STATE OF MICHIGAN

COURT OF APPEALS

GEOFFREY HARRISON, Plaintiff-Appellant,	UNPUBLISHED February 22, 2000
v	No. 205494 Wayne Circuit Court
GREAT LAKES BEVERAGE COMPANY, Defendant-Appellee.	LC No. 95-523376 CZ ON REHEARING

Before: Kelly, P.J., and Jansen and White, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order entered by the trial court granting summary disposition in favor of defendant under MCR 2.116(C)(10). On August 31, 1999, this Court affirmed the decision of the trial court. On October 26, 1999, in an unpublished per curiam opinion, this Court granted rehearing to resolve an apparent contradiction in its per curiam opinion.

The trial court granted summary disposition on its finding that, even if plaintiff had a just-cause employment contract, there was no question of fact but that defendant had just cause to terminate plaintiff's employment. Plaintiff claimed that his conduct was intended as a joke and that he did not believe it was offensive. Plaintiff had received a letter of reprimand in 1991 for similar conduct. Under the terms of the parties' collective bargaining agreement, however, consideration of any infraction or discipline that occurred more than three years prior in fashioning discipline for the current charge was prohibited.

In our opinion, we stated, "The fact that plaintiff admitted to making comments of a sexual nature after having been reprimanded in 1991 for similar conduct is enough to constitute just cause for termination." We clarified our reasoning in a footnote:

> Plaintiff claims that the collective bargaining agreement precluded consideration of the 1991 reprimand in imposing discipline because it occurred more than three years prior to the current incident. However, the 1991 reprimand is not being used to impose discipline, rather, it is used to show that plaintiff had knowledge of defendant's policy

against sexual harassment and that making comments of a sexual nature or with a sexual connotation is not acceptable behavior at work.

Our conclusion was premised on the rationale that, since plaintiff had been warned that similar past conduct could have constituted sexual harassment, he could not now claim a lack of knowledge that such conduct was either offensive or in violation of defendant's policy against sexual harassment. He was aware of defendant's policy against sexual harassment, and he breached that policy. The letter terminating plaintiff's employment makes no mention of the 1991 incident, and plaintiff acknowledged that he was terminated for the subsequent conduct and for no other reason. Accordingly, defendant had just cause for discharging plaintiff, and there is no evidence that the 1991 incident was improperly considered in fashioning the discharge.

Affirmed.

/s/ Michael J. Kelly
/s/ Kathleen Jansen
/s/ Helene N. White