

Jones v St. Joseph's College
2006 NY Slip Op 30501(U)
September 22, 2006
Supreme Court, New York County
Docket Number: 111801-2004
Judge: Rosalyn H. Richter
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Rosalyn Richter

PART 24

PRESENT

Index Number : 111801/2004

JONES, MILLICENT

vs

SAINT JOSEPH'S COLLEGE

Sequence Number : 002

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

FILED

SEP 26 2006

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH THE ATTACHED MEMORANDUM DECISION**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: _____

9/22/06

Rosalyn Richter

HON. ROSALYN RICHTER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 24

-----X
MILLICENT JONES,

Plaintiff,

-against-

SAINT JOSEPH'S COLLEGE and
EILEEN MULLEN,

Defendants.
-----X

DECISION AND ORDER
Index No. 111801-2004
Motion Sequence No. 2

FILED

SEP 26 2006

NEW YORK
COUNTY CLERK'S OFFICE

Richter, J.:

In this employment discrimination action, plaintiff Millicent Jones alleges that she was wrongfully terminated from her employment with defendant Saint Joseph's College ("Saint Joseph's") on the basis of disability. The complaint asserts causes of action under both the New York State Human Rights Law and the New York City Human Rights Law. Jones also alleges that her immediate supervisor, defendant Eileen Mullen, is individually liable because she purportedly took part in the decision to terminate Jones.

The following facts are undisputed. St Joseph's College is a private educational institution that includes a School of Adult and Professional Education ("SAPE") for individuals pursuing continuing education in their chosen fields. Since many of SAPE's students work full-time jobs, St. Joseph's has partnered with numerous private entities, such as hospitals, police precincts and corporate offices, that allow the school to teach classes at their locations. These private entities are located throughout Brooklyn, Staten Island, Queens and Manhattan. St. Joseph's actively recruits adult students by regularly sending representatives to these locations to make presentations to potential students and to distribute materials.

On July 22, 2002, Jones was hired as the only full-time corporate recruiter for SAPE. Her

job functions included conducting recruiting visits to outside locations, following up with potential students and assisting applicants with the application process. Shortly after she was hired, she accompanied Mullen on a recruitment trip to a hospital on Staten Island. Thereafter, Jones was instructed to develop her own contacts at outside entities as a way to conduct recruiting for the school. Jones decided to focus her recruiting efforts in Manhattan, Brooklyn and Queens. However, at no time was Jones ever told that her recruitment functions would be limited to only those boroughs. Within a year, Jones was given a promotion to senior corporate promoter and a raise. Despite the change in her title, Jones remained the sole full-time recruiter for the school.

On October 6, 2003, Jones was involved in an automobile accident on her way to work and suffered a herniation to one of her spinal disks. She told St. Joseph's that she would be unable to return to work for a period of time due to her need to attend physical therapy sessions. St. Joseph's readily accommodated Jones's request and held her job open during that period. During Jones's absence, which lasted about four weeks, Mullen struggled to keep the school's recruitment efforts on track but found it very difficult to do so without Jones's assistance. At around the same time, St. Joseph's had successfully negotiated agreements with two other outside entities, one in Brooklyn and one in Staten Island, to permit the school to hold classes at each location for the Spring 2004 semester. Mullen testified that there was increased pressure on her to recruit enough students from the Staten Island location to make the collaboration a success.

When Jones returned to work on November 24, 2003, Mullen asked her to assist with recruiting efforts in Staten Island and Jones agreed to do so. Shortly thereafter, Jones reneged, telling Mullen that her injuries from the car accident made it impossible to travel from her home in Queens to Staten Island because she could not sit in a car for prolonged periods of time. Jones also told Mullen that her injuries prevented her from carrying recruitment literature on recruitment visits. In

addition, Jones requested an adjustment in her work hours so that she could attend physical therapy. In response, St. Joseph's adjusted Jones's hours as requested and made alternative arrangements for the recruiting materials to be delivered to the recruitment locations. For a period of time, St. Joseph's did not require Jones to travel to Staten Island.

In December 2003, Tom Travis, SAPE's Vice President and Dean, asked Jones when she would be back to full capacity and Jones said that she hoped by mid-January. Travis told Jones that anything beyond that would constitute a hardship to the school. St. Joseph's continued to accommodate Jones's condition throughout December and January and did not ask her to recruit in Staten Island. On January 13, 2004, Jones provided St. Joseph's with a doctor's note indicating that her injuries prevented her from sitting for prolonged periods of time; the note did not indicate when, if ever, this restriction would be lifted. Nor did Jones ever tell anyone at the school if and when she would ever be able to return to full duty. On February 18, 2004, Travis terminated Jones's employment for being unable to recruit in Staten Island. Travis told Jones that her position required her to be able to recruit in all five boroughs and that her inability to do so had placed an undue hardship on the school and its recruitment efforts.

In this motion, defendants move for summary judgment dismissing the complaint in its entirety. Both the New York State and New York City Human Rights Laws prohibit employment discrimination based upon disability. Under the state law, protection is afforded to those individuals with disabilities that "upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held." Executive Law § 292[21]. Under the city law, an employer can raise an affirmative defense by showing that the employee "could not, with reasonable accommodation, satisfy the essential requisites of the job." N.Y.C. Administrative Code § 8-107[15][b]. Thus, both the state

and city statutes require an employer to provide a disabled employee with a “reasonable accommodation”, which is defined as an accommodation that does not cause “undue hardship” to the employer’s business. Executive Law § 292[21-e]; N.Y.C. Administrative Code § 8-102[18].

The Court concludes that St. Joseph’s has satisfied its burden of showing that it is entitled to judgment as a matter of law and Jones has failed to identify any disputed issues of fact that would preclude summary judgment. St. Joseph’s has established that Jones’s alleged disability rendered her unable to perform duties that were essential functions of her job as the school’s recruiter, namely, the ability to make recruitment visits to all of the off-campus locations the school had contracted with. In response, Jones argues that there is an issue of fact as to whether travel to Staten Island, as opposed to travel to locations closer to her home, was an essential function of her job.

In determining whether a job function is essential to an employee’s position, state courts often look to federal law for guidance. *See Pimentel v. Citibank, N.A.*, 29 A.D.3d 141 (1st Dept. 2006). The relevant EEOC regulation provides that a job function may be considered essential if, *inter alia*, “the reason the position exists is to perform that function”. 29 C.F.R. § 1630.2[n][2][I]. Here, there is no question that the reason Jones was hired as the sole full-time recruiter for the school was to ensure that someone would be available to travel when and where necessary to engage in recruitment activities. At no point during her employment was she ever told that her recruitment functions would not include travel to Staten Island or would otherwise be limited in geographic scope. Indeed, one of the first recruitment visits Jones made was to a hospital in Staten Island, and Jones was well aware that Mullen had often conducted recruiting visits to Staten Island. Moreover, St. Joseph’s has submitted undisputed evidence that individuals employed in the recruiter position both before and after Jones’s tenure traveled to Staten Island, as well as to other boroughs, in connection with their recruitment activities. Although it is true that Jones had not often conducted recruitment visits in

Staten Island, around the time of Jones's accident, the school had contracted with an additional Staten Island location which would have made it necessary for Jones to travel there, a fact that Jones does not dispute.

The EEOC regulations also provide that a job function may be considered essential if there are a "limited number of employees available among whom the performance of that job function can be distributed". 29 C.F.R. § 1630.2[n][2][ii]. Here, St. Joseph's has submitted evidence showing that Jones was the school's only full-time recruiter. Despite this, Jones maintains that St. Joseph's should have used Mullen and other part-time employees to conduct recruiting visits in Staten Island. Mullen, however, was not the recruiter for the school; Jones was. Although Mullen at times performed recruitment functions, she was also responsible for hiring, supervising and evaluating faculty, managing the budget, directing off-campus sites and reviewing textbooks. Moreover, it is undisputed that the part-time employees who sometimes assisted with recruitment visits were employed as hourly employees, had different job functions and were under no obligation to accept assignments in Staten Island. Simply put, they were not full-time corporate recruiters who could have merely swapped geographic regions with Jones. Nor could they have fulfilled Jones's job responsibility to provide the necessary follow-up with the prospective students they met at recruitment visits. Thus, there is no merit to Jones's argument that travel to Staten Island was not an essential function of her job.

Jones has not pointed to any reasonable accommodation that St. Joseph's could have offered to enable her to perform the essential job function of being able to travel to off-campus locations for recruitment visits. Although Jones maintains that St. Joseph's should have used Mullen and other employees to conduct recruiting visits in Staten Island, it is well-settled that an accommodation that would require the reassignment of an employee's essential job functions is unreasonable as a matter

of law. See *Pembroke v. New York State Office of Court Administration*, 306 A.D.2d 185, 185 (1st Dept. 2003) (“[t]he only accommodations proposed by plaintiff – that his workload be reduced or that he be relieved of time constraints – would have required the reassignment of much of his work to coworkers, and were therefore unreasonable”); *Gilbert v. Frank*, 949 F.2d 637, 644 (2d Cir. 1991) (holding that assignment of essential tasks to other workers is not a reasonable accommodation); *Bratten v. SSI Services, Inc.*, 185 F.3d 625 (6th Cir. 1999) (employers are not required to assign existing employees or hire new employees to perform essential functions of a disabled employee’s job which the employee cannot perform by virtue of his disability).

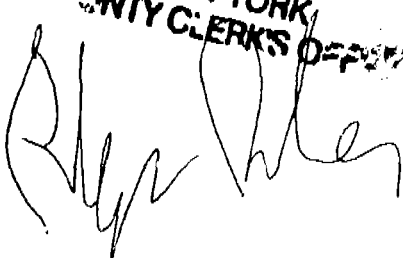
In sum, Jones was hired as SAPE’s only full-time corporate recruiter. One of the essential functions of her job was to make recruitment visits to off-campus locations chosen by the school, including those located in Staten Island. Due to Jones’s alleged disability, she was unable to perform that essential job function. Jones has identified no accommodation, other than transferring her work to other employees, that St. Joseph’s could have provided. Thus, St. Joseph’s is entitled to summary judgment. Accordingly, it is

ORDERED that defendants’ motion for summary judgment is granted and the complaint is dismissed and the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

September 22, 2006

FILED
 SEP 26 2006
 NEW YORK
 COUNTY CLERKS DEPT.



Justice Rosalyn Richter