

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

MARINETTE COUNTY

CASEY WEBER,

DECISION AND ORDER

Petitioner,

vs.

Case No.: 17-CV-98

LABOR AND INDUSTRY REVIEW COMMISSION

and

VAPIN USA-WI, LLC,

Respondent's.

FILED

MAR 16 2018

SHEILA M. DUDKA
CLERK OF COURTS
MARINETTE COUNTY, WI

The Labor and Industry Review Commission (LIRC) made findings in this case that the allegations against Michael Rice (Rice) were true and that the conduct occurred.

These findings are all based on the testimony of Casey Weber (Weber) and only Weber's testimony.

But then, LIRC finds that Weber did not prove that the conduct was "unwelcome."

LIRC infers that if the conduct was unwelcome, Weber would have complained about the conduct in various writings to Allison Vandeveld (Vandeveld) the Operations Manager. LIRC ignores Weber's testimony that she orally informed Vandeveld of the conduct.

LIRC therefore, finds that the conduct occurred even though it was not described in any of the writings, i.e. emails, texts, messages, etc, but they find that it's not unwelcomed because it's not in these writings.

The LIRC findings relevant to this case are number 6, 9, 10, 11, 12 and 13. The question is how can LIRC find her credible regarding all of the conduct but not credible as to whether it was welcomed or not?

The Administrative Law Judge, Stephanie Brown (Brown) found Weber to be credible and Brown is the Judge who listened to all of the testimony. Brown found that the conduct occurred and was unwelcome.

“Unwelcome” has been defined to mean that the employee does not solicit or invite the conduct and regards it as undesirable or offensive.

There is nothing in the statutes or case law that requires that the complainant offer a prior complaint about the conduct.

There is no evidence in the record that Weber solicited or invited any of this behavior.

It is clear from her testimony that she found it undesirable or offensive. In fact, even Vandeveld said that this behavior was sexual harassment pursuant to the company's rules.

LIRC went off on their own here, they had no basis to overturn the credibility determination of the Administrative Law Judge, Brown.

LIRC agreed with all of the pertinent findings, but they inferred that because they found no report, that Weber did not prove that it was “unwelcome.” It is interesting that they found all other credibility findings of the Administrative Law Judge, Brown regarding Weber to be supported but for the “unwelcome” determination.

How can you believe Weber that the conduct occurred but not that they were unwelcome?

Weber offered the only testimony that the acts occurred in her presence. William Turpin (Turpin) did not recall any of this activity occurring in the presence of Weber. There is a lot of the conduct alleged that Turpin simply does not recall even occurring.

Therefore, there is no basis for LIRC to reverse the determination that the actions were unwelcome.

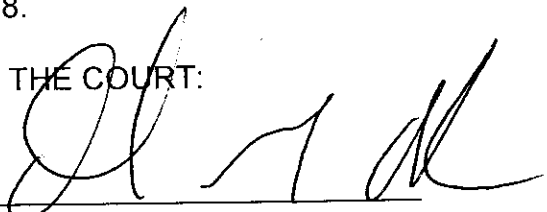
Had LIRC concluded that the conduct did not occur because they were not included in any writings, they would have been on better footing.

There is no basis to find that the conduct occurred but yet was not unwelcome. LIRC's decision is not supported by the substantial evidence in the record.

Therefore, the determination of LIRC is reversed. The decision of Administrative Law Judge Brown is supported by the evidence. Judgment is entered in favor of Ms. Weber.

Dated this 16th day of March, 2018.

BY THE COURT:



David G. Miron
Circuit Judge