

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

**DEBORAH BUSH and
PAMELA HARDEN,**

Plaintiffs,

v.

Case No. 5:13cv369-MW/GRJ

**GULF COAST ELECTRIC
COOPERATIVE, INC.,**

Defendant.

_____ /

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT'S MOTION IN LIMINE**

The Court has considered, without hearing, Defendant's Motion in Limine, ECF No. 67.

Plaintiffs Deborah Bush and Pamela Harden sued their former employer, Gulf Coast Electric Cooperative, Inc. ("GCEC"), for age and gender discrimination and retaliation. After granting in part and denying in part GCEC's motion for summary judgment, this Court allowed Bush and Harden's gender failure-to-promote claims and Harden's gender disparate treatment claim to proceed to trial, and dismissed the other claims as a matter of law. ECF No. 99.

In anticipation of trial, GCEC has filed a motion in limine seeking to exclude six items of evidence. This court will address each in turn.

a. Michael White's Criminal History

First, GCEC requests that any evidence of Michael White's arrest history be excluded from trial because it is unduly prejudicial and confusing to the jury.

Plaintiffs respond that they intend to present evidence of Michael White's arrest to show that he—a man—was given a lackluster punishment for a serious offense, even while they—women—were given stern punishments for innocuous offenses. Although this Court noted that White is unlikely to be considered “similarly situated” to Bush and Harden as required to establish a prima facie case of discrimination, *see* ECF No. 99 at 14, the evidence of allegedly disparate disciplinary measures taken against White compared to those taken against the female Plaintiffs could nonetheless be interpreted by a reasonable jury to circumstantially demonstrate GCEC's discriminatory animus against women. The jury, not the Court, should evaluate whether or not White's discipline and Plaintiffs' discipline were disparately administered.

Although the evidence is certainly prejudicial to White and GCEC, all relevant evidence “is inherently prejudicial; but it is only *unfair* prejudice, *substantially* outweighing probative value, which permits exclusion of relevant matter under Rule 403.” *United States v. Meester*, 762 F.2d 867, 875 (11th Cir.

1985) (citations and quotations omitted). Here, although evidence of an arrest could incite some prejudices in a jury, this effect does not *substantially* outweigh the probative value of the evidence in showing GCEC's practice of allegedly disparately disciplining men and women. This is particularly true where, as here, the nature of the criminal charge is not particularly inflammatory. ECF No. 64-7 at 2.

GCEC's motion is therefore **DENIED**.

b. The "Private Event"

Second, GCEC asks that the Court exclude any evidence relating to a private event for community leaders.

GCEC's characterization of this private event, however, starkly differs from that of the Plaintiffs. According to Plaintiffs, GCEC's management used workplace bulletin boards and group meetings to invite male employees, but not female employees, to a Leadership Appreciation Dinner hosted by the Board of Directors, Michael White, and attorney Pat Floyd. ECF No. 65 at p. 16-17. As explained, if the jury accepts this characterization of the event, it could be very strong circumstantial evidence of anti-female animus by GCEC's management. *See* ECF No. 99 at 13-14. Evidence of the event is therefore relevant to Plaintiffs' claims of gender discrimination, and GCEC's motion is **DENIED**.

c. Justin Barnes's Racial Comments

Third, GCEC asks that the Court exclude evidence that Justin Barnes made two isolated racially-charged comments about African Americans in front of Harden. Plaintiffs concede that this evidence is not relevant. GCEC's motion is therefore **GRANTED**.

d. Roy Barnes's Alleged Harassment

Fourth, GCEC asks the Court to exclude any evidence of Roy Barnes's alleged sexual harassment of another employee that occurred before 2010, long before the events alleged in Plaintiffs' Complaint.

Plaintiffs argue, however, that although Barnes was not involved in the discrimination against Plaintiffs, White knew about Barnes's sexual harassment, and neither he nor the Board said or did anything about it. As previously explained, ECF No. 101 at 4-5, a jury could plausibly interpret this inaction as evidence of anti-female animus in GCEC's upper management. This relevant evidence is not substantially outweighed by a risk of undue prejudice or confusion.

Defendants' motion is therefore **DENIED**.

e. Hearsay Statements by Michael White

Fifth, GCEC asks the Court to exclude gender-hostile statements allegedly made by Michael White on the grounds that they are double hearsay.

As previously noted, these statements are hearsay not within in any exception and must be excluded. ECF No. 99 at 6-7 n. 2. Plaintiffs' argument that the statements should be allowed under the exception for admissions of a party-opponent, Fed. R. Evid. 801(d)(2), is incorrect. Harden, who testified regarding the statements, did not state that she heard Michael White (the alleged party-opponent) make the statements; she stated that another employee named Peyton Gleaton told her that White made the statements. ECF No. 64-34 at 7. Although White's alleged statement to Gleaton could fit within the exception if Gleaton were to testify to its veracity, Gleaton's subsequent statement to Harden does not fall under any exception and must be excluded in its entirety.

GCEC's motion is therefore **GRANTED**.

f. Linda Skipper's Testimony

Sixth, GCEC asks to exclude the testimony of Linda Skipper. For the reasons stated in the Magistrate Judge's Order, ECF No. 87, and this Court's Order on reconsideration, ECF No. 95, GCEC's motion is granted. Her testimony will be excluded from trial.

CONCLUSION

For these reasons,

IT IS ORDERED:

Defendant's Motion in Limine, ECF No. 67, is **GRANTED IN PART** and **DENIED IN PART**.

SO ORDERED on September 23, 2015.

s/Mark E. Walker
United States District Judge