

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

B. DARRELL FLORENCE,
Plaintiff,

03 JUL 24 PM 2:41

v.

CIV. No. 02-1449 PJK/LAM

CHARLES RIVER LABORATORIES, INC.,
et al.,

CLERK OF COURT

Defendants.

**MEMORANDUM BRIEF IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

This case arises out of Plaintiff's employment at the Alamogordo Primate Facility (APF). The APF houses chimpanzees, including some that previously were laboratory test animals. During the 1990s, the Coulston Foundation managed the APF for the National Institutes of Health (NIH). In mid-May 2001, the NIH handed over management to Defendant Charles River Laboratories, Inc. (Charles River). Charles River selected Plaintiff to fill the position of Associate Director at the APF. He began working in June 2001. Eight months later, Charles River discharged Plaintiff based upon his inability to work with the APF Director, Lee (Lee). Plaintiff now sues all Defendants under several theories for events stemming from his brief employment at the APF. Defendants move for summary judgment on all counts.

STATEMENT OF MATERIAL FACTS

Administrative Prerequisites to Suit

1. Plaintiff named only Charles River as a respondent to his administrative charge of discrimination. Charge of Discrimination, attached as Ex. A.
2. The New Mexico Human Rights Division issued its order of nondetermination on August 21, 2002. (Compl. ¶ 13.)
3. Plaintiff filed his complaint on November 18, 2002. (Doc. 1.)

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reporting to Lee on September 7, 2001 that he felt that Sommerfeld's joking with another employee about the alleged homosexuality of an NIH official was "getting out of hand" and that Sommerfeld's description of their personal life was inappropriate in the workplace. Id. 90-91.

20. Plaintiff experienced no further actions he considered sexually harassing after October 1, 2001. Id. at 125, 130 & Ex. 14; relevant portions of ex. 14 are attached as Ex. G.

Termination of Plaintiff's Employment

21. Plaintiff failed to meet Lee's basic performance expectations. Lee Aff. ¶ 7, attached as Ex. H. Examples of independent instances that lead him to this conclusion are:

a) Although Lee had assigned Plaintiff the task of ordering the controlled substances for the APF in June 2001, the APF did not have euthanasia drugs on hand until December 2001.⁴

Pl.'s Dep. at 180. During the interim, there were at least two occasions when the APF had to borrow euthanasia drugs from elsewhere. Id. at 189-90; Lee Aff. ¶ 7(a).

b) In July 2001, Lee assigned Plaintiff the task of soliciting bids for an ultrasound machine. The machines were necessary for conducting thorough examinations of the chimpanzees. Plaintiff failed to complete the task. Pl.'s Dep. at 188.

c) On December 4, 2001, the APF's advisory committee⁵ met at the APF for a one-

⁴ It was important for the APF to have those drugs on hand to lessen the suffering of a dying or severely injured animal. Pl.'s Dep. at 180-81. Plaintiff was the only veterinarian at the facility who had a license to order them. Id. at 180.

⁵ The committee consists of well-respected professionals from around the country whose task is to provide guidance and advice to the APF. Those committee members included Bill Hobson, Ph.D, President of Sierra Biomedical in Reno, Nevada; Thomas J. Rowell, DVM, Facility Director of the New Iberia Primate Center in Louisiana; Four Star General Charles MacDonald, U.S.A.F.; Kate Rimby, Executive Director of the Santa Fe Humane Society; Hilton Klein, M.S., VMD, Senior Director, Comparative Medicine, Merck Laboratories; Denver Marlow, DVM, ACLAM, Facility Director, Lab Animal Resources, Oklahoma State University; Nicholas W. Lerche, DVM/MPVM, Adjunct Professor, California Regional Primate Research Center; and Dawn Myers, and employee at the APF. As these are quite busy individuals volunteering their time, Charles River strives to be as productive and efficient as possible during their meetings. Lee Aff. ¶ 7(c).

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(8) Q. Okay. In June, you were put in charge of
(9) ordering the controlled substances; correct?
(10) A. Yes. I was the only one that had a license.
(11) Q. Okay. Is it true that there was no euthanasia
(12) solution available on site until December?
(13) A. I'm not sure if that's true or not. It seemed
(14) to me we had some, but I'm trying to remember.
(15) Q. Well, there were a couple of times you needed
(16) some, correct?
(17) A. Yes.
(18) Q. Didn't you have to go get that off site?
(19) A. It could be we borrowed it from Coulston. I
(20) don't remember exactly.
(21) Q. And that's something that should be kept on
(22) site, right?
(23) A. Yes, sir.
(24) Q. Because if you have to go off site to get it,
(25) it increases the time the animal is suffering; is that

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Q. Do you remember an incident where he did a tooth extraction?

A. I remember he did one, yes.

Q. Do you remember in the hallway telling Dr. Lee in a loud voice that that son-of-a-bitch shouldn't be

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(1) allowed to operate -- touch any animal?

(2) A. I may have made that comment to Dr. Lee, yes, sir.

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(4) Q. Were there others around?

(5) A. I'm not aware of that.

(6) Q. Were you angry?

(7) A. No, sir.

(8) Q. In July, were you assigned to solicit bids for an ultrasound machine?

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(10) A. I was.

(11) Q. Did you do that?

(12) A. I tried to contact the individual that Rick gave me and was unsuccessful in getting in contact with them.

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(15) Q. So you were unable to get those bids?

(16) A. That's correct.

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(22) Q. Do you recall having to borrow anesthesia
(23) solution to euthanize an animal in August?
(24) A. It's possible.
(25) Q. Do you remember a memory of it?

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(1) A. Well, it's by memory that I remember we
(2) borrowed some euthanasia solution to euthanize an animal,
(3) yes.
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