

# Court Reverses Worker's \$300K Harassment Award

Kevin McGill, Associated Press

NEW ORLEANS (AP) — A federal appeals court has thrown out a \$300,000 court award for an iron worker in a sexual harassment lawsuit filed against Boh Brothers Construction Co.

The worker won the award in 2009 after the U.S. Equal Employment Opportunity Commission filed a lawsuit on his behalf. He alleged that his site superintendent flashed him and routinely taunted him about seeming feminine at a New Orleans area bridge project in 2006.

However, the 5th Circuit Court of Appeals said there was no evidence that the worker was a target of sexual stereotyping.

According to the July 27 opinion, Kerry S. Woods, a male construction worker in an all-male crew, alleged that a crew superintendent "engaged in 'same-sex' harassment against him by referring to him in raw homophobic epithets and lewd gestures." A jury eventually awarded him \$451,000 in damages and back pay — an amount the judge reduced to \$301,000.

Writing for a three-judge appeals court panel, Judge Grady Jolly said there was no question that Woods was the target of the superintendent's sexually vulgar language. But he said that doesn't mean there was unlawful same-sex discrimination as claimed by the EEOC. The federal law cited is not a civility code, Jolly wrote. "Nor is it the business of the federal courts generally to clean up the language and conduct of construction sites," the opinion stated.

Jolly's opinion made a reference to a previous federal case in which a woman was found to be victim of gender bias because some of the partners at her accounting firm thought she "should 'walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.'"

But Jolly wrote that in the Boh Brothers case, there was no evidence that Woods was actually perceived as other than masculine. And Woods was not the only target of the superintendent's language, the opinion said.

"To the contrary, misogynistic and homophobic epithets were bandied about routinely among crew members, and the recipients, Woods not excepted, reciprocated with like vulgarity," the opinion said.

The appeals panel ordered the case sent back to the district court for dismissal.

A call to the EEOC seeking comment was not immediately returned Monday

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afternoon. Contact information for Woods was not available.

A Boh Brothers spokeswoman, Ann Barks, said in a news release that the company agreed with the appeals court ruling. She also said the company was embarrassed by the superintendent's conduct and that he was given "appropriate discipline."

"In the aftermath," the statement said, "we have taken steps to better train our entire workforce on appropriate behavior."

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