

## FACT PATTERN

Immediately upon graduation from high school, plaintiff Della Street applied for a clerical job at Faber's Hotel and Resort Group's largest property. When she was interviewed, the male interviewer, seeing how physically attractive Ms. Street was, told her that he could place her immediately in a cocktail waitress position, but could not place her in a clerical job. Reluctantly, Ms. Street accepted. For several years she worked as a cocktail waitress. Frequently, she was asked to wear suggestive clothing. After working as a cocktail waitress out of the largest hotel for several years, Ms. Street was eventually promoted to be the Executive Assistant to the male vice president at the administrative office which managed several properties and was off site from the hotel in which she originally worked. In Faber's 30 page employee manual, within a long paragraph discussing the company's internal, informal grievance procedures, there was a statement that read as follows: "Frocks prohibits retaliation against employees who grieve under the company's procedures." The manual also laid out the Company's sexual harassment policy, which stated that the Company had a zero-tolerance policy towards sexual harassment. It set out a procedure for the reporting of sexual harassment concerns, which included contacting the Human Resources Department.

The VP on occasion, had outbursts in his office where he used the "f" word. These outbursts were not directed at Ms. Street, but were temper tantrums that her boss exhibited when things did not go right. At the time of these events Ms. Street was unmarried and 26 years old. Ms. Street routinely wore tight fitting jeans to work. Her boss did not criticize her for doing so, but sometimes commented to other male managers that his assistant looked 'hot,' which Ms. Street had overheard a few times without complaint. Ms. Street often told some of the female clerical staff in the facility that she thought he was out of line. Some of the older clerical staff responded: "What would you expect any red-blooded male to say when you come dressed to work like that?"

About six months after her transfer to the administrative office she overheard her boss having a rather ugly conversation on the phone with his spouse. When these conversations persisted for several days, she asked him whether she could be of any help and specifically said to him: "If you need a shoulder to cry on, I am here for you." The next day her boss asked Ms. Street if they could go have a drink after work. She accepted his invitation. One drink led to another, and her boss began to talk quite openly about his troubled marriage. Eventually, he placed his hand on hers, looked her in the eyes and told her that he was attracted to her, and that he wanted to have a relationship with her. According to Ms. Street, not wanting to hurt her boss's feelings during what was obviously a difficult period for him emotionally she squeezed his hand and told him that it probably wouldn't be appropriate to have a relationship with him given that he was her boss. Almost immediately thereafter, the boss's cell phone rang and it was his wife demanding to know why he was not yet home. Within minutes of this call, the two left the bar and went their separate ways.

The next day the boss thanked the Ms. Street for her "listening ear." He told her that his wife had to go out of town on business later that week, and he invited her to dinner that night. She declined, politely saying she did not think that it was appropriate to go out with him because of their work relationship. Later in the day, after the boss had been at lunch and appeared to have had a drink or two alone, he came to Ms. Street's cubicle and placed his hands on her shoulders and began massaging them. He asked Ms. Street to reconsider his dinner invitation. Again, she declined. He then reiterated that he found her to be very attractive and leaned over to kiss her. Ms. Street pushed him away and responded that she wanted to maintain a

professional relationship with him. He appeared visibly angry and told her that she would regret treating him in this manner. Ms. Street was very frightened by what she believed was a thinly veiled threat, but nonetheless told him she did not want to have a relationship with him.

The next day, the atmosphere in the office seemed to change. The boss appeared withdrawn, unfriendly, and angry at Ms. Street. Over the next period of time, he criticized her over minor issues, buried her with work, imposed unrealistic deadlines, and monitored her actions. Concerned about his change of behavior towards her, Ms. Street decided to speak with someone in the Human Relations department. After Ms. Street had recounted these events, the HR counselor said that she had to prepare a report and submit it to the HR Director who would determine what to do next. Ms. Street emphatically stated that she did not want this to result in an investigation, did not want this to become "a federal case," and did not want to get her boss into trouble as he had enough problems at home as it was. She also expressed concern that if the HR department pressed this matter, she would face reprisal at work. The HR officer assured her that the Company's policy prohibited retaliation.

A short time later, the HR Director over a period of several weeks completed interviews with several managers and a female typist to the VP, as well as the VP. The Company did not interview Ms. Street. During the pendency of the investigation the VP continued in his position.

At the start of the investigation, and over her protest, Ms. Street was transferred back to the hotel thirty-five miles away, which added an additional hour and half of commuting time to her day. Because there were no open executive assistant positions at the hotel office, she was given cocktail waitress work at the same pay and benefits that she had received as Executive Assistant at the administrative office. She was told that the investigation was particularly sensitive and that it would take two to three months to conclude involving as it did some important personnel and very sensitive allegations. Ms. Street protested the transfer, the return to waitressing and the added commute time, to no avail. She found the return to waitressing to be demeaning because the customers ogled her and were disrespectful.

After one month at the hotel, Ms. Street became disgusted with her long commute, and her return to a waitress position. She called the HR counselor and said that if the VP, her former boss, was not removed from the plant and she was not put back to work at the plant, she would have no choice but to quit. The HR counselor told her to hang in there and not to quit, as the Company would complete its investigation within a month or two. Ms. Street nonetheless quit.

About three months after Ms. Street initially contacted the HR Department, the HR Director met with the Chief Executive Officer to provide him with the results of the HR Department's investigation. The Department concluded that the VP had behaved inappropriately and in violation of Company policy by propositioning Ms. Street and treating her poorly after she rejected his advances. However, the Department concluded that the VP had not engaged in either sexual harassment or retaliation of Ms. Street. As a result of its investigation, the Company decided to terminate the plant manager. One of the managers who had been interviewed in connection with the Company's investigation was promoted to VP.

As soon as the VP was terminated, the HR Director contacted Ms. Street to offer to reinstate her with full back pay for the period she was out of work after she quit her job. Reinstatement and back pay were made conditional on Ms. Street providing the Company with a full release of claims. Ms. Street, who had still not secured a job, refused saying she would not be able to function in the administrative facility when the managers and the new VP knew she had been the cause of the termination of the plant manager. She further stated that she did not want to

waitress anymore because the customers ogled her, which made her very uncomfortable.

After receiving the Company's reinstatement offer, Ms. Street engaged an attorney and sued alleging sexual harassment and that the transfer was retaliation for protesting the plant manager's sex discrimination. She sought an award of emotional distress damages as well as punitive damages and attorneys' fees. She has not been treated by a mental health professional for emotional distress.

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