

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

EQUAL EMPLOYMENT	)	
OPPORTUNITY COMMISSION,	)	
SHAWN McBEE, and	)	
HEATHER CALVERT,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.: 4:05-CV-60
	)	(VARLAN/GUYTON)
BRIDGESTONE/FIRESTONE NORTH	)	
AMERICAN TIRE, LLC	)	
d/b/a BRIDGESTONE/FIRESTONE,	)	
	)	
Defendant.	)	

MEMORANDUM AND ORDER

This civil action is before the Court on the Defendant's Motion for Summary Judgment [Doc. 17]. Plaintiffs Equal Employment Opportunity Commission ("EEOC"), Shawn McBee, and Heather Calvert assert that McBee and Calvert were subjected to sexual harassment at defendant Bridgestone/Firestone North American Tire, LLC's ("Bridgestone") tire manufacturing plant in Morrison, Warren County, Tennessee. Bridgestone argues that, even if plaintiffs' allegations are taken as true, the actions of which plaintiffs complain do not rise to the level of a hostile work environment in violation of Title VII as a matter of law. The EEOC argues that there are genuine issues of material fact which preclude the entry of summary judgment.

The Court has carefully reviewed the parties' briefs and supporting materials [Docs. 18, 20, 25, 28] and has determined that oral argument on the pending motion is not needed.

For the reasons set forth herein, the defendant's motion will be denied.

I. Summary of Facts

Calvert and McBee worked in the tire room in Bridgestone's Warren County plant, where they worked on tire machines assembling tires. Beginning in 2002, plaintiffs allege that they were subjected to numerous offensive comments of a sexual nature that were broadcast over the employees' two-way radios. The plaintiffs complained about the radio chatter and allege that they were then subjected to further hostile remarks from their co-workers whereby their co-workers referred to them as "rats" and made sarcastic reference to being "offended." The plaintiffs also allege that the bead carts, which contain the rubber sidewall of a tire and are moved throughout the tire room, were marked with sexually explicit graffiti, some of which was specific to the plaintiffs. The plaintiffs also complained about the graffiti on the bead carts but contend that it continued to appear. Finally, plaintiffs allege that other offending incidents occurred, including the appearance in the workplace of a suggestively dressed female mannequin, magazine pictures of scantily-clad women, and other sexually related images.

II. Analysis

A. Standard of Review

Under Fed. R. Civ. P. 56(c), summary judgment is proper if "the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any,

show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” The burden of establishing there is no genuine issue of material fact lies upon the moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 n.2 (1986). The court must view the facts and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002). To establish a genuine issue as to the existence of a particular element, the non-moving party must point to evidence in the record upon which a reasonable jury could find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The genuine issue must also be material; that is, it must involve facts that might affect the outcome of the suit under the governing law. *Id.*

The judge's function at the point of summary judgment is limited to determining whether sufficient evidence has been presented to make the issue of fact a proper jury question, and not to weigh the evidence, judge the credibility of witnesses, and determine the truth of the matter. *Id.* at 249. Thus, “[t]he inquiry performed is the threshold inquiry of determining whether there is the need for trial - whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they cannot reasonably be resolved in favor of either party.” *Id.* at 250.

B. Hostile Work Environment

Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating “against any individual with respect to his compensation, terms, conditions, or privileges of

employment, because of such individual's ... sex... ." 42 U.S.C. § 2000e-2(a)(1). It is well settled that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex created a hostile or abusive work environment. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986). In order to establish a prima facie case of hostile work environment sexual harassment, a plaintiff must demonstrate the following: (1) she was a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment complained of was based upon sex; (4) the harassment unreasonably interfered with the plaintiff's work performance or created a hostile or offensive work environment that was severe and pervasive; and (5) the employer knew or should have known of the charged sexual harassment and failed unreasonably to take prompt and appropriate corrective action. *Fenton v. HiSAN, Inc.*, 174 F.3d 827, 829-30 (6th Cir. 1999).

Bridgestone contends that plaintiffs cannot show the offending conduct was based upon their sex or that it was sufficiently severe or pervasive to alter the conditions of their employment, *i.e.*, that plaintiffs cannot meet the third and fourth elements of a prima facie case of a hostile work environment claim. While defendant is correct that some of the purported conduct was clearly unrelated to the plaintiffs and may be appropriately characterized as juvenile or inappropriate, the record does reflect that some comments and graffiti were specifically directed towards the plaintiffs. The Court concludes that, viewing the facts in the light most favorable to the plaintiffs, whether the offending conduct rises to the level of a legally actionable hostile work environment is a question that is more appropriately resolved by the trier of fact.

Bridgestone also argues that it initiated a thorough investigation into plaintiffs' complaints and took remedial action to prevent recurrence of the radio chatter and graffiti on the bead carts to the extent possible. Thus, Bridgestone contends that plaintiffs cannot ~~not~~ meet the final element of a prima facie case, that is, that the employer knew or should have known of the alleged harassment and failed to implement prompt and appropriate remedial action. The record reflects that Bridgestone did initiate an investigation of the conduct in response to plaintiffs' complaints and plaintiffs acknowledge that at least the radio chatter ~~improved~~. However, the record reflects that plaintiffs complained on more than one occasion and that some offending conduct continued after their complaints. Thus, the Court concludes that there are genuine issues of material fact as to whether defendant's efforts to resolve the plaintiffs' complaints were prompt and effective. This question should also be resolved by the trier of fact.

III. Conclusion

As set forth above, the Court concludes that there are genuine issues of material fact which preclude the entry of summary judgment. Accordingly, the defendant's motion for summary judgment [Doc. 17] is hereby **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE