

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

ANDREW NEAL

Plaintiff,

v.

SPEEDWAY

Defendant.

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No. 3:17-CV-44-CRS

MOTION FOR SUMMARY JUDGMENT

Defendant Speedway LLC¹ ("Defendant" or "Speedway"), by counsel, hereby moves this Court for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Speedway requests this Court enter judgment in its favor and dismiss Plaintiff Andrew Neal's Complaint with prejudice on the grounds that there are no genuine disputes of material fact and Speedway is entitled to judgment as a matter of law. Speedway further respectfully requests an order of reasonable attorney fees and costs in its favor, given a blatant effort by Mr. Neal to defraud Speedway and deceive this Court.

This Motion relies on and incorporates the accompanying Memorandum of Law in Support of Motion for Summary Judgment, with its supporting exhibits.

This the 8th of February, 2018.

¹ As Defendant has advised Plaintiff since the beginning of this litigation, Plaintiff has named an incorrect Defendant and corporate entity. There is no corporate entity doing business as "Speedway" and operating in the State of Kentucky.

Respectfully submitted,

/s/ LaToi D. Mayo

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2018, the foregoing document has been filed via the Court's electronic filing system. Notice of filing will be performed by the Court's electronic filing system, and the Parties may access the document through the electronic filing system.

/s/ LaToi D. Mayo

LaToi D. Mayo

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
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ANDREW NEAL	:	
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Plaintiff,	:	
	:	No. 3:17-CV-44-CRS
v.	:	
	:	
SPEEDWAY	:	
	:	
Defendant.	:	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND FOR FEES/COSTS**

Defendant Speedway LLC¹ (“Defendant” or “Speedway”) respectfully submits this Memorandum of Law in support of its request that judgment be entered in its favor and, thus, each of Plaintiff Andrew Neal’s (“Mr. Neal”) baseless claims be dismissed with prejudice. As fully explained herein and as demonstrated by the evidence of record, Speedway properly suspended and ultimately separated Mr. Neal’s employment after he called a co-worker and threatened to “burn down” or “blow up” the store, called out of shifts because he no longer wanted to work third shift, and received customer complaints. Additionally, Speedway respectfully requests an order of reasonable fees and costs in its favor, given a blatant effort by Mr. Neal to defraud Speedway and deceive this Court. Mr. Neal requested that the same co-worker provide a dishonest statement and split the money from any proceeds gained as a result of his false claims against Speedway. This Court should end Mr. Neal’s litigation now as a matter of law.

¹ As Defendant has advised Plaintiff since the beginning of this litigation, Plaintiff has named an incorrect Defendant and corporate entity. There is no corporate entity doing business as “Speedway” and operating in the State of Kentucky.

I. INTRODUCTION

Mr. Neal claims in his lawsuit that Speedway, through its General Manager James "Jimmie" Cooper, engaged in illegal sexual stereotyping and discriminated against him because he was a man behaving mostly like the stereotype of a woman, which he described as "very feminine" and "very soft." Mr. Neal's allegations are patently false. Speedway never engaged in any form of discrimination with respect to Mr. Neal's employment. Moreover, in stark contrast to the entire basis for his lawsuit, Mr. Neal openly and repeatedly admitted at deposition that he purposely took on an "aggressive" persona at work because he had concerns about his safety working third shift alone. In Mr. Neal's own words, he "got a little tough" and "got out of [his] normal persona," leaving that persona at home while working for Speedway. Thus, according to Mr. Neal, he intentionally demonstrated a stereotypical male persona in the workplace, not a stereotypical female persona as forms the basis for his claims in the instant litigation.

Mr. Neal's allegations about employment events likewise flip flop, defy logic, and confirm that he simply will not accept the consequences of his own actions. For example, even though Mr. Neal admits that he was candid about his sexual orientation during his interview and from the beginning of his employment with Speedway, he now accuses Mr. Cooper of engaging in discrimination on that basis. Similarly, despite the fact that Mr. Neal admits that he was hired to work third shift, he now alleges that it was discriminatory when he was not transferred to another shift. Likewise, even though the record reflects that Mr. Neal chose not to appear for scheduled shifts, he contends it was discrimination when Speedway coached and, ultimately, disciplined him regarding

his increasingly poor attendance. Even though Speedway conducted a detailed on-site investigation in response to the allegations of discrimination by Mr. Neal against his General Manager, Mr. Neal claims Speedway discriminated against him by not taking action. And even when Mr. Neal personally called into Speedway and threatened that he and/or his family would burn the store down or blow the store up, Mr. Neal still contends Speedway discriminated against him by suspending him and, ultimately, terminating his employment. Simply put, Speedway treated Mr. Neal lawfully at all times and his transparent attempt to misrepresent Speedway's conduct with respect to his employment is wholly insufficient as a matter of law to sustain his baseless claims.

Indeed, Mr. Neal's allegations against Speedway are worse than false: they are a trumped-up ploy to try to leverage Speedway for money. Specifically, Mr. Neal requested that former co-worker Scottia Wooten conspire with him in this effort by making up a story that the General Manager called him a "faggot," a deeply offensive and hurtful term, and in this unscrupulous effort, Mr. Neal promised he would split the money from his lawsuit with Ms. Wooten. A couple of weeks later, Mr. Neal called her again, this time requesting she lie and say Speedway did not provide breaks for employees – an allegation that made its way into this litigation. Thereafter, Mr. Neal continued to actively recruit Ms. Wooten, even sending his grandmother to the store with an attorney business card so that she could call the attorney and make the false allegations. To her credit, Ms. Wooten repeatedly declined to be involved in Mr. Neal's dishonest scheme, and instead brought Mr. Neal's shocking requests to Speedway's attention, including writing out contemporaneous statements documenting same. Yet

Speedway still faces the instant lawsuit, chock full of allegations that have no basis in reality or the law.

Equally troubling, during the litigation, Mr. Neal even refused to dismiss a claim that his own counsel conceded to be legally invalid a year prior in another case. Not only should Mr. Neal's lawsuit should be dismissed, he should also bear financial responsibility for his effort to defraud Speedway and deceive this Court.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Speedway's Commitment to Equal Opportunity

Speedway is a retail operation committed to equal opportunity and advancement in employment on the basis of ability, performance and attitude, without regard to race, color, religion, age, sex, disability, national origin, or other protected classes. *See Exhibit One* (Equal Employment Opportunities Policy). To that end, Speedway has implemented a written policy expressly prohibiting any form of harassment or discrimination. *See Exhibit Two* (Anti-Harassment Policy). This policy is posted conspicuously in every store and can also be found in the Company's Operations Manual, a copy of which is also available in every store. *See id.* Under this policy, employees who feel that they have been harassed or discriminated against in any way have multiple options for reporting their concerns, including a toll-free number. *See id.* The policy prohibits retaliation and other adverse consequences for employees registering a bona fide complaint or assisting in the investigation of a complaint. *See id.* As such, Speedway is unequivocal in its anti-discrimination efforts and requires the same level of commitment from its employees.

B. Mr. Neal Begins Employment in May 2015

Speedway hired Mr. Neal on or about May 27, 2015, in the role of Customer Service Representative, or CSR, for the third shift at the location on Terra Crossing Boulevard in Louisville, Kentucky. *See Exhibit Three* (Neal Deposition Excerpts) at 29-30. As admitted by Mr. Neal in his deposition, during his interview and throughout his employment, he openly discussed his sexual orientation as gay with Speedway representatives, including Mr. Cooper. *See Exhibit Three* at 31, 110, 167-68.

At a minimum, the CSR role requires “providing outstanding service to customers while running a register and working on the sales floor[.]” *See Exhibit Four* (Position Description). As part of this service, the CSR must “ensure[] that items meet the required stock levels and presentation standards [and] . . . that cleanliness and safety standards are met or exceeded; greet[] customers in a friendly manner[, and] . . . make[] effort[s] to ensure that customers leave with a good impression of the Company and are likely to return.” *See id.*

C. Mr. Neal Adopts An “Aggressive” Work Persona

Although Mr. Neal had previously worked third shift for other employers, accepted the third-shift role, and agrees there were never any robberies or attacks during his shifts at Speedway, *see Exhibit Three* at 58, 67, 83, he says that he felt concerned for his safety for multiple reasons, *see Exhibit Three* at 58, 67-68, at 70-71. As Mr. Neal described, “I’m by myself in a store . . . I am the only gas station on a very private road with little lighting. There is not a police station anywhere close. The only thing close to me is a women’s prison.” *See Exhibit Three* at 58. Mr. Neal did not

feel comfortable handling the trash outside the building during third shift. *See Exhibit Three* at 70-71.

As a result of his concerns about safety, Mr. Neal intentionally took on an “aggressive” persona in the workplace.² *See Exhibit Three* at 96. As Mr. Neal put it, “I’m not going to be as sweet as the girls that come – that are here in the morning when there’s four or five people up here.” *See Exhibit Three* at 59. Mr. Neal purposely “[came] off a littler harsher, a little bit meaner, someone you didn’t mess around with[.]” *See Exhibit Three* at 58. In fact, as Mr. Neal described, he “came off as a hard ass and a mean ass and if you didn’t listen to my rules, you could get out of the store and go.” *See Exhibit Three* at 59. And, “purposely tried to make it – tried to not sound as gay.” *See Exhibit Three* at 172. In short, Mr. Neal left his “normal” persona at home. *See Exhibit Three* at 172.

D. Mr. Neal’s Coaching and Counseling

As one can reasonably imagine, given Mr. Neal’s job as a CSR, his “aggressive” persona at work, among other things, resulted in multiple customer complaints. Despite this, he received only coaching for each of those instances. *See Exhibit Three* at 74-81, 94. As Mr. Cooper explained in his deposition, given the burden or obstacle of trying to find and retain employees to work third shift, he preferred to manage Mr. Neal with coaching and counseling in lieu of formal discipline or termination. *See Exhibit Five*

² In contrast to his aggressive workplace persona, Mr. Neal described his own typical personality as follows: “I’m very flamboyant. I’m more feminine than I am, I guess, masculine, so plays up into the way media -- social media just plays up with the stereotypical gay guy as we’re very feminine, we’re very fashion oriented, you know, I can tell you every person on E! News, you know, just an assortment of stuff.” *See Exhibit Three* at 169.

(Cooper Deposition Excerpts) at 28. To this end, Mr. Cooper met with Mr. Neal to discuss his performance issues when Mr. Cooper arrived in the store at the beginning of his normal work shift toward the end of Mr. Neal's standard third shift. *See Exhibit Five* at 30-31. During one of these meetings, on a date Mr. Neal cannot recall, Mr. Neal testified he told Mr. Cooper that he suspected Mr. Cooper disliked him because he was gay. *See Exhibit Three* at 102-04. Mr. Cooper explained to Mr. Neal that he had no issue with Mr. Neal's sexual orientation and he thought they may have difficulty relating to each other because of the age difference between them. *See Exhibit Three* at 103. Thereafter, to be sure Mr. Neal felt as comfortable as possible, Mr. Cooper worked with Co-Manager Tammy Foard to supervise Mr. Neal, and Ms. Foard began conducting coaching sessions with Mr. Neal. *See Exhibit Three* at 94, 167. Mr. Neal was receptive to coaching from Ms. Foard. *See Exhibit Three* at 94, 167.

E. Mr. Neal's Attendance Issues in December 2015

Unfortunately, despite his coaching from Ms. Foard, Mr. Neal's attendance declined considerably in December 2015, his final month of employment. Tired of working third-shift hours, Mr. Neal began to call off shifts, typically leaving Mr. Cooper or Ms. Foard to cover those overnight periods, even though they had just completed full daytime shifts. *See Exhibit Three* at 99, 159. Additionally, other employees had to change schedules or move shifts to accommodate Mr. Neal's absences – an employee relations issue. Specifically, Mr. Neal called out on December 7, 11, 18, and 23, after which Mr. Cooper issued a verbal counseling reminding Mr. Neal the importance of showing up for his scheduled shifts. *See Exhibit Three* at 98-99; **Exhibit Six** (Verbal

Counseling). At deposition, Mr. Neal conceded that he actually lied to Speedway's managers about the reasons for his absences that month. *See Exhibit Three* at 159. At the time of his absences, he told Speedway that he missed work because he needed to care for his grandmother, but really he just did not want to work the shifts. *See Exhibit Three* at 99, 159. Thereafter, Mr. Neal continued to call out additional days, including December 28. *See Exhibit Three* at 113.

F. Mr. Neal's HR Complaint and Speedway's Investigation

During the entirety of his employment, Mr. Neal never heard Mr. Cooper or anyone else make any derogatory reference to him at Speedway.³ *See Exhibit Three* at 131. Nevertheless, on December 22, 2015, in the midst of his admitted absences, Mr. Neal called into the Speedway hotline and made a complaint of sexual orientation discrimination. *See Exhibit Seven* (Intake Summary Email). In that telephone call, Mr. Neal alleged that Mr. Cooper referred to him as "that gay guy." According to Mr. Neal at that time, his grandmother was ill and needed care, so he also wanted off third shift. *See Exhibit Seven*. When asked what relief he sought, Mr. Neal explained that he wanted "the GM to be retired early because he is so shitty with the employees . . . [or] he would like some big sum of money." *See Exhibit Seven*. Importantly, no one informed Mr. Cooper of Mr. Neal's complaint at this time. *See Exhibit Seven*.

Instead, Speedway promptly responded to Mr. Neal directly. *See Exhibit Eight* (Macklin Email). Senior HR Advisor Donna Rowden, who had responsibility for the

³ At best for Mr. Neal, his entire case rests on his personal perception that Mr. Cooper disliked him due to his sexual orientation, plus one time Mr. Cooper allegedly referred to him as a "gay guy," which Mr. Neal did not hear personally. Mr. Neal takes this wildly tenuous purported foundation and then tries to read every employment event through that lens.

Central Kentucky area, was on vacation at the time, so HR Advisor Nicki Macklin reached out to Mr. Neal and spoke with him on December 24 regarding his complaint. *See Exhibit Eight.* During this call, Mr. Neal added some additional allegations to his complaint, but in general, the allegations remained the same. *See Exhibit Eight.* Other than the "gay guy" allegation, which Mr. Neal only knew secondhand, and the issue he had with his third shift schedule, Mr. Neal also alleged that Mr. Cooper referred to another employee as the "Black" guy and that a data-input error by Mr. Cooper on Mr. Neal's record constituted discrimination because it delayed a paycheck for Mr. Neal. *See Exhibit Eight.* As to the relief requested, Mr. Neal stated that either Mr. Cooper will no longer be employed by Speedway or he will "get an attorney." *See Exhibit Eight.*

Following this call, Speedway continued its investigation. With respect to Mr. Neal's request to be removed from third shift, Speedway determined that Mr. Neal did not apply for a first or second shift work schedule, and only indicated on his application that he could not work weekends. Upon reviewing his work schedule, Speedway also determined that throughout most of his employment, Mr. Neal mainly worked third shift averaging 16 to 24 hours per week. *See Exhibit Eight.*

In regard to the data-input error by Mr. Cooper, Speedway learned that Mr. Cooper inadvertently selected the wrong option when entering a personnel action for another employee, accidentally changing Mr. Neal's status in the company's internal system. *See Exhibit Nine* (Cooper Email). However, company records also showed that when the error was discovered, Mr. Cooper immediately requested Mr. Neal be reinstated as an active employee and his pay be rectified as soon as possible. *See*

Exhibit Nine. This error was corrected within one day of Mr. Cooper's report, and Mr. Neal was promptly paid for all time worked. *See Exhibit Three* at 118.

On December 29, Ms. Rowden went to the Louisville store and conducted on-site interviews to further investigate Mr. Neal's allegations of sexual orientation discrimination.⁴ *See Exhibit Ten* (Rowden Deposition Excerpts) at 11. District Manager Jonathan Mahin accompanied Ms. Rowden, and throughout the day, he served as a witness for each interview, recording the interviewees' responses to the questions posed by Ms. Rowden in writing. *See Exhibit Ten* at 11. Ms. Rowden sought to schedule interviews with as many employees as possible, and she ended up interviewing a total of eight. *See Exhibit Ten* at 11. With respect to Mr. Neal's discrimination claim, the interviews revealed the following information:

- Mr. Neal confirmed that he had never heard anyone refer to any employee as the "gay guy," but asserted that Mr. Cooper was "two-faced" and would not keep him off third shift so he could take care of his grandmother. *See Exhibit Eleven* (Neal Interview Record).
- Scottia Wooten explained that while she did tell Mr. Neal that Mr. Cooper had descriptively referred to him as a "gay guy," she clarified to Speedway that she did not believe the statement was made offensively, given Mr. Neal's open and repeated references to himself as a "gay guy" and opined that Mr. Cooper did not discriminate. *See Exhibit Twelve* (Wooten Declaration) at **Exhibit A** (Interview Record).
- All of the remaining employees denied hearing any reference to the "gay guy" and spoke highly of Mr. Cooper and the work environment, including such comments as "Great environment at this store," "I really like it here," and "Keep me with Jimmie." *See Exhibit Thirteen* (Other Interview Records).

⁴ Ms. Rowden created an "HR Audit" form for the on-site visit that included specific questions based on Mr. Neal's allegations. *See, e.g., Exhibit Eleven; Exhibit Twelve at Exhibit A; Exhibit Thirteen.* She also took the opportunity to ask additional questions about the workplace in the store in general. *See Exhibit Eleven; Exhibit Twelve at Exhibit A; Exhibit Thirteen.* Based on Ms. Rowden's decades of HR experience, to include workplace investigations, she felt the more general approach encouraged interviewees to be open with her.

In response to Ms. Rowden's general questions, some employees also raised operating issues relating to Mr. Neal's job performance, including concerns of theft, so Ms. Rowden had them write additional statements relating to their concerns. *See Exhibit Ten* at 12, 15. At the end of each interview, with the exception of Mr. Neal's, Ms. Rowden had the employee review and sign a copy of a letter previously provided to all Speedway employees outlining Speedway's strict prohibitions against discrimination and harassment and providing four separate ways for employees to raise any concerns going forward.

After all other employees had been interviewed, Ms. Rowden met with Mr. Neal. *See Exhibit Eleven*. Mr. Neal attributed his recent attendance issues to purported discrimination and harassment from Mr. Cooper despite the fact that Mr. Cooper worked a completely differently shift and the on-site investigation revealed no evidence of discrimination or harassment. *See Exhibit Three* at 132; *Exhibit Eleven*. As such, Ms. Rowden informed Mr. Neal that he still needed to report as scheduled, either at his current store or be transferred to another store. *See Exhibit Three* at 132-33; *Exhibit Eleven*. Mr. Neal stated that he would not consider transferring to another store. *See Exhibit Three* at 133; *Exhibit Eleven*. And, when Ms. Rowden explained that Mr. Cooper would continue to be the General Manager of the current store, Mr. Neal stood up, told Ms. Rowden and Mr. Mahin that Speedway would hear from his attorney, and stormed out. *See Exhibit Three* at 16; *Exhibit Eleven*.

G. Mr. Neal's Job Abandonment and Threat of Violence

After Mr. Neal walked out of the meeting with Ms. Rowden, Mr. Mahin

terminated Mr. Neal's employment in the Speedway system as job abandonment, assuming Mr. Neal meant to quit. *See Exhibit Fourteen* (Mahin Email). However, in case Mr. Neal unexpectedly sought to return to work, Mr. Mahin and Ms. Rowden also advised Mr. Cooper to contact them if he heard from Mr. Neal. *See Exhibit Fifteen* (Mahin Deposition Excerpts) at 24-25. Thereafter, on December 31, Mr. Mahin learned that Mr. Neal had, in fact, called the store the day before on December 30 to call out of his scheduled shift, but had also asked whether he was scheduled for any upcoming hours. *See Exhibit Fourteen*. Mr. Mahin took the call to mean that Mr. Neal was not abandoning his job by walking out of the HR interview after all, so Mr. Mahin requested that Mr. Neal be reinstated into Speedway's system. *See Exhibit Fourteen*. The system was updated the same day. *See Exhibit Fourteen*.

In the meantime, and unbeknownst to Mr. Mahin, during the December 30 to December 31 third shift, Mr. Neal called Ms. Wooten, who was working the shift. *See Exhibit Twelve* at *Exhibit C* (First Wooten Statement). According to Ms. Wooten, Mr. Neal told her that he and/or his family would "burn down the store or blow up the store." *See Exhibit Twelve* at *Exhibit C*. Mr. Neal also asked her if she would agree to lie and say that Mr. Cooper called Mr. Neal a "fucking faggot," for which Mr. Neal would give Ms. Wooten settlement monies. *See Exhibit Twelve* at *Exhibit C*. Ms. Wooten let Mr. Cooper know about the conversation, including the threat to the store, and Mr. Cooper had Ms. Wooten write out a contemporaneous statement about the call with Mr. Neal. *See Exhibit Twelve* at *Exhibit C*. Thereafter, by direction of Speedway's HR and Risk Management teams, Mr. Cooper called the Louisville Metro

Police Department and made a report. *See Exhibit Five* at 32.

H. Mr. Neal's Suspension and Termination

When Mr. Mahin became aware of the threat against the store, he let Mr. Neal know that he was suspended pending an investigation. *See Exhibit Three* at 114. Ultimately, after further consideration, Speedway terminated Mr. Neal's employment because of his threat to the store and other negative interactions with coworkers, and the various customer complaints that came to light during the HR on-site investigation. *See Exhibit Sixteen* (Termination Form). Because Mr. Mahin was in the process of transferring to another a District and had, in fact, transferred to another District at the time the termination decision was made, he did not have the ability to process Mr. Neal's termination into the company's system until January 19, 2016. *See Exhibit Fifteen* at 27-28. However, the termination was made effective as of December 30, 2015, Mr. Neal's last scheduled workday prior to the investigation into his threat to the store. *See Exhibit Sixteen*.

I. Mr. Neal's Solicitation and Scheme to Defraud Speedway

Mr. Neal appeared undaunted by these events. According to Mr. Neal, he began work for Thornton's on January 2, 2016, while he was still on suspension from Speedway. *See Exhibit Three* at 115-16, 189. On January 14, 2016, Mr. Neal called Ms. Wooten again to ask her to lie in support of a lawsuit he planned to file against Speedway. *See Exhibit Twelve* at **Exhibit D** (Second Wooten Statement). This time, Mr. Neal asked her to fictionalize an account that Speedway does not provide breaks to employees, and Mr. Neal encouraged Ms. Wooten by contending that, if she would join

him, the two of them could “get a class action lawsuit going.” *See Exhibit Twelve* at **Exhibit D**. Mr. Neal asked to take Ms. Wooten to his attorney’s office downtown so Ms. Wooten could make the false statement, and Mr. Neal promised to buy her dinner and give her a Bath & Body Works gift card. *See Exhibit Twelve* at **Exhibit D**. Ms. Wooten declined Mr. Neal’s requests. Nevertheless, Mr. Neal continued in his efforts by sending his grandmother to Speedway to give Ms. Wooten a copy of his attorney’s business card, further encouraging her to contact his attorney and make a dishonest statement. *See Exhibit Three* at 137. Ms. Wooten declined to call Mr. Neal back or to join his “money grab” scheme against Speedway.

J. Mr. Neal and Counsel Refuse to Dismiss a Legally Invalid Claim

Mr. Neal filed his Complaint on December 27, 2016, seeking to bring claims of sexual orientation/stereotyping discrimination under Title VII, the Kentucky Civil Rights Act, and Louisville-Jefferson County Metro Government Ordinance Chapter 92. *See DE#1-1* at 9-18 (Complaint). As relevant to the instant Motion, undersigned counsel contacted Mr. Neal’s counsel on November 19, 2017, asking Mr. Neal to agree to dismissal of his Louisville ordinance claim, “given the multiple cases holdings the ordinance does not provide a private right of action.” *See Exhibit Seventeen* (First Inman Email). In response, counsel for Mr. Neal asked whether Speedway intended to make a settlement offer and stated that, without such an offer, there was “no reason to ask him.” *See Exhibit Eighteen* (First Fauver Email). There was quite a compelling reason, however, as more than a year prior, counsel for Mr. Neal had conceded the exact same issue in a different matter. *See Mickens v. Gen. Elec. Co.*, No. 3:16-CV-603-

JHM, 2016 WL 7015665, at *2 (W.D. Ky. Nov. 29, 2016). Accordingly, undersigned counsel for Speedway followed up and explained: "I was thinking more because it's not a viable cause of action – saves everyone time and expense not to have to address that on dispositive motion – rather than settlement." See **Exhibit Nineteen** (Second Inman Email). Mr. Neal, by counsel, declined to dismiss the claim: "If you all would like to save your client some money on things like this, just give me their offer and then we can go from there. I have responded to that motion enough times that it really is not work for me to do that one." See **Exhibit Twenty** (Second Fauver Email).

All told, currently before this Court is a lawsuit with known-to-be-false allegations that Mr. Neal openly tried to coerce a co-worker to support through a dishonest statement in exchange for settlement monies, dinner, and a gift card. Also before the Court is a legally invalid claim that counsel for Mr. Neal previously agreed to be improper in a different lawsuit, but has nonetheless refused even to ask Mr. Neal to dismiss now. This posture could not be more unfortunate and even shameful, and Speedway should see fair recompense.

III. LEGAL STANDARD

"Summary judgment is appropriate when the record, viewed in the light most favorable to the nonmoving party, reveals that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." See *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014) (citing Fed. R. Civ. P. 56(c)). The party that moves for summary judgment must identify the portion of the record which demonstrates the absence of a genuine issue of material fact. See *Celotex*

Corp. v. Catrett, 477 U.S. 317, 322 (1986). Once the moving party has made this showing, the non-moving party bears the burden of “showing that there is a genuine issue for trial.” See *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 861 (6th Cir. 1986). To do so, he must present “significant probative evidence . . . on which a reasonable jury could return a verdict” in his favor. See *Chappell v. City of Cleveland*, 585 F.3d 901, 913 (6th Cir. 2009) (citations omitted). Absent such evidence, summary judgment must be entered for the moving party. See *id.*

IV. ARGUMENT

The Court should grant summary judgment to Speedway on each of Mr. Neal’s three claims, which are essentially the same theory brought under three different laws: Title VII, the KCRA, and Louisville-Jefferson County Metro Government Ordinance Chapter 92. There is no reason for these deeply flawed claims to go to trial. Moreover, because Mr. Neal openly sought to create false facts and refused to dismiss a legally invalid claim, the Court should make an award of reasonable fees and costs to Speedway.

A. Title VII and Kentucky Civil Rights Act

Summary judgment should be entered on Mr. Neal’s Title VII and KCRA claims because, under the applicable burden-shifting framework, he cannot meet his burden of proving his required *prima-facie* or pretext showings as a matter of law. Speedway had legitimate, non-discriminatory reasons for all action taken with respect to Mr. Neal’s employment and the record reflects that it treated Mr. Neal lawfully at all times.

1. Mr. Neal Cannot Prove his Discrimination Claim

To begin, neither Title VII nor the KCRA authorizes claims of discrimination based on sexual orientation, so to the extent Mr. Neal seeks to proceed on that ground, his claims fail immediately as a matter of law. *See Kasich v. AT&T Mobility, LLC*, 679 F.3d 464, 471 (6th Cir. 2012); *Pedreira v. Ky. Baptist Homes for Children, Inc.*, 579 F.3d 722, 727 (6th Cir. 2009). While the Seventh Circuit has recently reached a different conclusion, *see Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017), Sixth Circuit law remains unchanged, and this Court should, and indeed must, enforce Sixth Circuit precedent. Any part of Mr. Neal's claims based on sexual orientation must be dismissed with no further analysis. *See Kasich*, 679 F.3d at 471; *Pedreira*, 579 F.3d at 727.

In the absence of a viable sexual orientation claim, Mr. Neal may only proceed to the extent he can prove that he suffered discrimination due to nonconformity with male gender stereotypes. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51 (1989). As the Supreme Court explained regarding this limited circumstance, ". . . an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender . . . we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group." *See id.* According to Mr. Neal, he self-initiated an "aggressive" or stereotypical male persona at work, and thus, as fully explained below, it defies logic, and the record is completely void of any evidence, that Speedway treated Mr. Neal adversely because he conformed to his own male gender stereotypes.

Furthermore, since the “gay guy” remark allegedly made by Mr. Cooper does not constitute direct evidence, the Court should apply the familiar *McDonnell-Douglas* burden-shifting framework for claims based on indirect evidence. As the Court explained in *Imwalle v. Reliance Med. Products, Inc.*, 515 F.3d 531 (6th Cir. 2008), “[d]irect evidence is that evidence which, if believed, requires no inferences to conclude that unlawful retaliation was a motivating factor in the employer’s action.” *See id.* at 544. Here the evidence is that, according to a co-worker, Mr. Cooper referred to Mr. Neal as a “gay guy” when telling the co-worker who would be training her. *See Exhibit Three* at 108. While the alleged reference by Mr. Cooper may be inartful, Mr. Neal is, in fact, a “gay guy.” *See Exhibit Three* at 167-68. Notably, Mr. Neal made it a point to identify himself in this same manner to Mr. Cooper early in his employment. *See Exhibit Three* at 167-68. Moreover, there is no evidence or even suggestion that Mr. Cooper’s isolated reference to Mr. Neal as a “gay guy” was made during or as part of any alleged adverse employment event at issue, so there is no connection between that characterization and any purported unlawful employer action. To be clear, a simple “gay guy” reference in the context of a benign conversation about a training assignment falls far short of the mark to constitute direct evidence. *See Foltz v. Urban League of Portland, Inc.*, No. CV-99-10-ST, 2000 WL 230222, at *9 (D. Or. Feb. 18, 2000) (rejecting argument that “fat, white, gay guy” remark constituted direct evidence). Thus the burden-shifting framework applies to Mr. Neal’s claim.

Accordingly, Mr. Neal must first establish a *prima facie* case of discrimination by showing that: (1) he is a member of a protected class, (2) he was subjected to an

adverse employment action, (3) he was qualified for the position, and (4) he was treated differently than similarly situated employees outside the protected class for the same or similar conduct or was replaced by someone outside the protected class. *See McClain v. NorthWest Community Corrections Center Judicial Corrections Bd.*, 440 F.3d 320, 332 (6th Cir. 2006). Mr. Neal cannot make a *prima facie* case because, other than his suspension from employment, he suffered no adverse actions, and he cannot show he was treated differently than any similarly situated employees when he was suspended from employment or that he was replaced by anyone outside his protected class thereafter.

As to adverse actions, Mr. Neal claims that Mr. Cooper: (i) was not as friendly to him as with other employees; (ii) did not stand up to customers for him as much as for other employees, (iii) told him that he could not lockdown the store to use the bathroom; (iv) asked him to take out the trash despite his safety concerns; (v) shifted his schedule around; (vi) disciplined him unfairly for calling out of work; (vii) suspended him; and (viii) ultimately terminated his employment. "To establish an adverse employment action . . . , 'a plaintiff must show that a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.'" *See Garner v. Cuyahoga Cty. Juvenile Court*, 554 F.3d 624, 639 (6th Cir. 2009) (quoting *Burlington N. & Santa Fe Railway Co. v. White*, 548 U.S. 53, 68 (2006)). Generally an employment action, like a review, is not adverse unless it "significantly impact[s] an employee's wages or professional advancement." *See*

Blizzard v. Marion Tech. Coll., 698 F.3d 275, 290 (6th Cir. 2012) (quoting *James v. Metro. Gov't of Nashville*, 243 F. App'x 74, 79 (6th Cir. 2007)). Under this standard, Mr. Neal may fairly rely on his suspension as adverse action because it impacted his wages and advancement. Likewise, typically a termination would be an adverse action, but there was no termination here where Mr. Neal stormed off the job, called off for his next scheduled shift, and had already begun employment at Thornton's while on suspension from Speedway. In fact, Mr. Neal had moved on so fully that he did not even realize he had ever been terminated by Speedway. See **Exhibit Three** at 114. By contrast, Mr. Cooper's friendliness (or lack thereof), standing up to customers, instructions about the trash, bathroom break policy, and disciplinary warnings about showing up for work do not meet the standard because these had no impact, or even potential impact, on Mr. Neal's wages or advancement. All told, Mr. Neal's suspension is the only actionable adverse action he experienced.

Next, as to different treatment or replacement, Mr. Neal cannot make this showing. Here, as Mr. Neal testified extensively, he adopted a non-feminine or male persona **intentionally** in the workplace. Accordingly, while his supervisors Mr. Cooper and Ms. Foard knew that Mr. Neal was gay because he told them, they did not take, and indeed could not have taken, any action based on gender nonconformity because there was none due to Mr. Neal's own intentional decisions. That is, Mr. Neal, as a male employee, demonstrated an "aggressive" workplace persona that matches with his view of stereotypical male behavior, not female behavior. Mr. Neal even made it a point to differentiate himself from the "girls" in the workplace. While Mr. Neal targets Mr.

Cooper as the alleged bad actor, it is also significant that, according to Mr. Neal, Mr. Cooper was fully aware Mr. Neal identified as gay at least eight months prior to his termination. Equally important, there is no record of any “replacement” of Mr. Neal. In fact, Mr. Neal chose to begin employment at Thornton’s before Speedway took any final action on his employment. Given that Mr. Neal intentionally took on an “aggressive” persona in the workplace, he distinguished himself as different from the “girls” in the workplace, and there was no “replacement” of Mr. Neal, he cannot possibly satisfy this element of his *prima-facie* case. Mr. Neal’s claims fail, and summary judgment should be entered for Speedway.

2. Mr. Neal’s Threat to Speedway, Negative Customer Relations, and Customer Complaints are Legitimate Non-Discriminatory Reasons to Suspend his Employment

Even if the Court disagrees about Mr. Neal’s attempt to state a *prima facie* case, Speedway easily establishes its legitimate, nondiscriminatory basis for any adverse actions. Specifically, as to Mr. Neal’s suspension from employment, Speedway properly made that decision based on a worker’s report of Mr. Neal’s threat to the store. *See, e.g., Smith v. Leggett Wire Co.*, 220 F.3d 752, 759 (6th Cir. 2000) (holding that an employee's physical threat to coworkers and supervisors constituted a legitimate nondiscriminatory reason for his termination). Moreover, if the Court considers Mr. Neal’s employment separation as a termination, Speedway had a legitimate non-discriminatory reason to do so given Mr. Neal’s threat to the store and his coworkers, not to mention other negative employee relations with his co-workers and customer complaints. *See Harris v. Metro. Gov’t of Nashville*, 594 F.3d 476, 486 (6th Cir. 2010)

(holding that an employer had a legitimate reason not to renew an employee's appointment because the employee breached confidentiality and exhibited poor work performance); *Leggett Wire Co.*, 220 F.3d at 759.

3. Mr. Neal Cannot Meet his Burden of Proving Pretext

Finally, Mr. Neal certainly cannot show Speedway's actions were a pretext for unlawful discrimination. In general, a plaintiff can establish pretext in one of three ways: first, by showing that the proffered reasons had no basis in fact; second, by showing that the proffered reasons did not actually motivate his discharge; or third, by showing that the proffered reasons were insufficient to motivate his discharge. *See Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994). To meet his burden, Mr. Neal must introduce evidence of intent, rather than just try to pick apart Speedway's legitimate, nondiscriminatory reasons for employment actions. *See St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993). Here, while Mr. Neal may disbelieve Speedway, Mr. Neal's unsupported personal opinion does not entitle him to survive summary judgment. He cannot dispute that Speedway's decision to suspend him due to his threat to the store was based in fact, where Scottia Wooten, a third party with "no dog in this fight," wrote out a contemporaneous statement documenting the threat Mr. Neal made about blowing up or burning down the store. *See Exhibit Twelve* at **Exhibit C**. Ms. Wooten thereafter reiterated her past written statement to Speedway in the attached Declaration after she had left employment with Speedway. *See Exhibit Twelve*. Mr. Neal certainly cannot reasonably contend that a threat to cause harm or damage to the store and its personnel is not serious enough to warrant suspension

from employment for investigation. On this record, he cannot show Speedway's action to be pretextual as a matter of law, and summary judgment must be entered for Speedway.

Importantly, Speedway further honestly believed in its basis for taking the employment actions at issue, and this honest belief constitutes a complete defense. As the Sixth Circuit has described, "[i]f an employer has an honest belief in the nondiscriminatory basis upon which it has made its employment decision (i.e. the adverse action), then the employee will not be able to establish pretext." *See Tingle v. Arbors at Hilliard*, 692 F.3d 523, 530–31 (6th Cir. 2012); *see also Chen v. Dow Chem. Co.*, 580 F.3d 394, 401 (6th Cir. 2009) ("When an employer reasonably and honestly relies on particularized facts in making an employment decision, it is entitled to summary judgment on pretext"). The basis of this honest belief must come from particularized facts that were before the employer when the decision was made, allowing the employer to make a "reasonably informed and considered decision before taking an adverse employment action." *See Braithwaite v. Timken Co.*, 258 F.3d 488, 494 (6th Cir. 2001). Here, as to Speedway's decision to suspend Mr. Neal, Speedway had specific facts presented by Ms. Wooten, who informed Mr. Cooper that Mr. Neal threatened that he and/or his family would blow up or burn down the store. *See Exhibit Twelve* at **Exhibit C**. Speedway took the threat seriously, involving its Human Resources and Risk Management teams, which ultimately determined to suspend Mr. Neal and file a report with the Louisville-Metro Police Department. While Mr. Neal may question Speedway's actions, including its motivation for calling the Police Department,

there is no dispute that Speedway received a report of a threat against the store from employee Ms. Wooten. Nor is there any dispute that Mr. Neal's co-workers alerted Speedway of various customer complaints and his negative interactions among them during Ms. Rowden and Mr. Mahin's on-site investigation. These facts were before Speedway, which took action in suspending Mr. Neal based on its honest belief in those facts. Summary judgment should be entered for Speedway on this basis as well, resulting in dismissal of Mr. Neal's claims with prejudice.

4. Mr. Neal Cannot Prove a Hostile Work Environment Claim

Mr. Neal's Complaint utilizes the term "hostile work environment," but it is not clear if he intends to proceed on this theory given the absence of any record evidence in support of his claim. Nonetheless, to be thorough, Speedway also demonstrates herein why Mr. Neal cannot survive summary judgment on any hostile work environment claim he may attempt to bring.

To establish a *prima facie* case for a hostile work environment claim, Mr. Neal must prove: (1) he was a member of a protected class; (2) he was subjected to harassment based on a protected characteristic; (3) the harassment unreasonably interfered with his work performance and created an objectively intimidating, hostile, or offensive work environment; and (4) there is a basis for employer liability. *See Crawford v. Medina Gen. Hosp.*, 96 F.3d 830, 834-35 (6th Cir. 1996). "Whether an environment is hostile or abusive is determined by looking at all of the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes

with an employee's work performance." *See Hale v. ABF Freight Sys.*, 503 F. App'x 323, 337 (6th Cir. 2012). Mr. Neal cannot show he was subjected to harassment based on a protected characteristic or any harassment unreasonably interfered with his work performance or created an objectively intimidating, hostile, or offensive environment.

Mr. Neal was not harassed at all, much less harassed based on his sexual orientation or any conduct failing to conform to gender stereotypes. According to Mr. Neal, he mostly worked alone on third shift. *See Exhibit Three* at 59, 165. Given this work schedule, there were few opportunities for him even to have the opportunity to interact with others let alone experience any harassment. In fact, the purported bad actor, Mr. Cooper, worked first shift and Mr. Neal worked on third shift, so the two had few interactions on a daily basis. At most, Mr. Cooper would come into work at the end of third shift to prepare for the busy morning rush on first shift by counting money and doing other tasks. Further demonstrating their minimal interaction, Mr. Neal actually complains that Mr. Cooper did not engage with him more and appeared to keep his distance. *See Exhibit Three* at 101-02, 183. In this regard, Mr. Neal appears to suggest he experienced "inverse harassment," where a supervisor's alleged utter lack of attention, especially positive attention, effectively constitutes harassment. However, there is no support – legally or factually – for such a theory. Indeed, no court has recognized that a party can harass someone by leaving him alone. Even as a factual matter, after Mr. Neal expressed his belief that Mr. Cooper did not like him, Mr. Cooper coordinated with Ms. Foard to work primarily with Mr. Neal because he seemed receptive to comments and corrections by her, but was less receptive to the same from

Mr. Cooper. That is, Mr. Cooper actually arranged for Mr. Neal to receive support in the workplace – *i.e.*, specific attention -- from someone Mr. Neal liked. There was no harassment here, and summary judgment should be entered for Speedway.

Additionally, no harassing conduct unreasonably interfered with Mr. Neal's work performance or created an objectively intimidating, hostile, or offensive environment. At deposition, Mr. Neal testified that he liked mostly everyone and only had issues with Mr. Cooper. *See Exhibit Three* at 73. Again, as noted above, Mr. Cooper did not work third shift, so Mr. Neal and Mr. Cooper had few interactions. Moreover, as a matter of law, a single reference to Mr. Neal as the "gay guy" in the context of a training assignment falls far short of the mark to interfere with work performance or create any illegal environment. *See, e.g., Rhea v. Dollar Tree Stores, Inc.*, No. 04-2254 ML/V, 2005 WL 2600213, at *5 (W.D. Tenn. Oct. 12, 2005) (concluding that "gay guys" remark did not create actionable work environment). Mr. Neal cannot establish a *prima facie* case, and his claim must be dismissed.

To the extent the Court disagrees, Speedway incorporates herein by reference the analysis put forward in the legitimate, nondiscriminatory reason and pretext argument sections above. As fully explained therein, Speedway treated Mr. Neal lawfully at all times, and his claims should be dismissed with prejudice.

B. Louisville Ordinance

Mr. Neal's claim under the Louisville Ordinance should be dismissed as a matter of law, with no further analysis required. Courts have consistently held that Louisville-Jefferson County Metro Government Ordinance Chapter 92 does not provide any basis

for relief. *See, e.g., Roberson v. Brightpoint Servs., LLC*, No. 3:07-CV-501-S, 2008 WL 793636, at *3 (W.D. Ky. Mar. 24, 2008) (“Because Metro Government exceeded the power granted to it by the General Assembly by creating such a private right of action for persons injured by a violation of the Ordinance, Roberson cannot obtain a remedy from this court.”); *Mickens*, 2016 WL 7015665, at *2 (“As Plaintiff concedes in his response, Ordinance § 92.06 does not create a private right of action.”). A Kentucky municipality, like Louisville’s Metro Government, has only those powers granted by Kentucky’s General Assembly. *See Boyle v. Campbell*, 450 S.W.2d 265, 268 (Ky. 1970). While the KCRA permits municipalities to enact local ordinances prohibiting discrimination and retaliation based on characteristics not expressly protected by the KCRA and to impose penalties for violating such ordinances, *see* KRS § 344.300(1), the KCRA does not authorize municipalities to create a private right of action in a court of law for violations of an ordinance, *see* KRS § 344.450 (limiting the right to file a civil suit to violations of the KCRA itself); *Roberson*, 2008 WL 793636, at *3. This has been the law in the Commonwealth for more a decade, and there have been no changes.

To the extent this Court disagrees, Speedway incorporates herein by reference the analysis put forward above. Speedway treated Mr. Neal lawfully at all times, and he cannot meet his *prima-facie* and pretext burdens to survive summary judgment.

C. Award of Fees and Costs

Given the unusual record in this case, the Court should make an award of reasonable fees and costs to Speedway. Mr. Neal openly and repeatedly sought to bring false allegations before this Court, and by counsel refused to dismiss a legally invalid

claim. For these reasons, an award is warranted.

There are two legal grounds for the requested award. First, district courts have inherent authority to sanction bad-faith conduct. *See Metz v. Unizan Bank*, 655 F.3d 485, 489-92 (6th Cir. 2011). Second, under 28 U.S.C. § 1927, the Court may make an award of “excess costs, expenses, and attorneys’ fees” caused by an attorney who “multiplies the proceedings in any case unreasonably and vexatiously.” As to either ground, Speedway’s Motion gives Mr. Neal notice of the possible imposition of sanctions and a chance to respond, so he has a full and fair opportunity to do so.

The record supports an award of fees and costs. Scottia Wooten contemporaneously documented two separate attempts by Mr. Neal to secure dishonest testimony from her in his favor. On December 30, 2015, Mr. Neal called Ms. Wooten and asked her to make a false claim that Mr. Cooper had referred to him as a “fucking faggot,” and offered to split settlement monies with Ms. Wooten. *See Exhibit Twelve at Exhibit C*. Thereafter, on January 14, 2016, Mr. Neal called Ms. Wooten again to ask her to provide a dishonest statement. *See Exhibit Twelve at Exhibit D*. This time, Mr. Neal asked her to make a false claim that Speedway does not provide breaks to employees, suggesting that she and he could together “get a class action lawsuit going.” *See Exhibit Twelve at Exhibit D*. Importantly, this same break allegation ended up as part of Mr. Neal’s Complaint, as he contends (baselessly) that Mr. Cooper somehow told him he could not lock the door to take bathroom breaks. Indeed, Mr. Neal’s asking Ms. Wooten to make that false statement confirms that he knows full well his allegation in this instant litigation is false too. As Ms. Wooten explains, Mr. Neal had

even instructed her to lock the door to take bathroom breaks while working on third shift. *See* **Exhibit Twelve**. Also on January 14, Mr. Neal asked to take Ms. Wooten to his attorney's office downtown so she could make the false statement, and he offered to buy her dinner and give her a Bath & Body Works gift card. *See* **Exhibit Twelve** at **Exhibit D**. During this timeframe, Mr. Neal also sent his grandmother to Speedway to give Ms. Wooten a copy of his attorney's business card, encouraging her to contact his attorney and make a dishonest statement. *See* **Exhibit Three** at 137. This egregious conduct, including proof that Mr. Neal has brought a false allegation as part of the instant lawsuit, must find no safe haven before this Court.

Equally telling, Mr. Neal, by counsel, continued in his efforts to exploit Speedway by refusing, without any basis, to dismiss a claim known to be legally invalid. As explained above, not only did Mr. Neal's counsel refuse to acknowledge the multiple cases holdings that the Louisville Ordinance does not provide a private right of action, she attempted to hold this baseless claim over Speedway to induce a settlement. This conduct is even more egregious when considering that more than a year prior, this same counsel for Mr. Neal **conceded the exact same issue** in a different matter. *See Mickens*, 2016 WL 7015665, at *2. Specifically, in the Response to General Electric's Motion to Dismiss in that matter, the plaintiff, by Mr. Neal's counsel in this matter, wrote as follows:

First, the Defendant ("GE") states that the Louisville Metro Government's "Fairness Ordinance" does not create a private right of action. **On this point the Defendant is correct** and the Plaintiff is pursuing a claim with the Equal Employment Opportunity Commission ("EEOC").

See DE #8, *Mickens v. General Electric*, No. 3:16-CV-603-JHM-DW, at 2 (emphasis

added). Clearly surprised by Mr. Neal's counsel's conduct, undersigned counsel for Speedway even followed up and emphasized the benefit of dismissing a non-viable cause of action. *See Exhibit Nineteen*. Mr. Neal, by counsel, still refused: "If you all would like to save your client some money on things like this, just give me their offer and then we can go from there. I have responded to that motion enough times that it really is not work for me to do that one." *See Exhibit Twenty*. Indisputably, Mr. Neal and his counsel unreasonably and vexatiously caused a needless multiplication of the instant proceedings. The Court must make an award of reasonable fees and costs to Speedway on this record.

V. CONCLUSION

For the reasons set forth, summary judgment should be granted, and Mr. Neal's claims should be dismissed with prejudice. Moreover, the Court should make an award of reasonable fees and costs to Speedway, given Mr. Neal's unabashed intention to bring false allegations and refusal, by counsel, to dismiss a legally non-viable claim.

This the 8th day of February, 2018.

Respectfully submitted,

/s/ LaToi D. Mayo

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Operations Manual

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POLICY: EQUAL EMPLOYMENT OPPORTUNITIES

Speedway is committed to the principle that people should be recruited, hired, trained, and promoted without regard to their *race, color, religion, sex, age, disability, national origin, sexual orientation, genetic information, veteran status, or other protected status under all applicable laws or regulations.*

Each manager has the responsibility of understanding the Company's EEO Policy and ensuring it is understood, implemented, and practiced within his or her area of supervisions. If there are any questions regarding this Policy, contact your Human Resources Representative.

In the event you are made aware that a complaint charging discrimination is filed with any regulatory agency against the Company, you should immediately notify your Human Resources Representative and immediate supervisor.

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Anti-Harassment Policy

In order to promote harmonious work relationships and maintain a professional atmosphere, Speedway LLC has a policy prohibiting harassment of fellow workers and/or customers. All forms of harassment which create an offensive environment are forbidden, including but not limited to insulting or discourteous conduct as well as derogatory jokes or comments relating to age, color, national origin, race, sexual orientation, religion, gender, veteran status, or disability.

With respect to sexual harassment, the Equal Employment Opportunity Commission has issued guidelines defining unlawful sexual harassment as:

"Unwelcome sexual advances; request of sexual favors, and other verbal or physical conduct of sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for the employment decisions affecting such individual, or (3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

This type of conduct, whether of a sexual nature or otherwise, will not be tolerated. Our Company is committed to providing an environment for all customers and employees that is free from harassment and other discriminatory activity. Because of this commitment, specific procedures for filing a complaint have been established and are communicated in this Policy.

If you believe you have been discriminated against or harassed in violation of this Policy or witnessed harassment of customers or co-workers, you should immediately contact your supervisor. For the purposes of this procedure, complaints should not be filed with co-managers and shift leaders or other lead personnel. Alternatively, complaints may be directed to Human Resources Management at the following numbers:

<u>Diversity & Corporate Human Resources</u>	<u>HR Manager Western Human Resources</u> Buckeye Division Heartland Division Lake Shore Division	<u>HR Manager Eastern Human Resources</u> Motor City Division Tri-State Division
1-888/297-8112 Ext: 6491	1-888/297-8112 Ext: 7867	1-888/297-8112 Ext: 6228

All complaints will be fully and promptly investigated. A final report will be made to the appropriate level of Company management involved, which will result in appropriate corrective action, if warranted. Except to the extent necessary to conduct the investigation and take appropriate corrective action, if warranted, all communication concerning complaints under this Policy will be kept confidential. In all instances any disclosure will be limited to those persons with a need to know.

The use of this procedure to register bona fide complaints will not result in retaliation or other adverse consequences to the employee reporting the problem or any individual assisting in the investigation.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
CIVIL ACTION NO. 3:17-cv-00044-CRS

ANDREW NEAL

PLAINTIFF

VS.

DEPOSITION FOR THE DEFENDANT

SPEEDWAY

DEFENDANT

* * *

DEPONENT: ANDREW NEAL

DATE: JUNE 12, 2017

JESSICA MYERS, RPR
Certified Court Reporters
P.O. Box 5505
Louisville, Kentucky 40255-0505
(502) 648-6390
certifiedreporterslouisville.com

Andrew Neal

6/12/2017

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1 attorney regarding your employment at Speedway?

2 A. After I went through the appropriate
3 channels to attempt to have the situation
4 resolved, when their HR department refused to
5 handle it properly, I got up out of a meeting that
6 I was having with HR and said, the next thing you
7 will hear from me is something from my attorney,
8 and then I left the store.

9 Q. And we'll talk about that HR
10 conversation, but basically in that statement is
11 it fair that you had an attorney before --

12 A. No.

13 Q. -- you left that interview?

14 A. No, I got one after that interview
15 was over.

16 Q. Okay. So when you said, you'll hear
17 from my attorney, you didn't have anyone?

18 A. I didn't have anyone at the time,
19 but I figured the next thing they would hear from
20 me would be from my attorney, whenever I got one.

21 Q. Fair enough. Who other than
22 Ms. Fauver, if anyone, have you consulted as an
23 attorney?

24 A. No one else.

25 Q. All right. We're going to go to our

Andrew Neal

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1 A. It wasn't my choice to leave. All
2 of us got a call one morning and they told us
3 they're pulling out of the area, you don't have
4 jobs.

5 Q. All right. So sort of laid off?

6 A. Mm-hmm.

7 Q. Let's talk about Accent Marketing.
8 where was that office located?

9 A. It was -- used to be in New Albany's
10 industrial park. They're not there anymore. I'm
11 not even sure if they're even in the area. I
12 worked there when I was 18. It was like literally
13 my first job ever, and...

14 Q. I apologize.

15 A. Go right ahead.

16 Q. why did you leave that employment?

17 A. I did not leave. I was young and
18 stupid and got the flu and did not call in to work
19 to let them know I had the flu, so I got fired.

20 Q. Now, as far as Speedway, is it
21 correct you were hired on or about May 27, 2015?

22 A. I don't recall. It's been a long
23 time.

24 Q. Does May 2015 sound like about the
25 right time frame?

Andrew Neal

6/12/2017

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1 A. Yeah. It was summertime, I know
2 that much, when I first started working.

3 Q. Is it correct you were hired into
4 the role of customer service representative?

5 A. Yes.

6 Q. What's your understanding of the
7 responsibilities --

8 A. A customer --

9 Q. -- of that -- of that position?

10 A. A customer service representative
11 is -- for Speedway was to help the customer in any
12 way possible, whether selling them a product or
13 helping them find a product on the shelf or
14 sometimes, you know, if they need to come in and
15 use our phone, their phone's dead, their car's
16 dead, you know, a good customer service rep would
17 be like, here, let me grab our store phone and you
18 can use it and just...

19 Q. You submitted an application which
20 was approved?

21 A. Mm-hmm.

22 Q. Did you have an interview?

23 A. Yes.

24 Q. With who was that?

25 A. Mr. James Cooper.

Andrew Neal

6/12/2017

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1 Q. Anyone else?

2 A. Not that I can recall.

3 Q. Who actually hired you?

4 A. Mr. Cooper.

5 Q. All right. Let's talk about a few
6 documents here.

7 (NEAL DEPOSITION EXHIBIT 3 MARKED)

8 Q. And while you take a look at that,
9 let me just say for the record there are going to
10 be various HR documents in this deposition, and
11 this isn't necessarily one of them, where we might
12 work on a protective order to try to keep some
13 information confidential.

14 MS. FAUVER: Okay. And I forgot to
15 tell you, I talk really fast, so if I do answer
16 something or say something, you have to let me
17 know if I need to slow down.

18 COURT REPORTER: Okay.

19 MR. INMAN: And Jessica is just
20 faster than a speeding bullet, so...

21 MS. FAUVER: So I should be okay.

22 MR. INMAN: Yes.

23 A. All right.

24 Q. Have you had a chance to look at
25 what's been marked as Exhibit 3?

Andrew Neal

6/12/2017

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1 your coworkers interacted with customers and how
2 you interacted with customers?

3 A. There's a little difference. I'm by
4 myself in a store, so I can honestly say I
5 probably did not come off as the nicest person,
6 but at the same time I am the only gas station on
7 a very private road with very little lighting.
8 There is not a police station anywhere close. The
9 only thing close to me is a women's prison.
10 Doesn't really make you feel that much safer. Can
11 you repeat the question again.

12 Q. Yeah, I'd be glad to. Any
13 differences you observed between how you
14 interacted with customers and how your coworkers
15 interacted?

16 A. I was some people say a little bit
17 meaner but at the same time I didn't want to come
18 off as a softy and someone attempt to rob me. I
19 can honestly say every time I've worked third
20 shift I've never been robbed, but I did, I come
21 off a little harsher, a little bit meaner, someone
22 you didn't mess around with because, you know, I
23 was in there by myself. You know, we weren't
24 allowed to have a baseball bat, a gun or anything
25 to actually protect ourselves in that store so,

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1 yes, I came off as a hard ass and a mean ass and
2 if you didn't listen to my rules, you could get
3 out of the store and go. I'm sorry.

4 If I can't have anything in there to
5 protect myself with and you're not going to put
6 anyone in there with me, then I'm not going to be
7 as sweet as the girls that come -- that are here
8 in the morning when there's four or five people up
9 here. I'm by myself. So, yeah, my attitude was a
10 little bit different from the girls in the
11 morning. Okay. I'm looking out for not only the
12 safety of the store but for my own damn safety
13 because I was told by a manager I could never lock
14 the doors, not for a break, not for lunch, not
15 even to go to the bathroom. So, yeah, I wasn't as
16 nice as everybody else.

17 Q. Let's talk about that a little bit.
18 You said your manager told you you couldn't lock
19 the doors?

20 A. No, I tried.

21 Q. All right.

22 A. I tried one time to lock the doors
23 to have a lunch, to have a break, and I got yelled
24 at. He said that we have paid breaks, which means
25 that means you have to come off of them when a

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1 off days.

2 Q. During your employment were there
3 ever any incidents where there was an attack of
4 employees or a robbing of the store?

5 A. No.

6 Q. Were you aware of any incidents like
7 that at that location?

8 A. Not -- not that I recall.

9 Q. So you're --

10 A. Because the location was fairly new,
11 I mean, it wasn't a really old store. I think it
12 was just maybe not even a year old. It was fairly
13 new, so...

14 Q. And what I'm trying to understand is
15 the basis for your safety concerns. I want to
16 make sure I understand. So we've got the dark
17 road, that it's near correctional facilities.
18 what else?

19 A. It's right off the highway, I mean,
20 there's -- where, you know, at night, I mean, they
21 were all empty but countless empty office
22 buildings behind me, a large open field behind me.
23 I mean, we had a -- we complained about raccoons
24 and skunks like half the time. It's just when
25 you're the only -- and I do mean only gas station

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1 that anyone can go for in miles, sorry, it makes
2 you a little unnervy. That you look down the road
3 and there's no lights, you look down the road and
4 there's no lights. You're the only light.

5 Q. what did you understand to be the
6 closest gas station?

7 A. The closest other gas station was
8 you either get on the highway and get off at
9 Westport Road and hit the other Speedway or go all
10 the way down Old Henry Road until you hit kind of
11 like the beginning of Anchorage to hit a
12 Thornton's, and police was probably a mile or two
13 away from us in either direction.

14 Q. Let's shift gears a little bit. At
15 some point did you request a schedule change?

16 A. Yes.

17 Q. when was that?

18 A. It was once we got temporaries, I
19 figured, you know -- you know, I was told that
20 Scottia wanted to work third shift full time and I
21 mentioned to Jimmy, I said, Jimmy, I would love --
22 you know, I'm getting tired of working on third
23 shift, you know, all my days are running together,
24 I'm missing holidays, birthdays, you know, I
25 missed my grandmother's funeral, just missed a

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1 never got off on the correct time I was supposed
2 to get off. They'd all come in at seven, but he
3 made sure that I did outside garbage because I
4 refused -- refused every single time to do it when
5 I'm in the store by myself.

6 Q. By outside garbage, do you mean like
7 between gas pumps?

8 A. Between gas pumps and run them all
9 the way to the dumpster behind the building.
10 Refused to do that at night. I'm sorry. My
11 life's more precious than garbage.

12 Q. Did he ever talk to you about that?

13 A. Yep.

14 Q. What did he say?

15 A. He goes, I need you to do outside
16 trash, and I told him I'm not doing outside trash
17 when I'm by myself. I said, if Taylor's here --
18 you know, it was near the end because I told him,
19 I said, that's a safety concern, not only for me
20 but for the store because if I'm in here by myself
21 and I run out to all those pumps out there and
22 grab all the trash and run them to the back
23 dumpster and that takes about 10, 15 minutes,
24 okay, because those bags are not easy, they're
25 stuffed filled, they're like at least 30,

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1 40 pounds each, okay, you've got to lift them up,
2 out of the thing and haul them in the back, okay.
3 within that time period it would be easy for
4 someone who was walking, and we did have walkers,
5 or people who rode bikes to come into the store,
6 rob it and I would never know the difference.
7 They could have taken every cigarette back there
8 or taken a carton, I would have never known.

9 Q. So you refused to do the outside
10 garbage at night. Were you ever written up for
11 that?

12 A. No.

13 Q. Now, as far as -- moving back to
14 sort of your request for a schedule change, were
15 there already employees working the first and
16 second shift?

17 A. Yes. But there were gaps and
18 openings because people had left and quit and
19 changed locations, you know, stuff that happens.
20 I don't really know all the details. Again, I
21 worked third shift. I interacted with them like
22 ten minutes out of my day.

23 Q. Let's explore what details you do
24 know. Who do you believe left a first or second
25 shift position and created an opening?

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1 was an event the next day, it's not like I can go
2 to sleep, wake up, just straight for it. No,
3 because I ended work on the day that they're
4 having it. Like that was the wrap-up of my day, I
5 wrapped up at 7:30 that morning of the party or
6 that morning of the event. So if it was 12, I
7 mean, how am I supposed to get up, you know. I'm
8 -- the best hour of sleep is eight-hour sleep.

9 Q. Sure. So we talked about a couple
10 people you thought had left and created open
11 positions?

12 A. Mm-hmm.

13 Q. Just to be sure, you weren't asking
14 for someone to be booted or terminated?

15 A. No. I specifically said, if there's
16 a position open, if there's any availability open,
17 could you please move me to third shift. I liked
18 generally most of the people I worked with. There
19 was only one person I had issues with, and that's
20 Mr. Cooper.

21 MR. INMAN: That's probably the
22 perfect opportunity here to take about a
23 five-minute break and I'll just love putting this
24 on the record, but I usually take fairly frequent
25 breaks just to keep everybody fresh. So let's go

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1 off the record for five minutes or so and we'll
2 come back.

3 (OFF THE RECORD)

4 Q. All right. We're back on the record
5 after a short break. Let's go back at one thing
6 here, one detail to follow up on and then we'll
7 drive ahead. Okay?

8 A. Okay.

9 Q. The conversations you had with --
10 the conversation you had with Mr. Cooper about
11 locking the door, did he tell you you couldn't go
12 to the bathroom?

13 A. No. He never once told us that we
14 couldn't go to the bathroom.

15 Q. All right. Let's go ahead and move
16 forward here. Over the course of your employment
17 do you recall any incidents with customers where
18 customers complained or anything like that?

19 A. Yes.

20 Q. All right. Let's kind of walk
21 through those. What's the first one you recall?

22 A. The first one I recall was a -- it
23 was the main one. It constantly usually came up
24 multiple times in a week. Mr. Cooper would not
25 allow me to tell him not to come back to the

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1 property because he caused nothing but trouble.
2 He was a driver and say if I was for this
3 instance, for the problem we're talk -- I was in
4 the middle of a lunch break, you know, just
5 finished wrapping up a rush, you know, half my
6 cappuccino, all their parts undone, soaking in the
7 sink, you know, half the stuff that you would go
8 and get drinks from were kind of disabled for the
9 moment because they were all being cleaned, which
10 they have to get cleaned every night.

11 And a guy came in and this was
12 before -- this is what led to the conversation of
13 the door being locked. I had the doors locked and
14 I just wanted to have a lunch by myself, go to the
15 bathroom, you know, just thought that would be all
16 right. He came knocking at the door and he
17 knocked and I said, I'm sorry, sir, you're going
18 to have to come back later, I'm on lunch and he
19 goes, you can't take lunch because you're the only
20 person in the store, you have to open up the
21 store.

22 And I said, sir, I'm on lunch,
23 please come back in like -- and I looked at my
24 clock and I was like, please come back in ten
25 minutes, my lunch is almost over, you know, give

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1 me time to go to the bathroom, you know, all this
2 other stuff. He was not being patient. He
3 started banging on the door, so I cut my break
4 short and opened the door, let him in and he
5 immediately from there just started -- he was
6 going to chew me out. He says, you need to have
7 this door open, I'm a customer, you need to serve
8 me, you need to do this, you need to do that, and
9 I got an attitude and I said, I don't need to do
10 anything, period. I said I was on lunch, I tried
11 to tell you I'd be coming off of it in ten
12 minutes, just hold on, I'll be right with you.
13 You know, I can understand if you're on break or
14 you're on lunch, you know, go to another gas
15 station. You're a truck driver, reimbursed for
16 your gas wherever you go.

17 Q. Was this a regular customer?

18 A. Yes, unfortunately.

19 Q. So describe the customer.

20 A. He was -- it's hard for me to guess
21 people's sizes because everybody's just shorter
22 than me. I'd say he was about 5-5, he was an
23 African-American and he had a moustache. He
24 always wore his company cap backwards, wore a blue
25 shirt and jeans.

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1 Q. Do you remember the company?

2 A. No.

3 Q. That's fair. I know a lot of this
4 will tax your memory today probably but we'll do
5 the very best we can here.

6 So what did the customer do when the
7 customer came in other than argue with you?

8 A. After me argued with me he goes,
9 well, I'm going to get what I want and he went in
10 and before the time we could, you know -- he could
11 still buy beer, so he went and got a beer and I
12 just -- to me that was alarming because you're a
13 truck driver and you're buying a beer. Went in to
14 buy a beer and he came back up to my counter and
15 he slapped it down really, really hard.

16 And to me, where my counter is,
17 there's glass. It's a glass counter and directly
18 underneath it is all of our scratch-offs. So to
19 me, you break that and break your beer in the
20 process, you've destroyed thousands of dollars'
21 worth of scratch-offs, you know. I'm not in a
22 position to know even to how to write that off.

23 So I got on. I said, sir, do not
24 slam a glass bottle down on my glass counter,
25 please don't do it, and I said it with little bit

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1 of an attitude because at the same time he came in
2 with an attitude and I'd cut my lunch short and
3 now you're slamming stuff on my counter. So I
4 said, sir, please don't do it. And he goes, if I
5 slam it and break it, you will clean it up. At
6 that point in time after you've cussed at me,
7 you've got an attitude with me, you're slamming
8 things against my counter, you know, not caring if
9 you break it, to me, me being the customer service
10 person at that point was turned off, me being a
11 real person turned on and I said, listen, you can
12 treat me like a normal human being or you can
13 leave my store because I -- you know, I do have --
14 they told us -- I asked Jimmy, do we have the
15 right to refuse service? Only if they are irate,
16 cussing at you, screaming at you. I said, I don't
17 have to serve you, you can leave my store if you
18 can't change your attitude. He goes, I don't have
19 to deal with this, you will ring me up and slammed
20 it down again and I was like, screw it. I'm just
21 going to ring him up, get him out of here, tell
22 about -- tell it to Jimmy in the morning, okay.

23 well, I didn't tell Jimmy -- well, I
24 told him right away when he came in in the
25 morning. I said, there was a customer, he was

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1 irate with me, I told him not to come to the store
2 again. Jimmy says, you can't do that. I said,
3 well, you -- I asked you do we have the right to
4 refuse service, you told me yes, he was being
5 irate, I attempted to refuse his service. It was
6 the very next day that he brought me into the
7 office and told me that you can't close the door
8 because I'm guessing the customer told him and
9 said I locked the door.

10 Q. Okay. So this is -- that was when
11 you did lock the door --

12 A. Mm-hmm.

13 Q. -- what happened? I mean, that is
14 what happened when you did lock the door?

15 A. Yeah. Yes, sir.

16 Q. And you're not sure of the time
17 frame other than it was during that month?

18 A. Yeah. All my days ran together
19 because I would start work on one day and it would
20 end on another and then I slept and woke up in the
21 same day to repeat the process, so telling what
22 exact date it was is extremely hard for me.

23 Q. I was just curious if you had any
24 triggers, like it was around someone's birthday or
25 a holiday or anything like that.

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1 A. No. Unfortunately, no.

2 Q. Okay. What other incidents do you
3 recall with customers?

4 A. Same customer, Jimmy wouldn't allow
5 me to send him away from the store, so there would
6 be nights that I constantly had a confrontation
7 with the same customer. Every time he came in he
8 came in with a smart-ass attitude because he knew
9 that I couldn't do nothing about it. I had to
10 serve him because my boss was making me serve him.

11 Q. Let me ask this. I understood you
12 to explain or to say that Mr. Cooper had told you
13 if someone's irate you can refuse service at that
14 point?

15 A. Yes.

16 Q. For me that's different than you can
17 never come in the store again. Can you speak to
18 that?

19 A. Yes. It's -- it is a difference to
20 refuse service, but to me if someone is being that
21 irate, I believe if you were refused service that
22 should mean that person shouldn't really be
23 allowed back in the store. I mean, that's my
24 personal opinion on it. And the only reason I say
25 that because I -- I witnessed in first shift of

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1 them getting irate customers, young girls cussing
2 and screaming at like Tammy and Courtney and
3 Mr. Cooper refused their service and bans them
4 from the store.

5 Now, I just found it a little bit
6 funny that when the same thing happened to me, I
7 was stuck constantly to serve him. He wouldn't
8 allow him -- you know, wouldn't allow me to refuse
9 him and at least ban him from the property so I'd
10 get a night where I'm not dealing with an irate
11 customer.

12 Q. well, let me ask, tell me about what
13 you observed with Tammy and Courtney.

14 A. I always called them the
15 untouchables because it looks like they never got
16 wrote up for anything. Mr. Cooper never critiqued
17 them on anything, but in their defense I wasn't
18 around most of the portion of my day. From what I
19 saw in my perception, those girls and the first
20 shift girls could do no wrong, but we third
21 shiffters, it seems like we were always in the
22 wrong. There was always a note for us the night
23 we came in of stuff we didn't do the previous
24 night or stuff he wanted to be done the previous
25 night. And to us, all of us had the same

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1 cleaned by us was cleaned on third shift. It was
2 not cleaned on first, it was not cleaned on
3 second, not unless we were so slam packed busy
4 that we left them a note, be like, we couldn't do
5 this, we couldn't do that. We always got
6 reprimanded. It wasn't done on first and second
7 shift. They left that list for us to do again
8 when we came back in.

9 Q. Let me ask you, you'd worked third
10 shift previously, right --

11 A. Yes.

12 Q. -- in a different job?

13 A. Yes.

14 Q. Was it the same sort of deal as far
15 as doing a lot of those kind of tasks?

16 A. Yes, but at previous locations when
17 I worked at Meijer, Meijer gave me the option, had
18 a little sign, when it was lunchtime and break
19 time, put it up in my rotating window, people
20 would know he's on lunch, on his break, don't
21 bother him. Speedway, I didn't get that option.
22 I was always on the clock, always had to work.
23 There was never a time that I could just be like,
24 okay, 15-minute break, I can sit back, not have to
25 listen to a -- there was never a time because

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1 anymore; correct?

2 A. Yes.

3 Q. All right. And your testimony there
4 was that you were corrected on the incidence. How
5 did that happen?

6 A. They confronted me on it, says, you
7 know, the customers were coming to us and saying
8 you couldn't sell scratch-offs and I said, from
9 previous jobs I've worked at I know that, you
10 know, Indiana state law, you know, certain state
11 laws you have to stop selling scratch-offs and
12 lottery at a certain time, at a certain time it
13 shuts down and turns off.

14 Q. Who did the correction as --

15 A. I --

16 Q. -- you've termed it?

17 A. I want to say it was Tammy because
18 she was typically the -- basically the only
19 manager I typically saw when I first came in, so
20 if there was anything that needed to be corrected,
21 she usually was the one to do it.

22 Q. All right. And when we say
23 correction, this isn't something you were written
24 up for; is that correct?

25 A. No. She pulled me to the side and

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1 came back. Don't remember -- I could have just
2 said, that's a threat, you know, you come back
3 here I'll call your company and have, you know,
4 the police called on you. Sounds like something I
5 would say to threaten somebody to keep them away.

6 Q. As part of sort of your
7 aggressive --

8 A. Yeah, my aggressive --

9 Q. -- approach?

10 A. -- to keep myself safe and keep
11 people at a distance.

12 Q. So is this the incident that we
13 described earlier regarding the regular truck
14 driver customer?

15 A. Yes, I do believe so.

16 Q. All right. Would you be 100 percent
17 certain that you did not call the truck driver's
18 job?

19 A. I just don't recall.

20 Q. All right. Let's look at the second
21 incident under the header of October. It says, a
22 police officer pulled up, you told him to go to
23 Thornton's because you were on a break, you were
24 outside smoking. Do you recall that?

25 A. Mm-hmm.

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1 Q. I represent for the record this is,
2 I believe, six pages. We're going to look at them
3 two pages at a time if that helps your reading.

4 A. Okay.

5 Q. Have you had a chance to look at the
6 first couple of pages of what's been marked
7 Exhibit 12?

8 A. Mm-hmm.

9 Q. Have you seen these documents
10 before?

11 A. No.

12 Q. All right. The very first page of
13 the exhibit appears to reflect status of a verbal
14 counseling. Do you agree?

15 A. Mm-hmm.

16 Q. And yes?

17 A. Yes. Sorry. Yes.

18 Q. All right. If we go to the second
19 page, there appears to be a write-up. And it
20 looks like there are four dates there where you
21 called in to work, December 7, 11, 18 and 23.
22 What, if anything, do you recall about those
23 instances?

24 A. Well, during this time I already had
25 confronted Mr. Cooper multiple times about

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1 discrimination, about how he made me feel, and
2 after a while when you're treated like a lesser
3 person, you don't want to come in and work and see
4 the man who makes you feel like you're not --
5 you're not even a person, is why I didn't come in.
6 That's why.

7 Q. So that's what led to these
8 call-outs?

9 A. Yeah, every time -- every morning I
10 knew I had to see his face and be treated lesser
11 than everyone else around me. I called in -- when
12 I looked at the schedule and I saw he was off, I
13 would come in to work and I would work and I would
14 be happy, but if it was ever a morning I had to
15 see his face, like I called in because I couldn't
16 deal with it anymore.

17 Q. All right. And you tell me if you
18 need a break at any time.

19 A. No.

20 Q. All right. So let me ask this, I
21 understood your testimony just now you said you'd
22 already confronted Mr. Cooper multiple times?

23 A. Yes.

24 Q. Is that correct?

25 A. Yeah.

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1 the months I worked for Mr. Cooper did he ever ask
2 any of that. So I didn't believe that it was an
3 age difference thing, not one bit, because if it
4 was an age difference thing, why can't you talk to
5 me like the way you talk to that straight male
6 right next to you? He couldn't.

7 Q. So you're not sure of the date you
8 said. Can you put it relative to your
9 termination? Was it --

10 A. It was probably about a month.

11 Q. A month prior. This conversation
12 occurred where?

13 A. At the store in his office.

14 Q. Office. The future district manager
15 was there?

16 A. I don't know if he was the district
17 manager for this area, I just know he was a
18 district manager in training. His name was -- I
19 don't remember.

20 Q. All right. So how did
21 discrimination come up in the conversation?

22 A. It came up for -- it's -- it's easy
23 to point it out when I'm the only person there in
24 the store and he's the first person who walks in
25 from Day One -- from Day One did I ever get and

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1 never once got a good morning, Andrew, how was
2 your night, Andrew, how have you been, Andrew, how
3 are you doing. Not once ever in my time working
4 there did he ever ask it. Not once.

5 And I knew it had to be something
6 with me because he comes in and will walk to Linda
7 all morning and talk to every frickin first
8 shifter that came in, but you can't talk to the
9 person who's been covering and watching your store
10 all throughout the night, who hasn't had any human
11 interaction, you couldn't -- didn't say one word
12 and this went on from the moment I hired to the
13 moment I left.

14 Q. How did he talk to the second
15 shifters at the start of their shift?

16 A. I don't know. I never -- I was
17 never around during the start of second shift.

18 Q. Yeah. So in -- I may have asked a
19 bad question a moment ago. Let me ask, in that
20 particular conversation how did the topic of
21 discrimination --

22 A. I brought it up to him. I told him.

23 Q. Okay. What did you say, if you
24 recall?

25 A. I just came into the store and I

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1 said, Jimmy, I need to talk to you and he goes,
2 sure. And I said, can it be in private? And he
3 goes, that's fine, can so-and-so join in, you
4 know. I said, that's fine. I told him, I said, I
5 feel discriminated by you. You come in -- you
6 come in every morning, you don't say anything to
7 me, you don't even attempt to greet me, you don't
8 even attempt to know me and I'm your employee.

9 Q. Okay. Do you recall anything else
10 you said?

11 A. You know, I asked, you know, do you
12 have issues with me and he goes, you know, no, I'm
13 not discriminatory, you know, I used to work at
14 Grinstead Drive, so, you know, I don't know what
15 that has do with anything. You know, he said he
16 wasn't, it's just an age difference thing and then
17 just immediately after he left the office I could
18 tell it wasn't an age difference thing.

19 Q. And help me understand, what is
20 Grinstead Drive?

21 A. It's -- Grinstead Drive is, I guess,
22 home to a lot of like gay bars and, you know, just
23 a lot of the LGBT community, I guess, live out
24 that way in the Highlands and stuff.

25 Q. Okay. Can you recall anything else

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1 about that conversation?

2 A. No.

3 Q. All right. Was there any other time
4 you spoke to Mr. Cooper about alleged
5 discrimination?

6 A. Not that -- not that I can recall.

7 Q. All right. And I do want to get
8 into another part of what you said a little bit.
9 You said you were treated lesser than everyone
10 else. Do you recall saying that?

11 A. Yes.

12 Q. All right. Tell us in what ways you
13 were treated lesser.

14 A. Just basic requests, you know, like
15 when my grandmother -- my great grandma died, I
16 requested -- and mind you, you know, I'm -- my
17 days are running together, it's hard for me to
18 keep days and -- you know, I told him, you know,
19 my grandmother passed, can I please, you know --
20 you know, get the next day off. I know I'm
21 scheduled to work, please find somebody. A most
22 decent human being would be like, I'm so sorry for
23 your loss, take what time you need. He huffed and
24 he puffed and he was like, fine, take it. I got
25 one day for my grandmother, one day.

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1 believe, that gay dude or that gay guy --

2 A. Yes.

3 Q. -- is what you contend Mr. Cooper
4 referred to you as?

5 A. Yes.

6 Q. Did you ever hear him do that
7 personally?

8 A. No.

9 Q. All right. Let's talk about each
10 instance you know of that occurring. So what's
11 the first time you knew that occurred?

12 A. When Michael told me about it. He
13 said that, yeah, I'm trying to get rid of that gay
14 dude. That's what he told Michael when Michael
15 got hired on, that he was going to try to get rid
16 of that gay dude. That's what Michael repeated
17 back to me.

18 Q. Michael, do you know the last name?

19 A. (Shakes head).

20 Q. Okay. Michael said, was going to
21 get rid of that gay dude?

22 A. Yep. Yes, sir.

23 Q. Do you have any idea what time
24 frame?

25 A. It's the start of our shift, so

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1 about -- I want to say maybe a month, maybe less
2 than a month before I left Speedway.

3 Q. Mr. Cooper's who hired you; is that
4 correct?

5 A. Yes.

6 Q. Do you know whether there were any
7 other individuals who identified as gay or lesbian
8 working at the store?

9 A. Mm-mm. No, sir. No.

10 Q. Let me ask, we've talked about what
11 you heard from Michael and what you heard from
12 Scottia. Is there anyone else who told you about
13 any comments like that?

14 A. Hunh-uh.

15 Q. Okay. Do you understand that
16 Mr. Cooper made any other comments of any sort
17 that you consider offensive?

18 A. No.

19 Q. All right. So let's go to the next
20 two pages of that exhibit if we can and let me
21 give you a moment to read those.

22 A. Okay.

23 Q. Have you had a chance to read those
24 two pages?

25 A. Mm-hmm.

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1 more question about the middle two pages. Do you
2 dispute that you were -- that you called in on the
3 23rd, 28th and 30th of December?

4 A. No. No, I don't, no.

5 Q. So let's look at the final two pages
6 of this exhibit. Oh, yeah, that's -- Michael made
7 a great point. On that first page of the final
8 two pages, there's a Jonathan Mahin listed. Do
9 you see that?

10 A. Okay.

11 Q. Is that the district manager?

12 A. Mm-hmm.

13 MS. FAUVER: Yes or no.

14 A. Yes. Yes, sir.

15 Q. All right. So we have the last name
16 as Mahin now, M-A-H-I-N.

17 A. Knew it started with an M.

18 Q. All right. It looks like this page
19 is documenting a dismissal. Do you see that?

20 A. Yes.

21 Q. All right. And let's go to the
22 final page of the exhibit. Looks like it
23 documents a termination because of customer
24 complaints and negative employee relations. What,
25 if anything, do you recall about your termination?

Andrew Neal

6/12/2017

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1 Let's --

2 A. Last I recall I was not terminated.
3 Last I recall on January 1 I got a call from
4 Jonathan Mahin saying I was suspended without pay.
5 This is the first I'm ever seeing that he
6 terminated my employment. I was told that I was
7 suspended without pay.

8 Q. All right. That was a call on
9 January 1 --

10 A. January.

11 Q. -- 2016?

12 A. Yes. The first of the year.

13 Q. What, if anything, else do you
14 remember about that conversation?

15 A. It was very short, very sweet. He
16 said I was being suspended because I allegedly --
17 or he didn't say allegedly but I called in a bomb
18 threat to the store and that I was -- needed to be
19 suspended without pay.

20 Q. Was it your understanding that was
21 to investigate whether you did?

22 A. I don't know. That's all he told
23 me.

24 Q. Did you have any idea when the
25 suspension would be over?

Andrew Neal

6/12/2017

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1 A. No, sir.

2 Q. Anything else you recall about that
3 conversation?

4 A. No, sir.

5 Q. All right. As far as your
6 termination or your status, what's the next thing
7 you recall?

8 A. Just in 1-01 or that day or that
9 year or...

10 Q. well, as far as your employment
11 status --

12 A. Oh, employment --

13 Q. -- with Speedway?

14 A. -- status.

15 Q. We have you suspended without pay.

16 A. I was suspended without pay and I
17 literally -- the day that they told me I was
18 suspended without pay I got online and put in an
19 application at Thornton's, got a call two days
20 later and started my job at Thornton's. I was not
21 going to go without a job and if I'm suspended
22 without pay, that means they did not fire me and I
23 don't get to collect unemployment.

24 Q. All right. So within how many days
25 you were reemployed?

Andrew Neal

6/12/2017

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1 A. In under a week.

2 Q. What was your position at
3 Thornton's?

4 A. Customer service representative,
5 second shift.

6 Q. What was your rate of pay?

7 A. \$10 an hour.

8 Q. What was your rate of pay at
9 Speedway?

10 A. I think it was -- it was 10.

11 Q. So same pay, same job, different
12 company --

13 A. Mm-hmm.

14 Q. -- and one of the shifts you wanted?

15 A. Yeah. Yes. Yes.

16 Q. All right. Do you recall anything
17 else regarding your employment status at Speedway?

18 A. The only thing I can recall is they
19 sent me tax returns for -- for the year I did not
20 work with them.

21 Q. So you're talking about 2016?

22 A. Yeah. All of 2016 on the beginning
23 of this year I got a tax return from Speedway
24 saying I worked that year, which I didn't because
25 I was suspended 1-01.

Andrew Neal

6/12/2017

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1 remember his last name -- I know it started with
2 an R, so it's completely different from my name,
3 and somehow I was accidentally deleted from the
4 system. For four weeks I went without being paid.
5 It got to the point that I was threatening that if
6 he weren't going to pay me, I wasn't going to come
7 in to work. That's how work works, you come in,
8 work, get paid. He kept on telling me he fixed
9 the problem.

10 Every time I confronted him, like,
11 Jimmy, I haven't gotten a paycheck this week, I'm
12 now two paychecks behind, you know, I don't have
13 money to put in my car to even get here. He says,
14 oh, I'm fixing it, I'm fixing it right now. Well,
15 in my understanding you told me you were going to
16 fix it last week and the week after. To me that
17 was another sign of discrimination. He just
18 wanted me gone. Hopefully -- maybe I'd quit
19 because I wasn't getting paid.

20 Q. Did you get paid?

21 A. Eventually four weeks later he fixed
22 it and I got my back pay.

23 Q. Were you -- I guess you received
24 that back pay in like December?

25 A. Mm-hmm.

Andrew Neal

6/12/2017

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1 Q. Do you recall the exact phrasing
2 that Mike or Michael told you Mr. Cooper used?

3 A. No.

4 Q. All right. So this indicates that
5 Scottia and Mike or Michael were the individuals
6 who told you about the alleged comment or comments
7 by Mr. Cooper. Does that seem correct?

8 A. Yes.

9 Q. Let's go to the second page there,
10 No. 12.

11 A. Okay.

12 Q. You reference remarks referring to
13 you as gay guy. Have we talked about all of those
14 remarks that you can recall?

15 A. Yes, sir.

16 Q. And, again, are there any other
17 comments you can recall that you believe or you
18 felt were offensive that we haven't discussed?

19 A. Not that I can think of, no.

20 Q. All right.

21 A. He never said any of it to my face.

22 Q. All right. Let's go to No. 16
23 there. Looks like it says you went two weeks
24 without pay. Was that possible?

25 A. That's possible. I couldn't really

Andrew Neal

6/12/2017

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1 recall how long it was. I just knew it was beyond
2 the above -- what I would consider the above
3 average time of not paying somebody.

4 Q. Sure. Would you agree that what's
5 written here was closer in time to your testimony
6 today? That's a bad question. Let me start
7 again. Would you agree that what's written here
8 was closer in time to the events in question than
9 your testimony today?

10 A. Yes.

11 Q. All right. Let's go to what's
12 written there for No. 19, please. Do you see this
13 sort of set-off paragraph?

14 A. Yep.

15 Q. All right. The second sentence, how
16 could we expect him to come to work when he is
17 being treated that way, is that what you described
18 earlier here today?

19 A. Yes.

20 Q. And it looks like they told you
21 you'd need to ensure you came to work as scheduled
22 moving ahead, whether it was at that store or
23 another store. Do you have any recollection of
24 that?

25 A. No.

Andrew Neal

6/12/2017

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1 Q. All right. Appears, at least
2 according to this, they told you that they would
3 not be terminating Mr. Cooper and you essentially
4 left?

5 A. Yes.

6 Q. Does that match your recollection?

7 A. Yes, I do remember that.

8 Q. All right. One thing I wanted to
9 talk to you about, you've mentioned they asked you
10 about quitting in your testimony today. Do you
11 recall that testimony?

12 A. Yes.

13 Q. Here there's discussion of this
14 particular store or another store which as
15 somebody reading it I'm thinking transfer. Can
16 you -- was this the same discussion or a different
17 comment? How do you --

18 A. It was the same discussion. It was
19 all brought up at once. They, you know, didn't
20 even ask if I wanted to be transferred, they said,
21 we can transfer you and I mentioned, what's going
22 to happen to Jimmy, and they told me, nothing.
23 And to me and my standing in the way I was raised,
24 people like that who treat people that way,
25 nothing should -- never nothing should just happen

Andrew Neal

6/12/2017

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1 A. I did ask it but I --

2 Q. well --

3 A. Let me rephrase that. I did not
4 personally ask her.

5 Q. Okay. Let's -- the statement says
6 you asked her --

7 A. No, I did --

8 Q. -- is that correct?

9 A. No, I did not ask her.

10 Q. Right. But my question is this
11 statement says that you did.

12 A. Okay.

13 Q. Do you agree the statement says
14 that?

15 A. Yes. The statement says that.

16 Q. All right. Now, let's get -- what
17 is your recollection?

18 A. My recollection, the 30th my parents
19 were getting ready to leave to go stay with my
20 ma-maw or they were out of town, they just weren't
21 in town, so I got those nights off, I wasn't
22 working, to stay home and dog-sit. When -- the
23 only time she was contacted by any one of my
24 family is when I sent my grandmother because my
25 lawyer advised me --

Andrew Neal

6/12/2017

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1 organized here.

2 Q. Yeah, you're doing great with that.

3 A. Here we are.

4 Q. Okay. So on that exhibit if we can
5 look at Question 14, please. I'll give you a
6 chance to read that.

7 A. I know what that's in regard to.

8 Q. All right. It says that -- your
9 response was you needed first or second shift
10 because you had to take care of your grandmother
11 at night. Do you see that?

12 A. Yes.

13 Q. What happened?

14 A. There was nothing. I had given them
15 multiple reasons why I wanted to come (sic) off
16 third, so I just honestly came up with one in
17 hopes that -- you know, my last-ditch effort that
18 maybe he would have some compassion and just
19 switch me off, and it failed.

20 Q. Okay. So you didn't need to take
21 care of your grandmother --

22 A. No.

23 Q. -- at night?

24 A. It was just a ploy to attempt to get
25 off third. I was desperate.

Andrew Neal

6/12/2017

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1 A. Yes.

2 Q. All right. What you can do is flip
3 the stack. We're going to go all the way back to
4 Exhibit 1 and talk about that in more detail. Go
5 back with you. We will start on the second page
6 and the section titled Preliminary Statement. And
7 do you see Paragraph 1, Subsection A?

8 A. Yes.

9 Q. All right. It says you were given
10 shifts to work by yourself in violation of company
11 policy. Do you see that?

12 A. Yes.

13 Q. Which company policy?

14 A. Speedway.

15 Q. Okay. What policy, though? What...

16 A. I don't know preciseness of it.

17 Q. All right. And what is your
18 understanding of what this policy says?

19 A. That if you're in a store on third
20 shift by your -- you know, you're not supposed to
21 be by yourself in a store.

22 Q. At any time?

23 A. Yes.

24 Q. And this is -- the next phrase is,
25 which means he was not allowed to use the

Andrew Neal

6/12/2017

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1 A. No. No.

2 Q. All right. Go to Sub D, please. Do
3 you see where it says he told -- he was told that
4 the manager was not, quote, that way. Do you have
5 any recollection of that?

6 A. Yes. I brought it up to Tammy. I
7 said, Tammy, you know -- because I was more closer
8 to her, I felt more comfortable telling that as an
9 assistant manager about the situation, and that's
10 what her response was, I don't believe he's that
11 way, which means, you know, I don't believe he is
12 discriminatory.

13 Q. Sub E there says you disclosed your
14 sexual orientation to your supervisor.

15 A. Yes, I always do whenever I get
16 hired on.

17 Q. How -- do you have any recollection
18 of that conversation?

19 A. Yes.

20 Q. All right. What is that?

21 A. When I sat down for my interview, I
22 let him know that I was an open and proud gay man,
23 I do not hide it when at work. I'm not going to
24 hide it when at work and I just put it out there
25 because, you know, sometimes it's an issue where I

Andrew Neal

6/12/2017

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1 work. Customers have problems with it, so I'd
2 rather my employee -- my employer know right off
3 the bat that I am that way and I don't hide it and
4 I'm very proud about it and so if an issue came up
5 he would know and understand.

6 Q. We've gone over this, he hired you;
7 correct?

8 A. Yes.

9 Q. Now, let's go to Sub F. Do you see
10 this perceived divergence from sexual
11 stereotyping?

12 A. Mm-hmm. Yes.

13 Q. Can you explain, at least as you
14 understand, what is being discussed there?

15 A. I'm talking about the way I
16 perceived Mr. Cooper is discriminating me against
17 or...

18 Q. Okay. Earlier you talked about
19 your -- I think we were talking about the term
20 sissy.

21 A. Uh-huh.

22 Q. And you'd said that gay man have a
23 certain stereotype?

24 A. Mm-hmm.

25 Q. Do you recall that?

Andrew Neal

6/12/2017

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1 A. Yes, sir.

2 Q. All right. Do you fit that
3 stereotype? Are you different from that
4 stereotype?

5 A. I would honestly say I probably fit
6 it to a tee some days.

7 Q. Some days. What -- how do you fit
8 it?

9 A. I'm very flamboyant. I'm more
10 feminine than I am, I guess, masculine, so plays
11 up into the way media -- social media just plays
12 up with the stereotypical gay guy as we're very
13 feminine, we're very fashion oriented, you know, I
14 can tell you every person on E! News, you know,
15 just an assortment of stuff.

16 Q. All right. And what's the -- what's
17 the stereotype of a heterosexual male?

18 A. Butch, loves to play sports, could
19 possibly -- maybe was a lumberjack in their
20 previous lives, just very masculine compared to
21 your stereotypical gay man, which is very
22 feminine.

23 Q. So, I mean, we're talking about --
24 we're talking about butch and that level of
25 masculinity or we're referring to lumberjacks, I

Andrew Neal

6/12/2017

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1 I don't think we've talked about that. who told
2 you that?

3 A. I think that's my -- my reference to
4 HR. It's that's the way I perceived that they
5 were going to -- they were doing nothing about it.

6 Q. Okay. Because they wouldn't
7 terminate Mr. Cooper?

8 A. Yeah. They're -- they're -- yeah.

9 Q. All right. Let's go to Sub L,
10 please. It's on the next page. So -- and their
11 little sub i, ii and iii there in Roman numerals.
12 Do you see those? Let me give you a chance to
13 read those, then I'll have a couple questions.

14 Have you had a chance to read those?

15 A. Yes.

16 Q. All right. So I'm trying to put the
17 whole timeline together, and we saw earlier that
18 Ms. Wooten wrote a statement, and feel free to
19 look at it if you want to, saying that on the
20 night before, which was December 30, you'd called
21 in and said something about burning or blowing up
22 the establishment. Do you recall that?

23 A. The phone call?

24 Q. well, do you recall the --

25 A. Statement.

Andrew Neal

6/12/2017

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1 anyone else in that store, not one time, not even
2 my -- Taylor when she worked there, he would be
3 sweet as pie to her when he'd come in the morning.

4 I'd be like, good morning, Jimmy. I
5 didn't get any response, I didn't get looked at
6 it. He just immediately started, well, did you do
7 this, did you do that. Well, I don't see -- this
8 ain't done. This ain't done. I never got one bit
9 of appreciation for anything. So, yeah, I just
10 started to call in. I didn't care about my job
11 anymore because he didn't care. He didn't care
12 whether I did a good job or not. He never cared.
13 Same thing every -- for those three and a half
14 months I worked there.

15 Q. Any other emotional distress?

16 A. Just that he made me feel like
17 nothing, just not the same as everybody else.

18 Q. All right. And I apologize if I've
19 asked this. Let me be sure, are you aware of
20 whether there was anyone else working at Speedway
21 there who was gay, lesbian, bisexual, trans?

22 A. No. Everybody else there was either
23 married, had kids. I was the only -- the only one
24 of the LGBT community in that store.

25 Q. And just help me, how do you know as

2016 Compensation Policy

Compensation Table of Contents / Responsibility Statement Table of Contents

OPERATIONS

Effective Date: 03/09/1993

Revision Date: 10/19/2015

RESPONSIBILITY STATEMENT

Job: CUSTOMER SERVICE REPRESENTATIVE

Reports to: GENERAL MANAGER

Subgroup: U0 Hourly FT

U4 Hourly PT

Subarea: 2000 Store EE w/o SD

2001 Store EE w SD

Summary:

Specializes in providing outstanding service to customers while running a register and working on the sales floor; ensures that items meet the required stock levels and presentation standards; and that cleanliness and safety standards are met or exceeded; greets customers in a friendly manner and suggestively sells products to help increase sales; makes effort to ensure that customers leave with a good impression of the Company and are likely to return

Responsibilities:

- Provides positive, personalized customer service by greeting each customer in a friendly manner, assisting with purchases, suggestively selling and making sure products are available for purchase
- Runs a Point of Sale (POS) and monitors customer lines in order to expedite the sale process; interrupts all other activity when customer service is needed
- Maintains knowledge of products and services offered by the Company and knows how to complete associated transactions
- Adheres to Federal, State and local regulations and prohibits the sale of age restricted products to individuals under the minimum age requirement
- Takes an active role in promoting programs introduced by the Company; ensures established standards are adhered to
- Listens and responds to customer requests, follows immediate customer satisfaction guidelines to resolve customer concerns and forwards information to management as needed
- Cleans and maintains the store area including, but not limited to, cleaning counters, equipment, floors, cabinets and external areas. Performs light maintenance duties as assigned
- Helps ensure equipment is operating correctly. Communicates to management when maintenance is needed
- Learns and follows applicable policies and procedures including, but not limited to, grooming, cleanliness, uniform policy, eating, drinking and smoking policy and overall professional appearance, as is outlined in the Company Operations Manual
- Integrates HES into daily job performance and assists in maintaining a safe environment for customers, employees and self
- Follows and complies with all health and sanitation procedures and adheres to safe work practices
- Helps ensure proper stock levels, dating and rotation of all food products and supplies
- Attends company required training programs; assists in training fellow store associates on existing and new training programs as needed
- Provides suggestions for and actively participates in improving sales, margins and execution of Merchandising/Marketing programs
- Reports all time worked, on or off site, for appropriate compensation
- Completes other duties, including special projects, as assigned by Management

Education Requirements:

- No requirement

Experience Requirements:

- Customer Service experience preferred

Skill Requirements:

- Basic computer skills
- Good verbal and written communication skills
- Understanding of store functions and operations
- Ability to work as a member of a team
- Ability to model proper workplace behavior, including being respectful, honest and fair
- Ability to perform repeated bending, standing, and reaching.
- Ability to occasionally lift up to 50 pounds **Note: Not authorized to drive for Company business**

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF KENTUCKY
3 AT LOUISVILLE
4 CIVIL ACTION NO. 3:17-CV-00044-CRS
5 HON. CHARLES R. SIMPSON, III

6
7 ANDREW NEAL,
8 PLAINTIFF

9
10 V.

11
12 SPEEDWAY,
13 DEFENDANT
14
15
16
17
18
19
20
21
22

23 DEPONENT: JAMES COOPER

24 DATE: NOVEMBER 29 2017

25 REPORTER: SHELBY LODA

1 Q Right. But do you understand what I'm saying?
2 If there was a concern -- if he called on the 30th, and
3 you didn't report to the police until the 1st --

4 A Okay.

5 Q -- were you actually concerned that he was
6 going to do anything?

7 A No.

8 Q Okay. So you only reported it because you
9 were told to?

10 A Yes.

11 Q Okay. So if there had been complaints about
12 Andrew, why did you never report him to your
13 supervisors?

14 MS. MAYO: Object to form.

15 Q Okay. You said you had received complaints
16 about Andrew's -- well, about Andrew.

17 A Okay.

18 Q Okay. But why did you never report him?

19 A Because he works third shift. It's hard to
20 hire people there. If, you know, I terminate him, I'd
21 be working third shift.

22 Q Okay. So you kept him just so you didn't have
23 to work the shift?

24 A No. I mean, he wasn't all bad. It was just
25 -- he had value.

1 Q Prior to issuing the written warning to Mr.
2 Neal, did you issue any other type of discipline to Mr.
3 Neal?

4 A Verbal.

5 Q And tell me what is the -- what was your
6 verbal warning regarding?

7 A Explaining to him that if he doesn't show up
8 for work, that somebody else has to work his shift, and
9 it's inconveniencing a lot of people.

10 Q So did it address attendance issues?

11 A Yes.

12 Q Okay. And did you have this verbal warning --
13 or give Mr. Neal this verbal warning prior to your
14 knowledge that he had filed a complaint against you with
15 corporate?

16 A Yes.

17 Q You also discuss the fact that you were aware
18 of customers lodging complaints against Mr. Neal
19 regarding I guess -- I think you said rudeness; is that
20 correct?

21 A Yes.

22 Q And I think you stated that you did not issue
23 any discipline to him for that -- in regard to those
24 complaints; is that correct?

25 A Written?

1 Q Well you tell me.

2 A A verbal? We talked -- verbal. Just a
3 conversation about importance of good customer service.

4 Q And why did you not issue any type of formal
5 discipline to Mr. --

6 MS. FAUVER: Neal.

7 Q -- Neal?

8 A Neal. We tried to coach to better people to
9 get them up to doing good customer service. It's a
10 correctable -- or easily correctable matter.

11 Q And did you have this discussion with Mr. Neal
12 regarding customer complaints or concerns about his
13 rudeness prior to your knowledge that HR -- that he had
14 filed a complaints against you with HR?

15 A Yes.

16 Q You also talked -- stated, I believe, that you
17 were not involved in Mr. Neal's -- the decision leading
18 to Mr. Neal's termination of employment; is that
19 correct?

20 A Yes.

21 Q So could there have been someone else who
22 terminated Mr. Neal in Speedway's system, you know,
23 outside of your knowledge?

24 A Yes.

25 Q Lastly, you talked about, you know, calling

1 the pol- -- being instructed to call the police once you
2 made corporate aware of the incident involving Mr. Neal
3 as reported by Scottia. Is that correct?

4 A Scottia.

5 Q Scottia.

6 A Scottia.

7 Q Scottia. Is that correct?

8 A Yes.

9 Q All right. Are you as you sit here today, can
10 you affirm under oath exactly when you received that
11 directive from corporate to notify the plaintiff -- by
12 when -- what date you received that directive?

13 A No.

14 Q And I think you were asked, in connection with
15 your report to the police, were you concerned about your
16 safety. Tell me a little bit more about how you
17 typically handle -- what is the protocol with respect to
18 -- specifically with respect to handling the types of
19 complaint that you got from Ms. Wooten, or notice of
20 concern from Ms. Wooten.

21 A If I felt there was immediate danger, dial
22 9-1-1. If not, we just go through the protocol and take
23 report just to be -- so it would be noted.

24 MS. MAYO: Okay. I think that's all I have.

25 MS. FAUVER: Off the record.

Personnel No Name
EE group Regular Employee Personnel ar Speedway 9451 Louisville KY
EE subgroup Hourly PT Status
Start to Chng 

Grievance data

Subtype DISCIPLINE SSA STORE
Reason Absenteeism/Tardines
Date entered
Supervisor James D Cooper

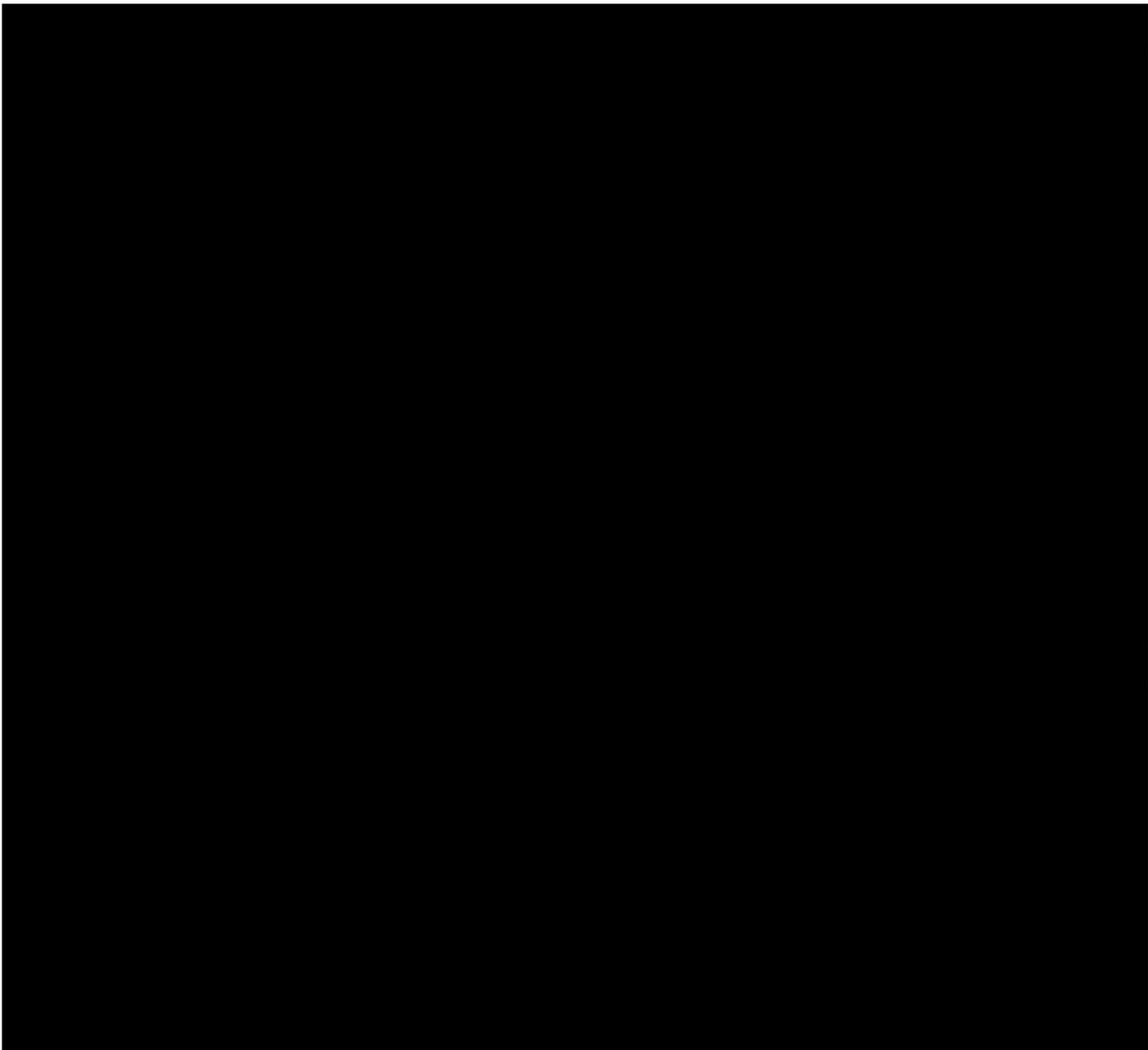
Status

Grievance status
Stage
Result VERBAL COUNSELING Date settled

Additional fields



1 on 12-7 was to 12am -5am called in# 12-11 was to work 6am-11am called in#
2 12-18 was to work 7am -2pm caled in# 12-23 was to work 6am -2pm c
3 alled in##I explained to Andrew we can not give good customer service unless e
4 veryone shows up. It is not fair to the customers and other employees. If this
5 continues stronger action will take place up to termination.



From: Smead, Jo (Speedway)
Sent: Tuesday, December 22, 2015 2:20 PM
To: Macklin, Nicole R. (Speedway)
Cc: Rowden, Donna S. (Speedway)
Subject: Complaint - 960191 Andrew Neal, Store 9451, CSR/PT

Hi Nikki,

Per our conversation, I just got off the phone with Andrew Neal, 960191, who has called in a complaint of discrimination, sexual orientation and his phone number is 502-974-5463. Please let me know what you discover in your investigation.

Andrew found out from an employee that when the GM talks about him he does not use his name and he refers to him as "That Gay Guy". And Andres said he finds this offensive, said another employee and a customer told him that the GM refers to him as "That Gay Guy". He said that a GM should not be saying that because of someone's sexual orientation and that he does nothing at work to upset anyone about his sexual orientation. Said his mom has already wrote an email once to corporate. Said his mom would tell you that he comes home every day defeated because nothing he does is good enough. Andrew said his Nanna, was sick, he called off and the GM thought he was lying and he does not appreciate that. Said the GM has him working multiple shifts instead of placing him on one shift. Said works 2nd shift then 3rd shift and it is never the same shift. His Nanna is ill and he needs to be available to her and his niece and nephew and 2nd or 1st shift would be ok but not third. Andrew said he has addressed these issues with the GM previously and he did better for a while and he just feels discriminated against. Andres said his hours are being cut, I advised the store hours are cut during the winter months and with him being a part time employee this could be what happened. Andres said he did not know that. It appears to all the employees that the GM does not want to be there, that he is just going through the motions and he just doesn't care because he wants to retire. I asked Andrew what he would like to see happen. Andrew said he would like the GM to be retired early because he is so shitty with the employees and we have gone through 8 employees since he has been there and he has worked there the longest. Or, he said he would like some big sum of money for all the discrimination he is going through. I asked if he had contacted his DM or HR Adviser and he said he didn't know who they were. Andrew said the GM changes the schedule on a whim and does not tell him and last night the schedule was changed, the GM did not call and he did not know about it until Courtney called him. He said you don't want my mom to call because she will let me have it. I advised it is our company policy not to speak with the parents and we would not be able to speak to her. I advised his HR Advisor, Donna Rowden is out though HR Advisor, Nikki Macklin is in and we would investigate this. I advised I do not believe she will be able to get back to him today but should be able to by tomorrow. He said OK.

Thanks,

Jo Smead | Human Resources Coordinator | Speedway LLC
500 Speedway Drive, Enon, OH 45323
Phone 937-863-7869 | Fax: 419 420-1411 | Email: jsmead@speedway.com

Rowden, Donna S. (Speedway)

From: Macklin, Nicole R (Speedway)
Sent: Thursday, December 24, 2015 11:21 AM
To: Rowden, Donna S. (Speedway)
Subject: FW: Complaint - 960191 Andrew Neal, Store 9451, CSR/PT

*Miranda
quit on 12-27-15*

Donna,

Andrew and I were finally able to connect via phone, and below are some bullets on what he was sharing going along with what Jo already sent us

- Feels he is being discriminated against because of his sexuality, had a conversation with Jimmy a while back because he felt he was discriminated against because he Jimmy didn't try to get to know him like he did other employees
- He's openly stated to employees that he is retiring in 3 years and they all feel that he doesn't care about them
- Word has gotten back to him that Jimmy refers to him as that "gay guy" Scottia and Miranda have both advised him of this-they told him this on Monday.
- Referred to the previous 3rd shifter Mike Young as 'that black guy' this is what Scottia and Miranda advised him
- Schedule change 10-6 without notice, this past Monday Courtney called him because he wasn't there yet and he didn't know it was changed. He feels discriminated because of this because Jimmy changed it and failed to communicate it to him, says he doesn't do this to others (In looking at the schedule it was added in, not sure when but the total for the week was 16 and should be 24 with that shift)
- Feels that discriminated against because of the random schedules shift he is bouncing weekly between shift and no one else has too and they all have pretty set schedules. Says he has shared these concerns with Jimmy but feels he doesn't care
- Doesn't trust him because he has lied to him messed up his paycheck 3 weeks ago accidentally deleted him from the system I am fixing it now and then didn't get paid again the next week and Jimmy said I am fixing it now. Has been corrected now
- Feels like after he hounded him about getting him paid he feels like Jimmy is doing anything he can to get him to quit.
- Schedule Isn't posted until Wednesday afternoon
- Training isn't good, communication about things doesn't occur, he had to teach himself how to do gift cards, clean equipment etc.
- Employee handbook wasn't received from the RC feels like they haven't been provided all the information
- Doesn't know how to do a money order, has shared with Jimmy there are things that he doesn't know and needs to learn but he doesn't care.
- Doesn't want to bounce from 1st, 2nd, and 3rd shifts though (wants off of 3rd shift)
- Previously 3rd shifter, said that a prior lesbian employee (friend of hers) Jimmy would make her schedule unbearable and continued to do so to make her quit. She had asked to get off 3rd and he refused to give her the opportunity to do so.

Says that the only thing that is acceptable to him would be for Jimmy to no longer be with the company or at another store and he will get an attorney.

I advised him that we would need to do some additional follow up and given you were coming back on Monday you would be the one to continue the investigation and follow up accordingly.

I didn't know what your schedule was like otherwise I would have gone ahead and scheduled you to meet with Miranda, Scottia, and the GM on Monday. Looks like Miranda is working that day at 2 so might still be able to get Scottia to come in as well.

Give me a buzz Monday morning and we can discuss, sorry I wasn't able to get it knocked out before you came back! Hope you had a great holiday though!

From: Macklin, Nicole R. (Speedway)
Sent: Thursday, December 24, 2015 9:10 AM
To: Rowden, Donna S. (Speedway)
Subject: FW: Complaint - 960191 Andrew Neal, Store 9451, CSR/PT

Donna,

I haven't had a chance to speak with Andrew yet we have been playing phone tag, at any rate if I get to talk with him today I will provide any additional details to you but will plan to let you follow up on this.

Here is what I have found thus far:

In looking at his app on line he didn't apply for 1st/2nd shift it was open he just indicated on the app that he couldn't work weekends

I checked with customer service and there were no complaints received about the GM and his treatment of employees (a few since Andrew has been employed that I will send you for your file)

There is also another email out that I will forward to you that I haven't received a response on as I was wondering if there was an email supplied that didn't have a store attached to it

I have copies of the schedules for Dec and I pulled Andrews time since he has been with us and I will forward those to you. He has mainly worked 3rds since employee and there are some other shifts thrown in but normally a couple days in between. He is definitely not getting up a lot of hours it's never been consistent since he's been with us anywhere from 16 to 24 and his average is 23.90 which may be due to availability.

I didn't speak with the DM/GM at all yet as I want to talk with Andrew and see if we could get the name of the employee that alleges that the GM made this comment so that we could speak with them first.



Andrew Neal



Andrew Neal



9451 Roster.XLSX

Hours Report.htm Hours Detail.htm

Bailey, Shawn C. (Speedway)

From: Speedway Pers Admin Requests
Sent: Tuesday, December 08, 2015 12:57 PM
To: SSA-9451 (Speedway); Buss, Jennifer M. (Speedway); Dennis, Kristina N. (Speedway); Harshbarger, Julia K. (Speedway); Hunt, Vicky L. (Speedway); Meadows, Donetta M. (Speedway); Milum, Valerie A. (MPC); Mongold, Theresa A. (Speedway); Oren, Shannon L. (Speedway); Perkins, Michelle L. (Speedway); Shope, Kristen A. (Speedway); Stahl, Kelli (MPC)
Subject: FW: TIE Andrew Neal 960191

All,
The termination for Andrew Neal 960191 has been reversed. Please adjust your records accordingly.

Thank you,



Amber Johnson | Personnel Administration Processor | Speedway LLC
500 Speedway Drive, Enon, OH 45323
Phone: 937-863-6783 | Email: anjohnson@speedway.com

From: Green, Matthew D. (Speedway)
Sent: Tuesday, December 08, 2015 12:35 PM
To: Speedway Pers Admin Requests
Subject: RE: TIE Andrew Neal 960191

I approve

From: Speedway Pers Admin Requests
Sent: Tuesday, December 08, 2015 9:29 AM
To: Green, Matthew D. (Speedway)
Subject: TIE Andrew Neal 960191

Good morning,
Andrew Neal 960191 was a PT CSR at 9451 who was termed in error by the GM. Effective date of term was 11/18 and was keyed 11/18. The GM is requesting term reversal.

Thank you,



Amber Johnson | Personnel Administration Processor | Speedway LLC
500 Speedway Drive, Enon, OH 45323
Phone: 937-863-6783 | Email: anjohnson@speedway.com

From: Speedway HR Personnel Admin
Sent: Monday, December 07, 2015 11:07 AM
To: Speedway Pers Admin Requests

Cc: SSA-9451 (Speedway)
Subject: FW:

Good Morning PA,

Please see email below.

Thank you,



Camille Howard | Team Lead- Employee Service Center | Speedway LLC
500 Speedway Dr. Enon, OH 45323
Email: cmhoward@speedway.com

From: SSA-9451 (Speedway)
Sent: Monday, December 07, 2015 8:59 AM
To: Speedway HR Personnel Admin
Subject:

I termed Andrew Neal 960191 by mistake can you reinstate him I need to pay him by Thursday
Thanks Jimmie Cooper
mgr 9451

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF KENTUCKY
3 AT LOUISVILLE
4 CIVIL ACTION NO. 3:17-CV-00044-CRS
5 HON. CHARLES R. SIMPSON, III

6
7 ANDREW NEAL,
8 PLAINTIFF

9
10 V.

11
12 SPEEDWAY,
13 DEFENDANT
14
15
16
17
18
19
20
21
22

23 DEPONENT: DONNA ROWDEN

24 DATE: NOVEMBER 29 2017

25 REPORTER: SHELBY LODA

1 Q Did you contact Andrew? Like, how did you
2 first get involved with

3 A I don't remember.

4 Q Okay. Did you go to Speedway to interview the
5 employees?

6 A Yes.

7 Q Okay. How many people did you interview, if
8 you remember?

9 A I don't remember.

10 Q Okay. Did you interview all the employees?

11 A No.

12 Q Okay. How did you pick who you interviewed?

13 A Everyone that was available.

14 Q Everybody that was there that day?

15 A We scheduled people to come in that weren't on
16 the clock.

17 Q Okay. And who else was in the room with you
18 when you were interviewing these people?

19 A Johnathan Mahin.

20 Q Were the interviews recorded?

21 A Written recorded.

22 Q Okay. No audio recording?

23 A No. (Phone rings.)

24 Q Do you need to get that?

25 A No.

1 Q Okay. Now I threw myself off. Okay. So who
2 wrote down the statements?

3 A I did.

4 Q Okay. Did you have them review the statements
5 before you filed them?

6 A No.

7 Q Okay. So the statements that were recorded
8 were summarized or word-for-word statements?

9 A Word-for-word as much as possible.

10 Q Okay. And were there -- during this time,
11 were also handwritten statements taken from some of the
12 employees?

13 A I don't remember if they were taken at that
14 time or another time.

15 Q Would you know -- and I'll show you them in a
16 minute, anyway, but would you know why you only took
17 written statements from some of the employees, but not
18 all of the employees?

19 A If something came up during those interviews
20 that they had witnessed particular events, we would have
21 gotten the statement.

22 Q Okay. In their handwriting?

23 A Yes.

24 Q Okay. And which one of you-all was writing
25 down the statements?

1 wrote the day that you were --

2 A Uh-huh.

3 Q -- talking to her? Okay. Nowhere in this
4 statement that's in front of you right now does she
5 mention anything about Andrew's allegations about Mr.
6 Cooper, correct?

7 A Yes.

8 Q Okay. So why did you have her write this
9 allegation down as opposed to writing down the statement
10 about what you originally asked her about? And that was
11 bad form.

12 MR. INMAN: I'll object to form, but if you
13 understood, you can answer.

14 A To the best of my recollection, during the
15 interview, she brought up the theft issue, and I
16 requested a statement on that issue.

17 Q Okay. Is there -- to the best of your
18 knowledge, is there anything in Andrew's personnel file
19 that makes reference to a theft allegation?

20 A No.

21 Q Okay. Would you be the person that entered
22 that in?

23 A No.

24 Q Okay. Who would have been the person that
25 would have put that in?

HR Audit

Store 9451

Date: 12/29/2015

Name: Andrew Neal

Emp. #: 960191

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
8 months as a cashier.
2. Have you or are you being given the training needed to be successful?
None, but now I'm fully trained. He further stated he had learned it on his own. When asked if he had ever brought the lack of training to Jimmie's attention he said no because he felt they didn't care.
3. How would you describe the environment at this store?
Two-faced. He indicated they appear nice and friendly to your face but the minute you leave they talk about you. He said he had been called that gay guy by Jimmie according to Scottia. Mike (no longer with the Company) confirmed it to Andrew.
4. Are you satisfied with the management team at this location and do they provide leadership?
No.
5. Do you know what is expected of you?
I didn't know about the breaks.
6. Are we meeting your expectations?
No. I want to be treated like everybody else.
7. Do you feel you are cared about and that your success is important to your leadership?
No.
8. Are you motivated by your leadership?
No.
9. Do you feel appreciated?
No.
10. Do you feel good performance is recognized by your leadership?
No.

11. Are you challenged?
Yes.
12. Are you treated fairly with dignity and respect?
No, not with remarks referring to him as gay guy.
13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?
No.
14. Are your concerns taken seriously and addressed immediately?
No. I told them I had to take care of my grandmother at night and needed to work 1st or 2nd.
15. Do you enjoy your job here at Speedway?
Other than management, I love my job.
16. Are you paid timely?
Yes. He went two weeks without pay when he was terminated out of the system for some reason.
17. When is the Work Schedule posted?
Wednesday afternoon of the prior week.
18. Are you happy with the number of hours you are being scheduled?
No. How many would you like to have? 32 on 1st or 2nd shift, but no thirds. Explained that we couldn't just term someone on 1st or 2nd to get him more hours as he evidently was hired for 3rd. It appeared after he made us aware he needed 3rd off, we had hired someone else who was now getting those hours.
19. When the Work Schedule changes, when and how are you notified?
I am not notified of changes.

I asked him how many days he had called off in the last 30 and he said 3 or 4. He then went on to say how could we expect him to come to work when he was being treated that way he was and became very emotional. I explained that going forward he would need to ensure he came to work as scheduled whether it be at this store or another store and if a problem to notify someone. He became very agitated and said he would not go to another store. I told him he had made it clear he could not work for Jimmie and we would not be terming Jimmie and he then got very upset and abruptly stood up and said we would hear from his attorney and left the store.

20. Have you ever thought about leaving Speedway and if so, why?
21. How can we make this an even better place to work?

22. What must we do to keep you a long term and happy employee?

23. I thanked the employee for their time and for helping make the store the best it could be.

was on break, I would stop my break to assist the customer, then resume my break when the customer left.

5. On third shifts, if I was working alone, I understood that I could lock the doors to the store in order to use the restroom. The General Manager, James "Jimmie" Cooper, instructed me on that procedure, and Andrew also let me know that I should lock the doors to the store to use the bathroom. I followed Jimmie's and Andrew's instruction to lock the doors, and it was never a problem.

6. On December 29, 2015, I was interviewed by an HR employee, Donna Rowden, and our District Manager, Jonathan Mahin, was also there. They were both taking written notes. Donna asked the questions, and she wanted to know about the work environment in the store and whether I had heard anyone referred to as the "gay guy" or "Black guy." The HR audit form attached to this Declaration as **Exhibit A** accurately reports what I was asked and what I said in response, to the best of my recollection.

7. I let Donna and Jonathan know that I had heard Jimmie use the phrase the "gay guy" one time, when Jimmie told me who would be training me on third shift. His use of that phrase made sense to me because Andrew made it a point to tell everyone he identified as gay. Jimmie did not use the phrase negatively; he was just letting me know who my trainer would be on third shift.

8. Having interacted with Jimmie extensively in the workplace, I am confident that he treats everyone the same. I personally witnessed Jimmie interact with Andrew, and I never saw any interactions that concerned me. Jimmie treated Andrew

respectfully and just like everyone else.

9. During and after the HR investigation, I provided several handwritten statements, which are attached as **Exhibits B, C, and D** to this Declaration. The handwriting is mine, and the Exhibits are true and accurate copies of the handwritten statements that I provided to Speedway.

10. During my interview with Donna and Jonathan, I mentioned that I had personally observed Andrew taking money from the charity funds and using that money to buy cigarettes. When I saw that, I was shocked, but Andrew told me that Jimmie knew he did it all the time and was fine with it. In the interview, Donna told me that, because what I was reporting was different than what they had come to investigate, they needed me to write out a statement. I did so, and that statement is **Exhibit B** to this Declaration. At the time, I had reported Andrew's taking charity money to another employee, who told me she would let Co-Manager Tammy Foard know. I do not know what, if anything, happened as a result of my report.

11. On my next third shift after the HR interview, Andrew called me and wanted to know what Donna asked me and what I told her and Jonathan. During the conversation, Andrew told me he had hired a lawyer to sue Speedway, and he asked me if I would lie and say that Jimmie called him a "fucking faggot." Andrew said that, if I would help him with his lawsuit, he would give me some of the settlement. During the same call, Andrew talked about his family burning down or blowing up the store, which concerned me.

12. I let Jimmie know about my call with Andrew and what he had talked

about doing to the store. Jimmie asked me to write out what happened on the call, and what I wrote is attached as **Exhibit C** to this Declaration. I do not know what happened about Andrew's comments after I reported them to Jimmie.

13. Thereafter Andrew contacted me multiple times on my cell phone, including calling me and texting me, and he kept wanting me to go talk to his lawyer and make the false statement to support his lawsuit. I could not believe he was so persistent in wanting me to lie for him, and I hoped that Andrew would stop contacting me when he realized that I would not be making any false statements.

14. On January 14, 2016, Andrew called me again to ask me to help with his lawsuit. This time, Andrew asked me to lie and say that Speedway did not provide breaks to employees, and he said that, if I would go along, we could get a class action lawsuit going. Andrew wanted me to say that he was not permitted to take bathroom breaks on third shift, even though he had previously always told me Jimmie wanted us to do that when we worked alone. On January 14, Andrew wanted to come pick me up and take me downtown to his lawyer's office right then, and he said he would also take me to dinner and give me a Bath & Body Works gift certificate. I told him I would call him back, but I did not and never had any intention of doing so; I just wanted off the phone.

15. I let Jimmie know about the January 14 phone call with Andrew, and he asked me to write out what happened on the call. What I wrote is attached as **Exhibit D** to this Declaration.

16. Andrew still did not give up and called and texted me several times more

to ask me to lie for his lawsuit. At one point, Andrew sent his grandmother up to the store with his attorney's business card so I could call the attorney directly. I never contacted the attorney, and I never provided any false statement for Andrew.

I have read the foregoing Declaration and declare under penalty of perjury that it is true and correct.

This the 8th day of February, 2018.



Scottia Wooten

HR Audit

Store 9451

Date: 12/29/2015

Name: Scottia Wooten

Emp. #: 954111

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
A month as a cashier.
2. Have you or are you being given the training needed to be successful?
Yes. Tammy has been training me.
3. How would you describe the environment at this store?
I like it!
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Yes.
6. Are we meeting your expectations?
Yes.
7. Do you feel you are cared about and that your success is important to your leadership?
Yes.
8. Are you motivated by your leadership?
Yes.
9. Do you feel appreciated?
Yes.
10. Do you feel good performance is recognized by your leadership?
Yes.
11. Are you challenged?
Yes.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?
When I first started working here, Jimmie said Andrew would be training me and I asked who is that and he said the gay guy. We were just talking (she and Andrew) and she shared it with Andrew. She further stated that Jimmie was not a racist and did not discriminate.

14. Are your concerns taken seriously and addressed immediately?

I don't have any, but if I did they would be handled.

15. Do you enjoy your job here at Speedway?

Yes.

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Usually Monday.

18. Are you happy with the number of hours you are being scheduled?

Yes.

19. When the Work Schedule changes, when and how are you notified?

I get a call.

20. Have you ever thought about leaving Speedway and if so, why?

No.

21. How can we make this an even better place to work?

Hire more people.

22. What must we do to keep you a long term and happy employee?

No complaints. I really like it here.

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

During the month of December, I witnessed Andrew taking money out of the charity funds. It was on an overnight shift in front of customers.

I asked him what he was doing & he said it was fine, Jimmie knows he does it all the time. I told Courtney

about it & she said she would let Tammy know. I didn't take it any further because I was a new employee. - Scottie Wooten 12-29-15

He took enough to get a pack of cigarettes
Most of our regulars on the night shift have literally shook my hand when I told them that Andrew wouldn't be on this shift anymore.

They say he's rude & refuses to wait on people because he's on his "lunch break". - S. Wooten 12-29-15

Last night, 12-30-15, Andrew called the store phone + was talking about having his family burn down the store or blow up the store. He also asked if I would tell his lawyer that I heard Jimmie call him a "fucking faggot" + in return he would give me a portion of his settlement.

S. Wooten 12-31-15

01/18/2016 09:42

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SPEEDWAY

PAGE 02/02

On 1-14-16 at 4:23pm Andrew called my cell phone + asked if I would call his lawyer + tell her that Speedway doesn't let us have lunch breaks + if we do get a lunch break we have to work through it unpaid. HE said that between the two of us, if I would lie + back up everything he says, that we could get a class action lawsuit going + he would give me a bath + body works gift card, buy me dinner, + take me downtown to actually meet his lawyer. I told him I would call tomorrow (1-15-16) but I have no intentions to I just wanted to get him off the phone.

-Scott's Warden 1-14-16

Statements

HR Audit

Store 9451

Date: 12/29/2015

Name: Nate Coleman

Emp. #: 971987

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
6 months.
2. Have you or are you being given the training needed to be successful?
Yes.
3. How would you describe the environment at this store?
Very friendly environment -- customers love us!
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Yes.
6. Are we meeting your expectations?
Yes.
7. Do you feel you are cared about and that your success is important to your leadership?
Very much so.
8. Are you motivated by your leadership?
Yes. Jimmie has a way of making you want to work for him.
9. Do you feel appreciated?
Yes.
10. Do you feel good performance is recognized by your leadership?
Yes.
11. Are you challenged?
Yes.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?
Customers have when complaining about Drew (Andrew). He doesn't know how to do lottery.

14. Are your concerns taken seriously and addressed immediately?

Yes.

15. Do you enjoy your job here at Speedway?

Yes.

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Wednesday that week.

18. Are you happy with the number of hours you are being scheduled?

Yes.

19. When the Work Schedule changes, when and how are you notified?

It's written on the schedule & if you're not working you are called.

20. Have you ever thought about leaving Speedway and if so, why?

No.

21. How can we make this an even better place to work?

Great environment at this store. Very friendly environment. Drew has a bad attitude and not part of the team and always complaining.

22. What must we do to keep you a long term and happy employee?

Stay as we are.

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

HR Audit

Store 9451

Date: 12/29/2015

Name: Tammy Foard

Emp. #: 886023

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
2 ½ yrs with the Company & at this store since the end of January as a CM.
2. Have you or are you being given the training needed to be successful?
Yes, it's a lot better here.
3. How would you describe the environment at this store?
Very good. I don't mind coming to work!
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Yes.
6. Are we meeting your expectations?
Yeah.
7. Do you feel you are cared about and that your success is important to your leadership?
Yes.
8. Are you motivated by your leadership?
Yes.
9. Do you feel appreciated?
Yes.
10. Do you feel good performance is recognized by your leadership?
Yes.
11. Are you challenged?
Yes.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?

No.

14. Are your concerns taken seriously and addressed immediately?

Yes.

15. Do you enjoy your job here at Speedway?

Yes.

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Wednesday of the work week.

18. Are you happy with the number of hours you are being scheduled?

19. When the Work Schedule changes, when and how are you notified?

20. Have you ever thought about leaving Speedway and if so, why?

No.

21. How can we make this an even better place to work?

It's good here, just need more people.

22. What must we do to keep you a long term and happy employee?

Keep me with Jimmie.

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

HR Audit

Store 9451

Date: 12/29/2015

Name: Mike Sloan

Emp. #: 97453

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
1 month. I work 2 days a week on 2nd shift between 4 p.m. and 10 p.m.
2. Have you or are you being given the training needed to be successful?
Still learning I found out about the Rewards goals when I got in trouble. I'm trained now.
3. How would you describe the environment at this store?
Good environment. Lax – not directing all the time.
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Getting work done and be here on time.
6. Are we meeting your expectations?
90% - 10% not getting enough hours.
7. Do you feel you are cared about and that your success is important to your leadership?
Yeah.
8. Are you motivated by your leadership?
Sometimes.
9. Do you feel appreciated?
Yeah.
10. Do you feel good performance is recognized by your leadership?
Not always – haven't done anything that grand.
11. Are you challenged?
A little bit – lottery.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?

No.

14. Are your concerns taken seriously and addressed immediately?

Yeah.

15. Do you enjoy your job here at Speedway?

Yeah.

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Wednesday the week before.

18. Are you happy with the number of hours you are being scheduled?

16 hours last week and 30 hours this week. Would like more hours but can't come in till after 4:00 p.m.

19. When the Work Schedule changes, when and how are you notified?

You call and if changed they call you.

20. Have you ever thought about leaving Speedway and if so, why?

Yes – due to hours and other opportunities in my field.

21. How can we make this an even better place to work?

More money.

22. What must we do to keep you a long term and happy employee?

More money.

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

HR Audit

Store 9451

Date: 12/29/2015

Name: Cortney McClain

Emp. #: 960193

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
Since June 1st as a Cashier.
2. Have you or are you being given the training needed to be successful?
Yes.
3. How would you describe the environment at this store?
I like it! It's a great place! Good relationship with employees and customers.
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Yes.
6. Are we meeting your expectations?
Yes.
7. Do you feel you are cared about and that your success is important to your leadership?
Yes.
8. Are you motivated by your leadership?
Yes.
9. Do you feel appreciated?
Yes.
10. Do you feel good performance is recognized by your leadership?
Yes.
11. Are you challenged?
Yes.

12. Are you treated fairly with dignity and respect?
Yes. Could not ask for a better management team. It's a family.
13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?
I have said the black guy, as far as a describing someone. I have been asked by customers if Drew is gay because they felt he was hitting on them.
14. Are your concerns taken seriously and addressed immediately?
Yes.
15. Do you enjoy your job here at Speedway?
Yes.
16. Are you paid timely?
Yes.
17. When is the Work Schedule posted?
Usually on Tuesday or Wednesday.
18. Are you happy with the number of hours you are being scheduled?
Yes.
19. When the Work Schedule changes, when and how are you notified?
You get a phone call or text.
20. Have you ever thought about leaving Speedway and if so, why?
Yes. Some people that get hired in were rude and disrespectful to customers, but they are no longer employed. Marinda was rude and hateful and told a customer, "you don't need to be such a bitch, you need to take your pill and put in another tampon." This occurred in December.
21. How can we make this an even better place to work?
Get people here that want to work.
22. What must we do to keep you a long term and happy employee?
Not sure. Only job I've ever had that feels like family.
23. Reviewed Anti-harassment policy.
24. I thanked the employee for their time and for helping make the store the best it could be.

HR Audit

Store 9451

Date: 12/29/2015

Name: Nadieh Rahbari

Emp. #: 981451

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
2 months as a CSR.
2. Have you or are you being given the training needed to be successful?
Yes.
3. How would you describe the environment at this store?
Fun & friendly.
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes. 100%!
5. Do you know what is expected of you?
Yes,
6. Are we meeting your expectations?
Everything is good!
7. Do you feel you are cared about and that your success is important to your leadership?
Yes.
8. Are you motivated by your leadership?
Good!
9. Do you feel appreciated?
Yes!
10. Do you feel good performance is recognized by your leadership?
Yes!
11. Are you challenged?

Yes.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?

No.

14. Are your concerns taken seriously and addressed immediately?

Yes.

15. Do you enjoy your job here at Speedway?

Yes!

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Week in advance.

18. Are you happy with the number of hours you are being scheduled?

Yes.

19. When the Work Schedule changes, when and how are you notified?

Never happened.

20. Have you ever thought about leaving Speedway and if so, why?

No!

21. How can we make this an even better place to work?

Some products are more expensive than other stores.

22. What must we do to keep you a long term and happy employee?

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

HR Audit

Store 9451

Date: 12/29/2015

Name: Loraine Watson

Emp. #: 948142

Witness: Jonathan Mahin, DM

We are conducting what I like to refer to as an HR Audit. We truly want to be an employer of choice and what better way to determine how we are performing as a Company than to talk to our employees! Any information you share with us will be treated confidentially.

1. How long have you been with us and what is your position?
1 year as a CSR.
2. Have you or are you being given the training needed to be successful?
Yes,
3. How would you describe the environment at this store?
Friendly – I love it here! Everybody's so sweet!
4. Are you satisfied with the management team at this location and do they provide leadership?
Yes.
5. Do you know what is expected of you?
Yes.
6. Are we meeting your expectations?
Yes.
7. Do you feel you are cared about and that your success is important to your leadership?
Yes.
8. Are you motivated by your leadership?
Yes.
9. Do you feel appreciated?
Yes.
10. Do you feel good performance is recognized by your leadership?
Yes.
11. Are you challenged?
Yes.

12. Are you treated fairly with dignity and respect?

Yes.

13. Have you ever heard an employee of Speedway refer to an employee as "the gay guy" or "the black guy"?

Never.

14. Are your concerns taken seriously and addressed immediately?

Yes.

15. Do you enjoy your job here at Speedway?

Yes.

16. Are you paid timely?

Yes.

17. When is the Work Schedule posted?

Week before.

18. Are you happy with the number of hours you are being scheduled?

Yes.

19. When the Work Schedule changes, when and how are you notified?

Stays the same and If changed Jimmie calls.

20. Have you ever thought about leaving Speedway and if so, why?

No.

21. How can we make this an even better place to work?

I don't know that anything can be better!

22. What must we do to keep you a long term and happy employee?

Nothing else.

23. Reviewed Anti-harassment policy.

24. I thanked the employee for their time and for helping make the store the best it could be.

To: Speedway Pers Admin Requests
Subject: FW: Andrew Neal
Importance: High

From: SSA-Hind, 228 (Speedway)
Sent: Thursday, December 31, 2015 11:17 AM
To: Speedway HR Personnel Admin
Cc: Rowden, Donna S. (Speedway); Smead, Jo (Speedway); SSA-9451 (Speedway)
Subject: Andrew Neal
Importance: High

Personnel Team,

I need to reverse the termination for employee Andrew Neal emp. # 960191. The original term was for resignation without notice due to a HR Audit where he stormed out of the interview. I was under the impression that Andrew did not want to work for us anymore. I put the term in yesterday and he called wondering about the rest of his schedule. If this can get processed ASAP that will be great.

Thanks and Happy New Year!



Jonathan Mahin | District Manager, #228 Louisville East | Speedway LLC
3411 Bardstown Rd, Louisville, KY 40218
Mobile: 502-689-7172/Fax: 419-434-3650/Email: ssahind228@speedway.com

1 UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF KENTUCKY
3 AT LOUISVILLE
4 CIVIL ACTION NO. 3:17-CV-00044-CRS
5 HON. CHARLES R. SIMPSON, III

6
7 ANDREW NEAL,
8 PLAINTIFF

9
10 V.

11
12 SPEEDWAY,
13 DEFENDANT
14
15
16
17
18
19
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22

23 DEPONENT: JOHNATHAN MAHIN
24 DATE: NOVEMBER 29 2017
25 REPORTER: SHELBY LODA

1 Q Okay. Because did you -- you saw Andrew, Mr.
2 Neal, at some point.

3 A Yes.

4 Q Okay. And he's not a black guy?

5 A Not at all.

6 Q He's, like, a six-foot tall white guy?

7 A Yes, ma'am.

8 Q Okay. So -- but you don't know why you asked
9 about if Mr. Cooper referred to anybody as the black
10 guy?

11 A No, ma'am.

12 Q Did Andrew make an allegation that --

13 A No.

14 Q -- Mr. Cooper referred to him that way? All
15 right.

16 A (Coughs) Excuse me.

17 Q Do you know if Mr. Neal was inadvertently
18 taken off the payroll before he was terminated from
19 Speedway?

20 A Yes, ma'am.

21 Q Okay. Can you tell me what you know about
22 that?

23 A Well, after we had spoke with him in his
24 particular interview for the audit, you know, he became
25 mad when it was apparent that no action was going to be

1 taken against Mr. Cooper in regards to, you know, his
2 allegation or claim of discrimination. He became upset,
3 walked out, and said, "You'll be hearing from my
4 lawyer." So we tried to reach him as he was getting out
5 of the door saying, "Are you quitting Speedway? Is this
6 an admission that you don't want to work for us
7 anymore?" And he repeated, "You will just be hearing
8 from my lawyer," and walked out. So we took that as
9 that he was walking off the job. And so we did proceed
10 with terminating his employment. And then the following
11 day when he did have a shift, you know, he came into
12 work, and he wasn't able to clock in. I mean, we didn't
13 have any contact. He didn't call the store to notify
14 anybody, you know, that he would be, you know, coming in
15 in regards to the way he left the audit. And so when he
16 came back, yes, we had to reinstate his employment.

17 **Q Okay. I actually wasn't even talking about**
18 **that time, but okay. We'll get to that in a minute. Did**
19 **you know that previously he'd been taken off the payroll**
20 **inadvertently?**

21 **A No.**

22 **Q Okay.**

23 **A That was the only time.**

24 **Q Okay.**

25 **MS. FAUVER: What number are we on?**

1 below the handwritten one. The 1-11-2016.

2 A That was entered in the system that way
3 because it was, kind of, after the fact. So when we,
4 you know, had prior contact with -- or didn't have any
5 prior contact with Mr. Neal. Because I was
6 transitioning out of the area to a different district.
7 So when they were like, "Well, we're going to terminate
8 his employment. You know, we need you to, you know,
9 fill out this form. It's going to be effective on the
10 30th." So that's why you see my name at the bottom as
11 signing off on the 18th, but we had to retro the
12 termination.

13 Q Okay. But Mr. Neal did not sign this.

14 A No. He wasn't present to sign, you know,
15 because he wasn't available.

16 Q Well -- okay. This one is 5. Okay. Can you
17 tell me what this one is?

18 (EXHIBIT 5 MARKED FOR IDENTIFICATION)

19 A Yes.

20 Q Okay. What is it?

21 A This is his final termination. You know,
22 based on a phone call that was received to the store on
23 the 31st after Mr. Neal -- after we, you know,
24 reinstated his employment because he came to work his
25 shift. After that, he was speaking with Ms. Scottia

1 Wooten and said that he was going to have people --

2 Q Okay.

3 A -- to come to the store and blow it up. And
4 that's why he was put on a suspension and then, you
5 know, per further review from our HR corporate office,
6 it was recommended that we terminate Mr. Neal due to
7 various customer complaints and also, you know, putting
8 Ms. Wooten in a position where she felt very
9 uncomfortable.

10 Q Okay. None of that is on here though, so what
11 is the document I gave you?

12 A This is a termination slip.

13 Q Okay. And the date of termination is

14 A Well, the date of termination was effective
15 12-31 -- or 12-30.

16 Q Okay. But on the second page, it says that he
17 was terminated on 1-19-2016.

18 A Right. That's when it was entered into the
19 system.

20 Q So it took 21 days for it to get entered into
21 the system?

22 A Yes, because he was put on suspension per
23 further review.

24 Q Okay.

25 A And then it was recommended -- and, you know,



**SPEEDWAY LLC
SEPARATION / DISCIPLINE FORM**

EMPLOYEE INFORMATION

EMPLOYEE NAME Andrew Neal	EMPLOYEE NUMBER 960191
POSITION Customer Service Representative	STORE / COST CENTER 9451

ACTION TYPE & DATE OF ACTION

<input type="checkbox"/> Resignation	<input type="checkbox"/> Retirement	ENTERED JAN 19 2016 CF
<input type="checkbox"/> Job Abandonment	<input type="checkbox"/> Death	
<input checked="" type="checkbox"/> Termination		
SEPARATION DATE: 12/30/2015 EF 1/11/2016	DISCIPLINE DATE: ___/___/___	
IS EMPLOYEE ELIGIBLE FOR REHIRE? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

SECTION A: FOR EMPLOYEE SEPARATION / RESIGNATION

Explain in detail why employee resigned / separated employment: _____

SECTION B: FOR EMPLOYEE TERMINATION / DISCIPLINARY ACTION

- | | |
|---|--|
| <p>Refused to Follow Instructions</p> <ul style="list-style-type: none"> <input type="checkbox"/> Insubordination <p>Violation of Company Policy</p> <ul style="list-style-type: none"> <input type="checkbox"/> Misappropriation of Company funds and/or other property <input type="checkbox"/> Failure to accurately complete required Company reports <input type="checkbox"/> Failure to wear Company uniform or maintain proper appearance <input type="checkbox"/> Engaging in illegal gambling on property or playing lottery while on duty <input type="checkbox"/> Personal use of electronic devices, cell phones, stereos, televisions, radios, etc. <input type="checkbox"/> Drinking and/or under the influence of alcohol, or possession of, or using drugs or narcotics <input type="checkbox"/> Falsifying any Company report or records <input type="checkbox"/> Tampering with meters or other Company equipment <input type="checkbox"/> Merchandise substitution and/or improper sales transactions <input type="checkbox"/> Violation of Federal, State, or local statutes including alcohol or tobacco laws <input type="checkbox"/> Keeping and/or using firearms, weapons or bringing animals on premises <input type="checkbox"/> Failure to record accurately the number of hours worked <input type="checkbox"/> Failure to make complete, timely, daily bank deposits <input type="checkbox"/> Unauthorized amounts of cash outside of the safe <input type="checkbox"/> Permitting loitering or loitering on the property <input type="checkbox"/> Damaging Company property | <p>Violation of Company Policy (Continued)</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conducting personal business during working hours <input type="checkbox"/> Failure to keep store open for hours designated by the Company <input type="checkbox"/> Policies outlined in the Operations Manual and/or other Company policies <input type="checkbox"/> Signing a warrant, complaint, or contract without Management approval <input type="checkbox"/> Excessive use of store telephone/unauthorized long distance calls <input type="checkbox"/> Failure to complete Required Tasks <input type="checkbox"/> Does not complete required tasks <input type="checkbox"/> Falsification of Application <input type="checkbox"/> Falsified Application <input type="checkbox"/> Absenteeism or Tardiness <input type="checkbox"/> Excessive absence or tardiness <input type="checkbox"/> Unethical Conduct/Dishonesty <input type="checkbox"/> Releasing confidential information to unauthorized persons <input type="checkbox"/> Violation of Ethics <input type="checkbox"/> Harassment/Inappropriate Conduct <input type="checkbox"/> Violation of Anti-Harassment Policy <input type="checkbox"/> Discourtesy to Customers/Employees <input checked="" type="checkbox"/> Use of profanity and/or rudeness or discourtesy toward customers or other employees <input type="checkbox"/> Mishandling of Cash/Inventory <input type="checkbox"/> Cash or inventory shortages |
|---|--|

Explain facts in detail and outline consequences of repeat offenses: _____
 Andrew Neal is being terminated from Speedway employment because of customer complaints and negative employee relations.

Employee comments: _____
 Employee Signature _____ Date _____

SUPERVISOR/HR SIGNATURE

Jonathan Mahin, District Manager
 By virtue of signing this document, I attest that any verbal counseling or written warning was reviewed with the employee.

EMP #
883887

DATE
01, 18, 16

From: Inman, Jay
Sent: Sunday, November 19, 2017 6:49 PM
To: Shannon Fauver
Cc: Mayo, LaToi D.
Subject: Re: another one of my LGBT cases

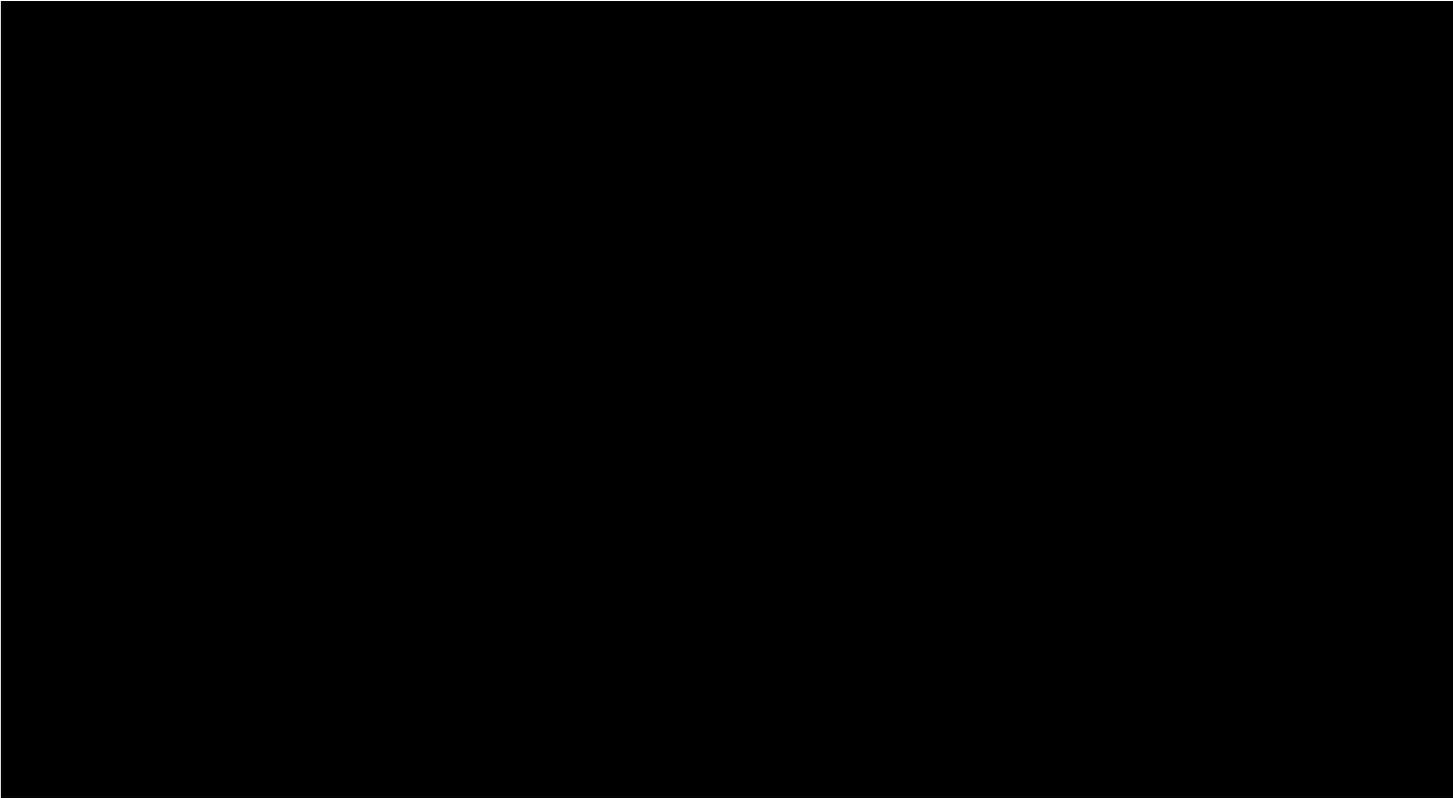
Hi, Shannon--

Thanks for sending this. Will your client agree to dismiss his Louisville ordinance claim voluntarily, given the multiple cases holdings the ordinance does not provide a private right of action?

Thanks,

Jay

Sent from my iPhone

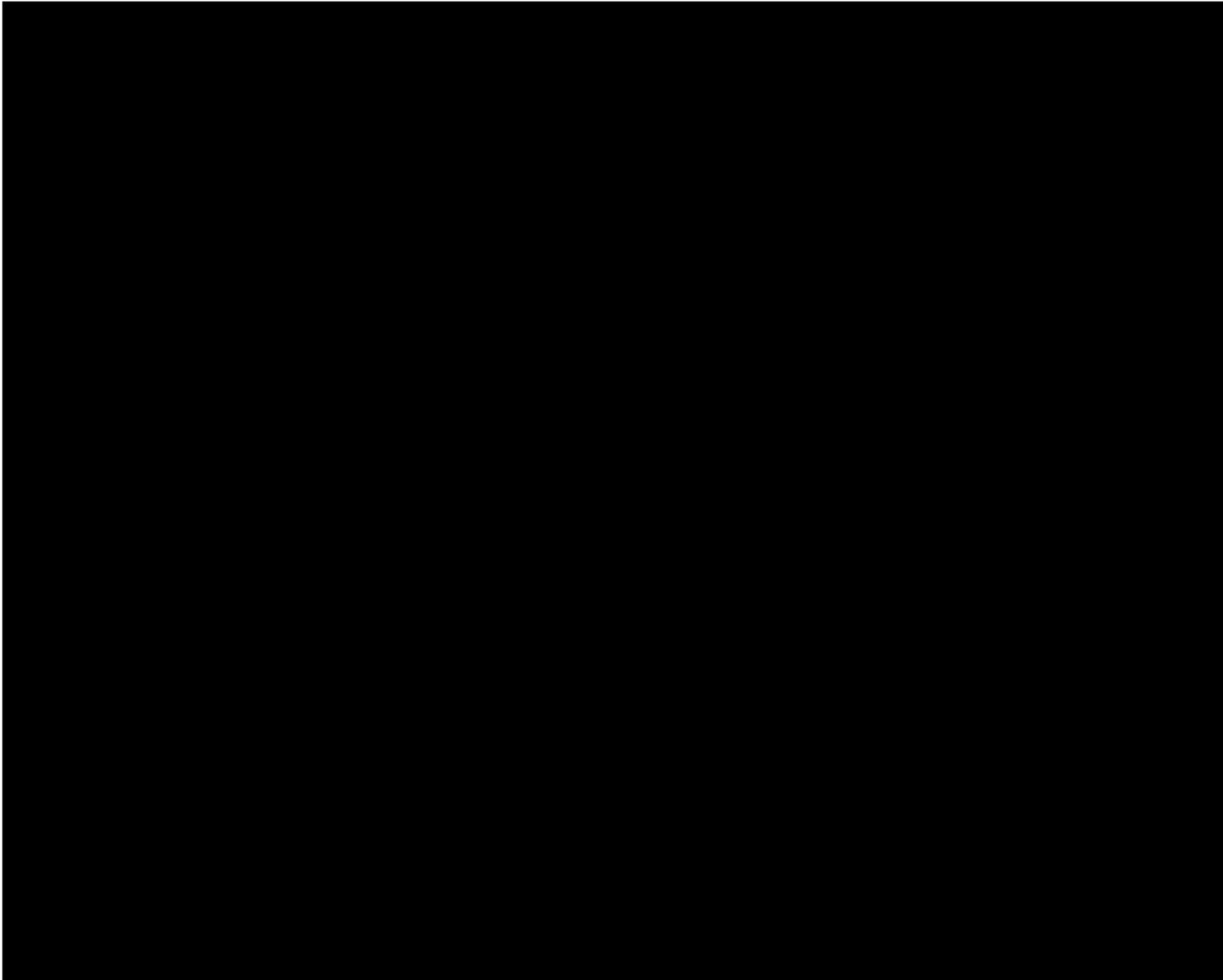


From: Shannon Fauver <shannon@fauverlaw.com>
Sent: Sunday, November 19, 2017 6:54 PM
To: Inman, Jay
Cc: Mayo, LaToi D.
Subject: Re: another one of my LGBT cases

Unless your client is willing to make an offer based on the other claims, there is no reason for me to ask him.

Shannon Fauver

Sent from my Sprint Samsung Galaxy S7.



From: Inman, Jay
Sent: Monday, November 20, 2017 4:04 PM
To: Shannon Fauver
Cc: Mayo, LaToi D.; Jennifer Irwin
Subject: RE: another one of my LGBT cases

Thanks, Shannon. I was thinking more because it's not a viable cause of action – saves everyone time and expense not to have to address that on dispositive motion – rather than settlement. I definitely understand we're in different places on settlement and appreciate your sending the opinion for our discussion, etc.

Jay

Jay Inman, Attorney At Law
859.317.7973 direct 859.201.1250 fax Jinman@littler.com
333 West Vine Street, Suite 1720 | Lexington, KY 40507

Littler | littler.com
Employment & Labor Law Solutions Worldwide

From: Shannon Fauver <shannon@fauverlaw.com>
Sent: Monday, November 20, 2017 4:06 PM
To: Inman, Jay
Cc: Mayo, LaToi D.; Irwin, Jennifer S.
Subject: RE: another one of my LGBT cases

Jay,

You have never made any settlement offer at all, so I have no idea where you are on settlement. If you all would like to save your client some money on things like this, just give me their offer and then we can go from there. I have responded to that motion enough times that it really is not work for me to do that one.

Shannon R. Fauver
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Louisville, KY 40206
(502) 569-7710 Office
(502) 899-2467 Fax
www.fauverlaw.com
Shannon@fauverlaw.com

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE**

ANDREW NEAL

Plaintiff,

v.

SPEEDWAY

Defendant.

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:
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:
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:
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:
:
:
:

No. 3:17-CV-44-CRS

ORDER

Being fully advised, the Court hereby **GRANTS** Defendant’s Motion for Summary Judgment and for Attorney fees and Costs in its entirety. Pursuant to Rule 54, Speedway shall submit an affidavit in support of its Motion for Attorney fees and Costs within fourteen (14) days of this Order. Thereafter, the Court will issue a final Judgment dismissing this matter with prejudice and awarding Defendant its attorney fees and costs incurred in this action.

This the _____ day of _____, 2018.

United States District Judge