

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Equal Employment Opportunity
Commission,

Civil Action No. 16-CV-03823 WMW/FLN

Plaintiff,

William Staple and Dion Pye,

Plaintiff-Intervenors,

v.

JL Schwieters Construction, Inc.,

Defendant.

**COMPLAINT OF
PLAINTIFF-INTERVENORS
WILLIAM STAPLE AND DION PYE**

JURY TRIAL DEMANDED

Plaintiff-Intervenors William Staple and Dion Pye, through the undersigned legal counsel, and for their Complaint against the defendant, state as follows:

I. INTRODUCTION

1. Plaintiff-Intervenors William Staple and Dion Pye bring this employment discrimination and harassment action. As employee carpenters for Defendant, Mr. Staple and Mr. Pye were subjected to outrageous acts of racial hostility by their supervisors and colleagues, including consistently being referred to with the worst racial epithets, being threatened and taunted with a noose and a cross, and barraged with racially insensitive jokes and stereotypes on a regular basis. They bring this action under Title VII of the Civil Rights Act, the Civil Rights Act of 1866, and the Minnesota Human Rights Act to seek

redress for Defendant's creation of a hostile work environment, their constructive discharges and other illegal acts of discrimination against both of them.

II. JURISDICTION AND VENUE

2. This action in part arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. §1981. Jurisdiction is therefore appropriate pursuant to 42 U.S.C. §2000e-5(f)(3), and 28 U.S.C. §1331 because this matter arises under the laws of the United States. The plaintiffs also invoke the supplemental jurisdiction of the Court in accord with 28 U.S.C. §1367 for their state law claims under the Minnesota Human Rights Act, Minn. Stat. §363A.01 *et seq.*

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the acts complained of occurred within this District and because Defendant carries on business within this District.

III. PARTIES

4. Plaintiff-Intervenor William Staple is an African American male. He resides in Jordan, Minnesota. He was an employee of the defendant from August 2012, until he was forced to quit in February 2013. He was an "employee" of the defendant within the meaning of Minn. Stat. §363A.03, subd. 15, and 42 U.S.C. §2000e(f).

5. Plaintiff-Intervenor Dion Pye is also an African American male. He resides in Maplewood, Minnesota. He has been an employee of the defendant since October 2012 until he was forced to quit in 2013. He is an "employee" of the defendant within the meaning of Minn. Stat. §363A.03, subd. 15, and 42 U.S.C. §2000e(f).

6. Defendant JL Schwieters Building Supply, Inc. (“Schwieters”) is a Minnesota corporation with its principal office in Hugo, Minnesota. During the plaintiff’s employment, they worked as Carpenters for Schwieters. The defendant is an “employer” within the meaning of Minn. Stat. §363A.03, subd. 16, and 42 U.S.C. §2000e(b).

V. FACTUAL BACKGROUND

7. Will Staple and Dion Pye joined JL Schwieters in September and October 2012, respectively. Each joined as a full-time carpenter and, given the tough economic environment, especially in the carpentry industry, each initially looked forward to a long career with the company. Their hopes were quickly dashed, however, as the work environment at Schwieters proved to be filled with racial hostility from colleagues and supervisors.

8. Early in their employment, both Staple and Pye were assigned to work on Tim Gutzke’s crew. Gutzke, who is white, served as their supervisor for much of their employment. Gutzke had been a long-tenured employee with Schwieters and had served many years as a foreman at the time Staple and Pye became employed.

9. During their employment, Staple and Pye were subjected to harassment based on their race by Gutzke, who frequently made outrageous racially derogatory comments and referred to them with racial slurs such as “nigger.”

10. On or around the first week of Staple’s employment, Gutzke stated offhandedly to him that he believed black people were “lazy.” Stunned, Staple did not respond. Apparently then realizing the inappropriateness of the statement, Gutzke added, “Oops, I shouldn’t have said that in front of you,” or words to that effect.

11. Staple was shocked and offended by his new boss's comments, but he did not want to jeopardize his status with the company so early in his employment. He contemplated confronting Gutzke and even the possibility of simply leaving the company and facing an uncertain marketplace, but ultimately decided that his income was too important for his family to jeopardize, given the hard reality of their financial situation. Staple resolved to keep his head down and limit interaction with his boss to the extent possible.

12. Gutzke's behavior did not improve, however, as he routinely singled Staple out on the basis of his race and routinely used racial slurs.

13. Dion Pye was transferred to Gutzke's crew on or around November 2012. As the only African-American employees at the company, Staple and Pye hoped that there may be strength in numbers and that their being together may reduce hostility. This hope proved false, however.

14. On Pye's first day on the job, Gutzke sneered, "Now there's two of your kind here" or words to that effect. He then ordered Staple to "take his brother," referring to Pye, and get to work.

15. Gutzke's grouping of Staple and Pye together was consistent with his common practice of separating minorities from white crew members by grouping them together for work projects apart from other crew members.

16. Gutzke's behavior grew worse as Staple and Pye's employment continued. Gutzke routinely told racial jokes and even encouraged such jokes from the rest of the crew.

16. Gutzke openly used the word “nigger” both generally referring to other black people as well as to Staple and Pye specifically.

17. Under Gutzke, Staple and Pye were continually subjected to racial slurs. Gutzke routinely referred to them as “niggers” and “black asses.” Comments such as, “You better start working, Nigger” and “Get your black ass to work” were commonplace from Gutzke and were openly made in front of other crew members.

18. On one occasion Gutzke brought up in casual conversation with his crew members the fact that he had a 50 caliber machine gun. After discussing what he liked to do with the gun for a period of time, he stated, “I could shoot a nigger from a mile away,” or words to that effect, justifiably terrifying Staple and Pye.

19. In another instance, Gutzke raised the issue of politics among some of his crew members. He proceeded to bash President Obama openly and savagely, offending Staple, an Obama supporter. Courageously, given Gutzke’s obvious passion for the subject and his status as Staple’s boss, Staple defended the President. Gutzke responded by declaring that, “It’s not the niggers’ turn,” or words to that effect. With vitriol in his voice, he spouted that “niggers” don’t know how to “run a country.”

20. These specific threatening and outrageous comments, combined with the daily onslaught of racial jokes, including lunch jokes about the types of things Gutzke and other crew members believed African-Americans ate (including constant jokes about “black people chips,” watermelon, and chicken), how Staple and Pye should each be wearing “overalls,” and how they were “dumbasses,” deeply disturbed Staple and Pye.

21. Other crew members followed Gutzke's lead with regards to openly telling racist jokes and using racist language.

22. Gutzke's vitriol was not reserved solely for African-Americans; he made racist statements about many minorities, including other JL Schwieters employees. On one occasion, he told an Asian-American employee, "If your eyes weren't slanted, the wall wouldn't be slanted" or words to that effect. He also constantly made comments about Asian Americans "eating dogs" and other outrageous Asian stereotypes.

23. Gutzke had it out for Hispanic-Americans as well, whom he referred to as "Beaners." For example, after believing that the company snow blower had been stolen, he blamed the "damn Beaners."

24. By late December 2012, Gutzke's behavior had become completely out of control. On or around that time, Gutzke's vitriol reached a new high when he fashioned a noose out of electrical wire in front of other crew members, including Staple and Pye. Disgustingly and incredibly, he told Staple and Pye, "I could hang your black asses with this" or words to that effect.

25. On another occasion, Gutzke grabbed two 2x4's and formed a cross. Directing it at Staple and Pye, he informed them that he was going to "burn it in their yards" or words to that effect.

26. The noose and cross incidents both infuriated and devastated Staple and Pye, who, again, were put in the excruciatingly difficult position of not reacting to their boss in a way that might jeopardize their jobs.

27. The events described above took a devastating toll on Staple and Pye, impacting their emotional health and family life. Staple began suffering symptoms of depression and anxiety. He had trouble sleeping during this time period and was unable to be himself with his family because of the stress of having to be subject to the onslaught of racial abuse at work. Pye was placed on high-blood pressure medication by his doctor as a direct result of his experiences at Schwieters and began experiencing prolonged bouts of depression.

28. Staple and Pye were unaware of any reporting mechanism or policy for employees with discrimination or harassment concerns. JL Schwieters failed to adequately provide them information in this regard.

29. Staple and Pye both believed that Gutzke had the power to discipline and terminate their employment as their supervisor. Gutzke specifically represented to Staple and Pye that he had such power.

30. Staple and Pye believed that their jobs would be jeopardized if they reported the hostile work environment to which they were being subjected.

31. Gutzke's treatment of Staple and Pye was common knowledge at Schwieters, as Gutzke's comments and behavior often took place in front of crew members.

32. Nonetheless, Pye complained to another supervisor/field manager about the harassment, but no action was taken to stop the harassment. Pye also complained to the safety director, but no action was taken in response to his complaint.

33. On or around late February 2013, Gutzke's behavior reached a shocking crescendo. Around that time, Staple and Pye were completing the construction of rails

around a fall hazard on the second floor of the site and ran out of material. Naturally, Staple went downstairs and started to lower the forklift to get more material. Inexplicably, Gutzke began yelling at the pair with a slew of racial and demeaning slurs. He shouted at Staple that he was a “stupid motherfucker,” among a host of other demeaning names. In a rage, he told him to get his “black ass” off the “fucking” forklift and get back up to the worksite. His racist, out-of-control tirade continued in front of all crew members who were present. Staple and Pye were humiliated, devastated, and extremely angry. Staple was so disturbed that his nose immediately started bleeding profusely. In an emotional whirlwind, Pye encouraged Staple to leave the site with him for a breather before the situation escalated out of control. Even after leaving the site and sitting in Pye’s car in an attempt to gather himself, Staple’s nose continued to bleed.

34. As a result of this incident, Staple found himself shaking uncontrollably, his anxiety over facing the abusive workplace overwhelming him. He decided he simply could not continue being subjected to such treatment. He promptly resigned, despite the fact that he had no other work lined up and little hope that he would be able to find a similarly-paying job given the state of the economy.

35. Pye’s economic situation as the only income earner for his family, simply made it so he could not risk leaving his position immediately, though he strongly wanted to do so.

36. Soon after Staple’s constructive discharge, in late February 2013, Gutzke became absent from the workplace. Accordingly, Pye reported to new foremans for the rest of his employment.

37. While Pye was initially thrilled to be removed from Gutzke's crew, he found that the culture of racial harassment persisted elsewhere at JL Schwieters as well. Pye continued to be subjected to harassment on the basis of his race by his new supervisors and his colleagues after Staple's resignation. Pye was referred to as "dumbass" and "stupid" in front of other crew members and was treated differently in many respects, including enforcing clothing rules more strenuously against him than other crew members. One of Pye's supervisors even would sometimes throw Pye's tools on the floor, forcing Pye to bend over and pick them up in the supervisor's presence.

38. When Pye determined that he could no longer tolerate his treatment at JL Schwieters, he resigned.

VI. COUNT ONE

(Hostile Work Environment in Violation of Title VII of the Civil Rights Act)

39. The plaintiffs hereby incorporate the above paragraphs of this Complaint.

40. During the course of the plaintiffs' employment, the defendant discriminated against them on the basis of their race with respect to the terms, conditions and privileges of their employment, including creating a hostile work environment caused by the illegal conduct of their supervisors and colleagues and otherwise subjecting them to racial harassment. Its actions, therefore, constitute unfair discriminatory practices in violation of Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e-2(a)(1).

41. Moreover, the defendant knew or should have known of the harassment and discrimination. The defendant is deemed to have known of the same because in large part

the harasser was the plaintiffs' supervisor and the harassment was witnessed by many of the defendant's employees and management level personnel.

42. The defendant's unlawful employment practices were intentional.

43. The defendant's racial harassment was unwelcome to the plaintiffs, it was severe and pervasive, and a reasonable person would consider it intimidating and abusive.

44. As a direct and proximate result of the defendant's willful and wrongful discriminatory acts, the plaintiffs have lost salary and fringe benefits, each in amounts to be determined at trial, and they have suffered mental and emotional distress and anguish, all to their damage, in an amount substantially in excess of \$75,000.

VII. COUNT TWO

(Race Discrimination in Violation of Title VII of the Civil Rights Act)

45. The plaintiffs hereby incorporate the above paragraphs of this Complaint.

46. During the course of the plaintiff's employment, leading up to and including their constructive discharge from employment, the defendant discriminated against them on the basis of their race with respect to the terms, conditions and privileges of their employment, including constructively discharging them from their employment. Its actions, therefore, constitute unfair discriminatory practices in violation of Title VII of the Civil Rights Act, 42 U.S.C. Section 2000e-2(a)(1).

47. Defendant created and tolerated employment conditions so intolerable that Staple and Pye were forced to resign and were thus constructively discharged.

48. The unlawful employment practices set forth above were intentional.

49. As a direct and proximate result of the defendant's willful and wrongful discriminatory acts, the plaintiffs have lost salary and fringe benefits, each in amounts to be determined at trial, and they have suffered mental and emotional distress and anguish, all to their damage, in an amount substantially in excess of \$75,000.

VII. COUNT THREE

(Hostile Work Environment in Violation of the Minnesota Human Rights Act)

50. The plaintiffs hereby incorporate the above paragraphs of this Complaint.

51. During the course of the plaintiffs' employment, the defendant discriminated against them on the basis of their race with respect to the terms, conditions and privileges of their employment, including creating a hostile work environment caused by the illegal conduct of their supervisors and colleagues and otherwise subjecting them to racial harassment. Its actions, therefore, constitute unfair discriminatory practices in violation of the Minnesota Human Rights Act, Minn. Stat. §363A.08 *et seq.*

52. Moreover, the defendant knew or should have known of the harassment and discrimination. The defendant is deemed to have known of same because in large part the harasser was the plaintiffs' supervisor and the harassment was witnessed by many of the defendant's employees and management level personnel.

53. The defendant's unlawful employment practices were intentional.

54. The defendant's racial harassment was unwelcome to the plaintiffs, it was severe and pervasive, and a reasonable person would consider it intimidating and abusive.

55. As a direct and proximate result of the defendant's willful and wrongful discriminatory acts, the plaintiffs have lost salary and fringe benefits, each in amounts to

be determined at trial, and they have suffered mental and emotional distress and anguish, all to their damage, in an amount substantially in excess of \$75,000.

VII. COUNT FOUR

(Race Discrimination in Violation of the Minnesota Human Rights Act)

56. The plaintiffs hereby incorporate the above paragraphs of this Complaint.

57. During the course of the plaintiff's employment, leading up to and including their constructive discharge from employment, the defendant discriminated against them on the basis of their race with respect to the terms, conditions and privileges of their employment, including constructively discharging them from their employment. Its actions, therefore, constitute unfair discriminatory practices in violation of the Minnesota Human Rights Act, Minn. Stat. §363A.08 *et seq.*

58. Defendant created and tolerated employment conditions so intolerable that Staple and Pye were forced to resign and were thus constructively discharged.

59. The unlawful employment practices set forth above were intentional.

60. As a direct and proximate result of the defendant's willful and wrongful discriminatory acts, the plaintiffs have lost salary and fringe benefits, each in amounts to be determined at trial, and they have suffered mental and emotional distress and anguish, all to their damage, in an amount substantially in excess of \$75,000.

VIII. COUNT FIVE

(Race Harassment/Hostile Work Environment in Violation of 42 U.S.C. Section 1981)

61. The plaintiffs hereby incorporate the above paragraphs of this Complaint.

62. The above-described illegal harassing and discriminatory conduct by the defendant was motivated by the plaintiffs' race. Such conduct gives rise to liability under 42 U.S.C. Section 1981 for the wrongful creation of a hostile work environment.

63. The above described harassing conduct was not welcomed by the plaintiffs and was so severe and pervasive as to create a work environment that was hostile and abusive.

64. As a direct and proximate result of the defendants' willful and wrongful discriminatory acts, the plaintiffs have lost wages and fringe benefits, in an amount to be determined at trial, and they have suffered mental and emotional distress and anguish, all to their damage, in an amount substantially in excess of \$50,000.

IX. RELIEF

WHEREFORE, the plaintiff requests judgment against the defendants as follows:

a. With respect to Counts One and Two of this Complaint, awarding the plaintiffs all relief available under Title VII of the Civil Rights Act, including lost wages and fringe benefits, each in amounts to be determined at trial, compensatory damages for loss of dignity and mental and emotional distress and anguish in an amount in excess of \$50,000, front pay, prejudgment interest, reasonable attorney's fees and the costs of this action pursuant to 42 U.S.C. §2000e-5.

b. With respect to Counts Two and Three, awarding the plaintiffs all relief available under the Minnesota Human Rights Act, including an amount equal to three times their lost salary and fringe benefits, each in amounts to be determined at trial, compensatory

damages for mental and emotional distress and anguish in an amount in excess of \$50,000, prejudgment interest, reasonable attorney's fees and the costs of his action pursuant to Minn. Stat. § 363A.29.

c. With respect to Count Five of this Complaint, awarding the plaintiffs all relief available under 42 U.S.C. §1981, including but not limited to present and future compensatory damages for mental and emotional distress, present and future damages for lost wages incurred, and their attorney's fees and costs.

d. Enjoining the defendant, its agents, employees and successors and assigns from engaging in any employment practices against its employees because of their race.

e. For punitive damages.

f. Such other relief as the Court deems just and equitable.

Dated: November 30, 2016

SCHAEFER HALLEEN, LLC

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