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Attorney draws court's ire in firing lawsuit, but escapes sanctions

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Corina Bass was a custodian for Joliet Public School District 86. She was assigned to clean the first floor at Cunningham Elementary School. She took a leave of absence.

During the 2008-09 school year, the district hired Pike Systems to conduct a time study of custodial duties at 11 of its schools.

At Cunningham, Pike concluded that the second floor took more time to clean than one shift permitted, while the first floor could be finished in less than one shift. Pike recommended that the restrooms on the second floor be reassigned to the custodian responsible for the first floor.

While Bass was on leave, the district had the substitute first-floor custodian clean both the first- and the second-floor restrooms. She could do this during her shift. The district approved the reassignment of the second-floor restrooms to Bass. The Pike study also resulted in reassignments at other schools, with seven male custodians being assigned additional duties.

Bass began having performance issues, which led to two suspensions without pay. Under the collective bargaining agreement, Bass was permitted a one-time disability leave for up to 12 months, in addition to all other accrued sick leave. The contract provided that employees who were absent after exhausting all leave were subject to disciplinary action, up to and including termination.

Bass had taken two extended leaves of absence, which alone exceeded the amount of leave Bass was entitled to under the collective bargaining agreement.

Bass injured her back on Aug. 12, 2010, and again took leave. Since she already had used two long-term disability leaves, Bass had no more available leave as of Nov. 3, 2010.

Bass obtained a doctor's note indicating that she could return to work on light duty, but the district had a longstanding policy of not having light-duty assignments for custodians. Bass returned to work 12 days later; she injured her back and was out for 2½ days.

This new absence resulted in 1½ days of unexcused and unpaid time off. The district issued a written reprimand. Bass returned to work on Nov. 19, 2010. On Jan. 3, 2011, Bass failed to report to work. She provided a doctor's note dated Jan. 4 stating that she could not work because of severe back pain.

The next day, Bass was told that her available leave would be exhausted on Jan. 5 and that she would be fired if she did not report to work.

Bass didn't return to work. She brought another doctor's note dated Jan. 7, but it provided no anticipated return date.

The district met with Bass on Jan. 13 to discuss her absences. Bass now offered a doctor's note dated Jan. 12 stating that she could return to work, but with lifting restrictions. When asked when she would be able to return without restrictions, Bass did not reply.

Bass was fired Feb. 2 based on job abandonment and failure to return to work after exhausting all available leave. Significantly, three male custodians also lost their jobs between 2008 and 2011 for the same reason.

Bass filed a discrimination charge alleging she was fired because she is a woman. The district court granted summary judgment to the school district, and Bass appealed.

The appeals court observed: "[W]hen all is said and done, the fundamental question at the summary judgment stage is simply whether a reasonable jury could find prohibited discrimination."

To defeat summary judgment, the plaintiff must present evidence showing that she is in a class protected by the statute, that she suffered an adverse action and that a rational jury could conclude that the employer took that adverse action on account of her protected class, not for any non-invidious reason.

Under the direct method, Bass had to present either direct or circumstantial evidence of discrimination in her opposition to summary judgment. Bass, however, offered no evidence that would allow a trier of fact to find that sex discrimination lay behind the district's action. As the court pointed out, "speculation is no substitute for evidence at the summary judgment stage."

Bass also tried to rely on the indirect method, using the *McDonnell Douglas* test.

Here, Bass initially needed to establish a prima facie case of discrimination. To do so, she had to show (1) she was a member of a protected class; (2) she was performing her job satisfactorily; (3) she suffered an adverse employment action; and (4) the employer treated similarly situated employees outside of the protected class more favorably.

Under the circumstances, Bass could not show that she was performing her job satisfactorily or that the district treated males more favorably. Bass repeatedly missed work and received written reprimands for her unexcused absences. Although she eventually returned to work, it was not for long. She failed to report to work again on Jan. 3, 2011, at a time when she had exhausted all available leave.

The appeals court concluded that her violations of the district's attendance guidelines showed she was not meeting the district's legitimate expectations.

Things didn't just go badly for Bass. Her attorney was ordered to show cause why he should not be sanctioned for filing a frivolous appeal. The appeals court directed the clerk of the court to transmit a copy of its opinion to the Illinois Attorney Registration & Disciplinary Commission for any action it deemed appropriate. *Bass v. Joliet Public School District 86*, F.3d , 2014 WL 1229578 (7th Cir. 2014).

Later, however, the plaintiff's attorney satisfied the court that sanctions were not appropriate. *Bass v. Joliet Public School District 86*, 2014 WL 1399422 (7th Cir. 2014).

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