

## Racial Harassment - Nonminority Retaliation Complaint

In April 2009, Turney (white) filed an internal grievance, identifying Bennett (white) as a witness and alleging that their supervisor (Crane) used a racial slur in referring to a fellow, black maintenance worker. The grievance accused Crane of creating a hostile work environment by his use of racially discriminatory language. Crane responded by stating that he had no recollection of the alleged incident. Jones, director of warehousing, packaging, and shipping, conducted a “management” review by interviewing the witnesses named in the grievance. Bennett corroborated Turney's account. Another maintenance worker witness could not recall what was said. Deeming these statements inconsistent, Jones concluded that no offense had been committed. Around the time of this investigation, Jones told Chance, the warehouse superintendent, that he had been unable to convince Bennett to drop the grievance. Chance later testified that Bennett's refusal to do so angered Jones.

Ultimately, the company's director of human resources investigated the incidents. In her May 2009 report, she expressed doubt about Crane's denials of the use of racial slurs and strongly recommended that he attend diversity training if he continued to serve in a supervisory role. Meanwhile, in early 2009 the company's CEO had issued a directive to division heads to reduce operating costs. In June 2009, Jones proposed reorganizing the maintenance staff for financial reasons. As a result of his proposal, two warehouse positions, those occupied by Bennett and Turney, were eliminated and they were terminated. This action was taken despite the fact that several members of the maintenance staff were junior to them and company policy listed seniority as a factor in layoff decisions.

Bennett and Turney filed charges with the EEOC, which issued each a “right to sue” notice. They then filed suit, alleging that the company terminated them in retaliation for their grievances in violation of Title VII, Civil Rights Act of 1964 and 42 U.S.C. § 1981 (creating a right to sue in federal court for persons claiming race discrimination in employment). The company moved for judgment as a matter of law, arguing that since neither plaintiff was a protected minority, neither had a claim under §1981. It also asserted that there was insufficient evidence of a retaliatory termination in violation of Title VII. The district court denied the motion, finding that sufficient evidence had been presented to show that the employees' “complaints of the use of racial epithets by Mr. Crane in the workplace were made in an attempt to vindicate the rights of minorities.” The jury found that the company retaliated against the plaintiffs and awarded each one lost wages and benefits, plus \$300,000 for emotional distress. Additional company motions for judgment as a matter of law made during trial and after the verdict were denied.

The Eighth Circuit Court of Appeals upheld the district court's rulings. In doing so, the Circuit Court held that to establish a retaliation claim under Title VII, an employee must show that he engaged in statutorily protected conduct, that he suffered an adverse employment action, and that the protected conduct was a “but-for” cause of the adverse action. Although not dispositive, the length of time between the protected activity and the adverse action, which was quite short here, was said by the court to be important in the causation calculus. In this case, the plaintiffs's evidence was sufficient to submit the Title VII claim to the jury. In response to the company's argument that § 1981 fails to provide a cause of action to a nonminority employee who brings a complaint on his own behalf, even if he does so in an effort to vindicate the rights of minorities, the Circuit Court noted that the claims under Title VII and §1981 merely state alternative grounds for the same judgment. Since the Court had concluded that the trial court's judgment under Title VII should be affirmed, it was unnecessary on appeal to consider the company's challenge to the §1981 claim. *Bennett, et al., v. Riceland Foods, Inc.* 721 F.3d 546 (8th Cir. Jul. 19, 2013)

While it may not seem logical, courts have generally protected an employee, though not a member of a minority group, from retaliation because of a complaint made about workplace discrimination targeting one or more other workers who were protected under federal civil rights laws.