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Justices weigh limits on racial slurs in the workplace

The Supreme Court may hear the case of a black computer technician fired after he complained about a co-worker's comment.

By David G. Savage, Times Staff Writer
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WASHINGTON — The Supreme Court weighed Friday whether to limit racial slurs in the workplace just as two broadcast networks were firing radio host Don Imus for his demeaning, racist comments on air.

The justices were considering an appeal from a black computer technician who was fired from his job at IBM after he complained that a white co-worker had loudly referred to a pair of crime suspects as "two black monkeys in a cage."

The case, which the court may act on as soon as Monday, starkly tests whether the nation's civil rights laws protect employees who complain about racist or sexist comments by co-workers.

It began in October 2002 when two snipers had been terrorizing the Washington area. On the day they were captured, Robert Jordan, the black technician, was watching a television along with several others at an IBM site in suburban Maryland. The two captured men were black.

"They should put those two black monkeys in a cage with a bunch of black apes and let the apes [sexually assault] them," one of the white employees declared.

Shocked and disgusted by what he had heard, Jordan asked other employees about the comment and was told they had heard similar statements from the same person in the past.

"It really bothered me, and I went to my manager," Jordan said in an interview. "I didn't want him to lose his job, but I thought they should tell him he can't say things like that."

But the complaint backfired: Jordan's work schedule was changed, and a month later, he was fired. "The reason I was given was that I was being disruptive," Jordan said.

According to the court record, the IBM supervisors questioned the white employee, who admitted saying only, "They should put those two monkeys in a cage."

What was most surprising for Jordan's lawyers was what happened next.

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A federal judge and the U.S. 4th Circuit Court of Appeals in Richmond, Va., threw out his race-bias lawsuit against IBM on the grounds that "an isolated racial slur" did not rise to a civil-rights violation.

Judge Paul Niemeyer recounted the "two black monkeys" comment and described it as "a single, abhorrent slur prompted by, though not excused by, a breaking news report.... No objectively reasonable person could have believed that the IBM office was infected by severe or pervasive racist, threatening or humiliating harassment," he wrote in the 2-1 decision.

Because Jordan could not show a pattern of racial harassment, he had no legal protection against being fired for reporting the incident, the appeals court said.

"We cannot discern in his claim any way that Jordan's race factored into his termination," Niemeyer concluded.

The dissenting judge noted that the Supreme Court has repeatedly said employees should report incidents of sexual and racial bias to their supervisors.

The U.S. Equal Employment Opportunity Commission, the National Employment Lawyers Assn. and several civil rights groups intervened on Jordan's side, but the full appeals court split 5-5 last fall on whether to reconsider the panel's ruling, thereby upholding Niemeyer's opinion.

The Virginia-based appeals court is considered the nation's most conservative, yet five of its judges signed a statement that "urges the Supreme Court to accord serious consideration" to Jordan's appeal.

On Friday, the justices met behind closed doors to review pending appeals and to decide whether to take up Jordan's appeal.

"This is an outrageous situation, and I'm optimistic the court will agree to hear this case," said Stephen Chertkof, a Washington lawyer who filed an appeal for Jordan.

Most employees who hear crude insults at work probably believe they should report the comment, said Jonathan Puth, an employment discrimination lawyer in Washington.

Jordan "didn't want to work in a place where employees are free to spew racial hatred. If a worker is called the N-word, or a woman receives a single pornographic e-mail, an employee would think a supervisor would want to know about that," Puth said.

"Until now, the law has encouraged them to report it. This case seems to change the equation. That's why we think it's of exceptional importance," said Puth, who filed a brief on behalf of the employment lawyers' group.

Lawyers for IBM told the court that the case "presents no important questions of federal law" and should be rejected.

"Jordan could not have reasonably believed that the isolated co-worker's statement, not directed to [him], and not related to the workplace, created an unlawful hostile work environment," they wrote.



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Glen Nager, a Washington lawyer who performs work for IBM, stressed that the company counseled the white employee after the incident.

"IBM would in no way condone that comment," he said. "IBM cares about having a diverse workplace."

But because the lawsuit was dismissed before a trial, Nager agreed the company had to accept the facts as presented in Jordan's complaint.

"This involved a nonsupervisory employee," Nager said. "The law is pretty clear that isolated comments do not give rise to a cause of action."

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