

Whenever Johnson sent employees home in the afternoon due to decreased work availability, he first selected Hispanic workers, not Black workers, to go home. Johnson and Barrett were more lenient with Black employees regarding tardiness or leaving work early while on the clock. For example, on one occasion Barrett allowed Takara Hughes-Martin to go home early to take care of her husband, while on another occasion Barrett did not permit Elizabeth Ledesma to leave early to pick up her young child from day care when it closed early.

Black employees were given longer lunch breaks than Hispanic employees. Johnson consistently allowed the African workers to use the microwave before the Hispanic workers.

Black employees were given training on various warehouse functions, but not the Hispanic workers. Johnson would meet with Black workers to discuss work, but he declined to meet with Hispanic workers as often.

Johnson told Elizabeth Ledesma that she and the Hispanic workers should refrain from speaking Spanish because non-Spanish speaking co-workers might resent it. Other non-English speakers were not similarly treated. Also, Johnson made a statement to Lolita Gonzales that "You and your people can go on break," and he used to wear a Black power t-shirt and make overtly racial references such as, "Jesus is Black."

Lita Zubiata resigned due to the aforementioned treatment. Before doing so, she complained to Barrett regarding Johnson's treatment of her.

Apart from issuing written warnings to Johnson and Barrett, Defendant took no action against either man, conducted no further inquiry, and took no significant preventive or corrective action until approximately the third week of August 2005, when