations in her personnel file. Moreover, Sanchez attempted to drive Barnes to quit by adding supervision of a student practicum to her already full-time teaching load. When Barnes objected that her class room teaching and practicum duties amounted to two full-time

¹ Barnes listed Sanchez as a defendant in her original Complaint and included a supplemental state tort claim against him for intentional infliction of emotional distress. If she and State University can reach an agreement on her federal Title VII claim, Barnes is willing to abandon her state claim. For that reason, this statement is limited to the Title VII claim. Should this case not settle, Barnes intends to pursue all originally asserted claims against these Defendants.

positions and that it appeared that Sanchez had devised these assignments to make her quit, Sanchez responded that Barnes inefficiently managed her time. He further demanded that she submit monthly activity reports. Sanchez' demand was outrageous given that he did not demand this of any other male professor in the counseling department. Moreover, shortly after he took over the department he initiated "Working-Man's Friend" Fridays, which entailed holding weekly, Friday lunches at the nearby Working Man's Friend restaurant, to which he only invited male professors. During these lunches, Sanchez would share and solicit information about the future direction and development of the department.

Barnes complained about this discriminatory treatment to State University's president but nothing changed. Consequently, she filed this lawsuit.

II. Legal Analysis:

Barnes will have no problem overcoming any dispositive motion filed by State University concerning her claims and convincing a jury that it discriminated against her on the basis of her sex. In a Title VII discrimination case such as this, an employee may use two methods – direct or indirect – to prove that an employer considered an unlawful factor and violated Title VII. Via the direct method, a plaintiff may use direct evidence, which means virtually an admission – or circumstantial evidence that points directly to a conclusion that State University took adverse employment actions against her because she is female. *Hasan v. Foley & Lardner LLP*, 552 F.3d 520, 527-30 (7th Cir. 2008). At this juncture, it is unlikely that sufficient evidence exists for Barnes to proceed directly.

Barnes will find no evidentiary impediment, however, to proving her case indirectly. The indirect method requires Barnes to show: (1) she is a member of a protected class; (2) she was performing her job satisfactorily; (3) she suffered an adverse employment action; and

(4) similarly situated employees outside the protected class were treated more favorably. *Antonetti v. Abbott Laboratories*, 563 F.3d 587, 591 (7th Cir. 2009). If Barnes establishes a *prima facie* case indirectly, State University must articulate a nondiscriminatory reason for its employment actions, and once done, the burden remains with Barnes to show that State University is lying about those reasons, which means the reasons are a pretext for its animus against female professors. *Nichols v. S. Ill. Univ.-Edwardsville*, 510 F.3d 772, 785 (7th Cir. 2007).

Barnes easily satisfies the first and third elements of this test as she is a female and Sanchez took actions that effected the terms and conditions of her employment. With respect to the fourth prong, Sanchez only singled Barnes out for unfair work loads and monthly reports subject to written reprimand for late submitted reports. Since none of the male professors in her department were subjected to these conditions, she sufficiently satisfies this fourth element. *See e.g., Filar v. Board of Educ. of City of Chicago*, 526 F.3d 1054, 1061 (7th Cir. 2008) (“to make this showing, a plaintiff need not present a doppelganger who differs only by having remained in the employer's good graces. But the comparator must still be similar enough to eliminate confounding variables, such as differing roles, performance histories, or decision-making personnel . . .”).

With respect to the third part of her burden, the second prong of the *prima facie* case and the pretext question “seemingly merge” given that a component of Barnes’ allegations appears to be that Sanchez essentially lied about her performance. *Hague v. Thompson Distrib. Co.*, 436 F.3d 816, 823 (7th Cir. 2006). Accordingly, Barnes need only demonstrate that Sanchez did not have an honest belief that her performance warranted the actions he took against her. As Barnes was a top performer prior to Sanchez’ arrival and State University has no evidence that her

performance warranted the humiliation of submitting monthly reports to Sanchez or the burden of assuming two full-time positions, it is likely Barnes will show that State University's reasons for Sanchez' actions lack any basis in fact and the only plausible explanation is Sanchez' animus against his female subordinates. That Sanchez acted against Barnes because of her sex is further bolstered by his weekly male-only lunches during which he shared crucial information about the department to only male professors, essentially leaving Barnes and other female professors out of the loop.

III. Damages:

Barnes seeks compensatory damages for the harm to her reputation as well as significant emotional distress that has permeated her professional and personal life because of State University's unlawful conduct. Barnes also contends that this conduct warrants punitive damages because it was with "malice or reckless indifference" to her federally protected rights. Lastly, Barnes seeks injunctive and equitable relief as spelled out in more detail below.

IV. Existence of any Applicable Liens:

Barnes is not aware of any applicable liens that would effect settlement of this matter.

V. Pending/Anticipated Dispositive Motions:

The parties have not filed any dispositive motions to date. It is anticipated that State University will file a motion for summary judgment on or before the November 15, 2009, deadline should this case not settle at the September 18 settlement conference. Barnes asserts that she has sufficient evidence in this case to overcome any dispositive motion and she will likely prevail on her Title VII claim at trial.

VI. Settlement History:

Shortly after filing this lawsuit, Barnes requested that State University and Sanchez pay

her \$1 million dollars to compensate her for the damage to her reputation and the emotional and physical stress Sanchez' discriminatory conduct caused her after he was made department chair. She additionally requested compensation for all costs and expenses associated with this litigation. Lastly, she asked that State University:

1. Expunge all of Sanchez' negative reports and evaluations from her personnel file;
2. Cease and desist in requiring her to provide monthly reports; and
3. Modify her contract to provide 15% annual raises and life long tenure.

State University summarily rejected this offer, and no further settlement discussion has ensued.

Barnes recognizes that the economic climate is considerably less favorable now than when she filed her lawsuit, and the recession has placed considerable financial pressure on State University. Consequently, Barnes is prepared to negotiate in good faith over the monetary damages she claimed previously. She still loves teaching and to the extent the other non-monetary terms she requested will allow her to continue doing so, she remains firm on most of these terms.

Respectfully submitted,

Ivanna B. Incourtmore
(Atty. No. 09-182009)

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