

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Michelle Hynnek, f/k/a Kirkham,

Complainant,

v.

Indianhead Council, Boy Scouts
of America,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS AND
ORDER**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on April 24, 27, and 28, 1995, at the Office of Administrative Hearings and on May 15, 1995, at Minneapolis City Hall, Courtroom 314.

Donald E. Horton and Leslie E. Scott, Horton and Associates, 700 Title Insurance Building, 400 Second Avenue South, Minneapolis, Minnesota 55401, appeared on behalf of Complainant Michelle Hynnek. Thomas P. Kane and Jennifer K. Muenchrath, Oppenheimer, Wolff & Donnelly, 1700 First Bank Building, St. Paul, Minnesota 55101, appeared on behalf of Respondent Indianhead Council, Boy Scouts of America. The record closed on July 19, 1995, upon receipt of the final submissions from the parties.

STATEMENT OF ISSUES

The issues in this case are:

1. Whether Complainant was subjected to a hostile environment on account of sex in her employment with Respondent.
2. Whether the hostile environment was sufficiently severe so as to be actionable.
3. Whether Respondent knew or should have known of the hostile environment and failed to take appropriate prompt remedial action.

Based on the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Complainant is a woman who was hired to work for Respondent as a program specialist at its "Navajo Camp", one of three camps located on Respondent's "Tomahawk Scout Reservation" near Rice Lake, Wisconsin. She was 19 years old at the time and her home was in Blaine, Minnesota. Respondent has its offices in St. Paul, Minnesota, and Complainant was hired there.

2. Marty Guinee was the Camp Director of Navajo Camp and responsible for the overall operation of the camp, including recommending the hiring, disciplining and firing of employees. He was Complainant's immediate supervisor, although there was an Assistant Camp Director, Denise Kiecker, with whom Complainant shared a tent and was quite close. T. III, 135; III 178.

3. Guinee, who was 21 years old at the time, T. II, 194, had worked on Boy Scout Camp staffs since 1987. Ex. 15. In 1989, he had been an aquatics specialist at the Sioux Camp, another of the camps on the Tomahawk Scout Reservation. At that time, Eric Hynnek had also been hired as an aquatic specialist at the Sioux Camp. They worked together at the Sioux Camp beach and became very good friends that year and the next when they again worked at Sioux beach. In 1991, they did not work together and they were not such close friends. In 1992, when Guinee was appointed as Navajo Camp Director, Hynnek, who was then Complainant's boyfriend, asked that Guinee hire Complainant. Hynnek had been hired as the Sioux Camp Aquatics Director for the summer of 1992. T. II, 196-204; Exs. 15 and 16. He and Complainant later married.

4. The Navajo Camp was just in its second year of operation in the summer of 1992. T. II 201. It was a camp for Webelo Scouts, which are 10 year-old boys just entering the Boy Scout level. Several of the Navajo Camp staff were female. T. IV, 29.

5. On Memorial Day weekend 1992, the Navajo Camp staffers went to Navajo Camp to begin setting it up for the summer. Memorial Day weekend extended from Saturday, May 23, to Monday, May 25, 1992. The staff was there from Saturday or Sunday through Monday. The staffs of the other camps on the Tomahawk Scout Reservation were also there. Sometime during that weekend, Complainant's boyfriend came to borrow some tools from the Navajo Camp. Guinee, who had been talking about the importance of keeping track of the camp equipment, in front of Complainant and other staffers, said that he was not worried about the tools being returned because if they were not returned by her boyfriend, she could "cut him off." Complainant found this upsetting and uncomfortable because she did not share her private life with others and because it was made in front of younger staff members. T. I, 39. One of those younger staff members was a 15 year-old boy who later made a "cut him off" comment to Complainant. T. I, 41-42. Guinee thought the comment was humorous at the time. T. II, 218.

6. Complainant and the other staffers went home after the Memorial Day weekend. They returned to Navajo Camp on Sunday, June 7, 1992, for the beginning of staff week. The first group of campers would not arrive at camp until Sunday, June 14, 1992. On the first day of staff week, all the staffers were setting up their tents and

helping each other out. The same 15 year-old boy was helping Complainant set up her tent. She was alone in that tent at the time because Kiecker would not arrive until Saturday, June 13, 1992. During that process, Complainant was the first to receive a mattress. The young co-worker asked why she was the first to get the mattress and Guinee said it was because Complainant "had the nicest ass." Complainant was embarrassed, offended and upset by this comment. T. I, 43-44. It was sometime during the next day or two that the 15 year-old staff member made the comment to Complainant about her "cutting off" her boyfriend.

7. On another occasion during staff week, Complainant was among a group of staffers working on the beach cleaning it up. She was dressed in shorts and a swimsuit top which was described by a number of people as a bikini top. She and some of the others decided to go to the dining room to get something to drink from a pop machine. She and another female staff member also dressed in a swimsuit top and shorts entered the dining room. Wearing just a bikini top and shorts was acceptable while working at the beach, particularly during staff week when there was no campers there, but it was inappropriate dress in the dining room, which everyone was aware of. At that time, Guinee was meeting in the dining room with some supervisory staff members. When Complainant and the other woman entered into the dining room wearing the bikini tops and cut-off shorts, Respondent's Camping Executive asked Guinee what his uniform expectations were, Guinee then called out or yelled out to Complainant and the other woman to put their shirts on. T. I, 44-45, I, 175-176, II, 137-138, II, 225-227, IV, 165-166. Guinee's order to Complainant caused her to be extremely embarrassed; she thought the comment was uncalled for because she had her shirt with her and was about to put it on. T. I, 45.

8. On another occasion during staff week, Complainant and two other female staff members were passing in front of Guinee's tent and he said that if they did not want to see him naked, they should turn around. He then added that Complainant might find out that his "dick" was bigger than her boyfriend's. T. I, 48-49, II, 136-137. One of the other women walking by at the time was Carey Napier. Guinee's comment made her feel very uncomfortable and very uncomfortable being around him. T. II, 137. Complainant found the comment disgusting, demeaning and confusing. T. I, 49-50.

9. On another occasion during staff week, Complainant was walking over to an adjoining camp to help set up their archery range with Guinee and other staff members. Guinee came up behind her, picked her up like a groom carrying a bride and held her close to him. She told him to put her down and he did. T. I, 46, II, 222. He put her down immediately because he could tell that she was very uncomfortable, T. II, 222. She felt it was "gross" and did not like to be touched that way and especially did not like being brought up so close to someone's body. T. I, 46-47.

10. Near the end of staff week, on June 11 or 12, 1992, Guinee called a meeting with himself, Complainant and two of the other female staff members, Carey Napier and Erin Clark. He told them that there had been talk around the camp about the fact that there were a lot of women working at Navajo Camp, but that he was confident of the staff he had hired and would stand up for them. T. I, 47, II, 223. He then asked if there

was anything that they wanted to say. At that point, Complainant told him that she had felt really uncomfortable with his remarks about cutting off her boyfriend. She told him that the 15 year-old staffer had repeated the comment. T. I, 48, 50, II, 224. Guinee told her it wouldn't happen again. T. I, 214, II, 221. Thereafter, Guinee talked to the 15 year-old staffer and told him it wasn't funny anymore and that Complainant would like it to stop. T. II, 221.

11. Tomahawk Scout Reservation had a grievance procedure as part of its 1992 summer staff manual. Ex. 3 at 34. According to the manual, the grievance procedure could be used by staff members for any problems they felt were not being dealt with properly, including personal problems. It also provides that each camp would have a designated confidential advisor regarding grievances. The grievance procedure was generally to let the staff member who was causing the problem know of the problem, then file an oral grievance to the Camp Director and then report to the Associate Reservation Director with a written and oral grievance. During the early part of staff week, Complainant received a copy of the staff manual and was also appointed as the grievance counselor for Navajo Camp. She also became aware of the common practice of bringing complaints directly to the Reservation Director, who at that time was Steve Nordrum. T. I, 203-206 and 208.

12. The grievance procedure set forth in the 1992 summer staff manual for Tomahawk Scout Reservation contains no reference to sexual harassment as being among the type of problems about which a grievance could be filed. Nor does the manual itself refer to sexual harassment, although it does contain a section on child abuse and the Boy Scouts of America's strategy to prevent child abuse. Respondent did not have a sexual harassment policy in place at any time relevant to this proceeding.

13. The campers arrived in Navajo Camp on Sunday, June 14, 1992. At the end of that week, on June 20, 1992, Complainant suffered abdominal pains and was taken to the hospital in Rice Lake, Wisconsin. She was discharged June 23, 1992, and went home to recover. She returned to Navajo Camp on July 4, 1992. T. I, 53.

14. Later in the summer, perhaps on the weekend starting Friday, July 17, 1992, Complainant and her boyfriend went to the nearby town of Birchwood, Wisconsin, for a town festival. As they arrived there, they saw Guinee and Jim Schweiger, the Chippewa Camp Aquatics Director, walking toward them. Guinee looked at her and the short shorts she was wearing and said, "If you ever wear that at camp, I will fire you." Complainant definitely felt that Camp Director would fire her if she wore the shorts in camp. T. I, 54.

15. Later that evening, Complainant was sitting on a bench next to her boyfriend when Guinee came up and sat down next to her. He leaned up against her and told her that her if her boyfriend were not there he would lick her thigh. Guinee had been drinking at the time and he may have spilled some beer on her leg prior to the comment. T. III 146-147; Ex. 18. Guinee then pointed to a nearby area and told her that he had "gotten laid" there the previous summer. T. I, 55-56. Guinee made the statement loud enough for Complainant's boyfriend to hear, to which Complainant's

boyfriend responded with some vulgarities not inappropriate to the situation. Complainant and her boyfriend then left. T. III, 201.

16. Complainant, Kiecker, and other staffers at the Navajo Camp felt that Guinee was an extremely poor manager and set a very poor example for the staff. They felt he drank too much, was sloppy in appearance, got up too late and worked too little. Complainant had raised such concerns with Nordrum, the Reservation Director, a few times over the summer, beginning with the first week of camp. T. IV, 39-41 Kiecker also talked to Nordrum a few times earlier in the summer about Guinee's general management style, his drinking habits affecting the program and his demeanor and professionalism. T. III, 161. Kiecker, herself, never observed Guinee to engage in anything "gross or inappropriate" or that constituted sexual harassment during the summer of 1992. T. III at 138 and 168.

17. Over the course of the summer of 1992, the relationship between Complainant's boyfriend and Guinee deteriorated. Guinee felt that Complainant's boyfriend was trying to see Complainant at times and take her away from her duties. T. II, 242-243. In early August, an incident arose where Complainant's boyfriend entered a woman's bathroom at the camp where Complainant was getting dressed. One of them locked the door to the bathroom. A camper's mother, who was working as an adult volunteer, came to use the bathroom and found the door locked and heard loud music playing from inside. She knocked and a minute or so later Complainant came out putting on her tee shirt, followed by Complainant's boyfriend. Ex. 113. The woman advised Guinee and told him that he should do something to stop this type of behavior. Guinee checked with the Reservation Director and went to talk to Complainant's boyfriend. He told the boyfriend that he thought the behavior was unacceptable because it could look very bad on the camp. The boyfriend responded that it was no big deal. Guinee told him that if he couldn't understand that that type of behavior was inappropriate, that he could not trust him to not act inappropriately again and that he was no longer allowed to be in Navajo Camp. T. II, 244-248.

18. On August 10, 1992, Guinee was in a meeting with a committee to establish the "Tommy Awards," which are awards given to camp staffers at an awards ceremony to be held on the last day of camp. Kiecker was on the committee, but she was not at the meeting that evening and there were only male staffers present. Schweiger, the Aquatics Director at Chippewa Camp, was present. They were discussing whether his beach staff could set the event up and decorate the hall and he said, "No, they probably won't do that because they're being a bunch of dicks lately." Schweiger had an all-male staff. T. IV, 138. Guinee responded, in an attempt at humor, "What does that make my staff, a bunch of clits?" T. II, 253. One of the other male staffers present at the meeting found the comment offensive and decided to tell people about it. The next day, August 11, 1992, he told Kiecker and Complainant about the comment, saying that Guinee had called his female staffers a bunch of clits. T. I, 63 and 121-123; T. III, 132.

19. Complainant and Kiecker immediately went to talk to Nordrum about the comment. For Complainant, it was the final straw and since there was only a week left of camp, she felt she had nothing to lose by talking to Nordrum. T. I, 64. Kiecker told

Nordrum that Guinee had done things that were inappropriate, was a poor leader, had a lackadaisical attitude, and dressed poorly. She then informed him about being told that Guinee had referred to the female staff as Navajo Camp as a bunch of clits. She was very angry and cited that as totally inappropriate and another example of his poor leadership and judgment. Complainant also stated how upset she was with the comment. Complainant also told Nordrum of at least some of the comments Guinee had made to her that she found offensive, including the comment about wanting to lick her leg and that he would fire her if she wore those shorts at camp. She also told Nordrum that Guinee was drunk at the Birchwood Festival and that that was an example of his being out a lot at night drinking and sleeping in the morning. She also told him of the cutting him off, bigger dick, and nicest ass comments. T. I, 65-67; III, 132-133; IV, 59-64. Nordrum told Complainant that he had not been aware of the comments Guinee he had made to her and had not been fully aware of the other things reported. He asked them what they wanted done and they told him that they did not want to work with him anymore. He then told them that he would move Guinee out of Navajo Camp. T. I, 67-68; IV, 64-65.

20. On August 11, 1992, soon after his discussion with Complainant and Kiecker, Nordrum had a discussion with Guinee in which he informed him of the complaints that Complainant and Kiecker had made about the clit comment and some of their other complaints and of his decision to remove Guinee from his position. Nordrum immediately demoted Guinee and assigned him to work at the sailing beach at Chippewa Camp, which was the camp located physically farthest from Navajo Camp on the Tomahawk Scout Reservation. T. IV, 69-70; II, 253-255. Nordrum chose not to terminate Guinee at the time because he felt he had performed well in non-supervisory positions in prior years and that his major problems were in the nature of poor judgment as a manager with tendencies to act more like a staff employee than a managing employee. T. IV, 70-71 and 82-83. Kiecker was promoted to Camp Director for the remaining four or five days left of the season. All of the staff was aware that Guinee had been demoted and was no longer Camp Director.

21. Guinee was not seen by Complainant in the Navajo Camp for the remainder of the season. She only saw him at a distance driving a vehicle or at the final Tommy Awards ceremony where he presented her with her award as part of the ceremony.

22. Effective December 1, 1992, Jeffrey Sulzbach became responsible for the Tomahawk Scout Reservation Boy Scout programs and Nordrum became responsible for other camping programs. T. IV, 165. In November, Respondent had sent out letters and applications to the 1992 camp staffers, including Complainant, inviting them to apply for the 1993 camp staff positions. They were instructed to apply and interview during the December holiday season, when most were home from college. T. IV, 173.

23. Complainant did not apply for a position in 1993. She did not apply because she had mixed feelings about her experiences in 1992 and because she was considering going back to school. She also thought that she could wait until February because in the prior year they were still doing some hiring as late as February. T. I, 71-72.

24. Guinee applied to be Camp Director at Navajo Camp for 1993. Prior to any interviews, Sulzbach talked with Nordrum and discussed the possible candidates. In particular, they discussed Guinee's problems during 1992. Nordrum made Sulzbach aware of the "clit" comment and of Guinee's management style shortcomings, but did not make him aware specifically of Complainant's other complaints. Nordrum did advise Sulzbach that if he were still in charge of Tomahawk Scout Reservation, he would not bring Guinee back as Camp Director at that point in time. T. IV, 77-79 and 173-174. Sulzbach interviewed Guinee on December 20, 1992. During the interview, they discussed the "clit" comment and Guinee admitted the comment was in bad taste, and stated that he felt badly about it, realized he had hurt people's feelings and was sorry about that. They also discussed Guinee's other management problems during 1992. T. II, 289-90; IV, 174-175; Ex. 118aa.

25. Sulzbach decided to offer Guinee the position of Navajo Camp Director for 1993. He did so because there had been a number of positive features about Guinee's performance during 1992, they had discussed the negative issues Sulzbach was aware of, and Sulzbach felt that Guinee had come to a good understanding of Sulzbach's expectations for the year and that Guinee was the best candidate available for the position. T. IV, 174-176.

26. When Guinee was offered the position, he set about interviewing his staff for the 1993 season. One of the people he called was Eric Carlson. Carlson was a friend of Complainant and her boyfriend and a person who felt that Guinee did not meet the high standards of the Boy Scouts in his dress, drinking habits, sexually-oriented jokes and the like. Complainant had previously talked with Carlson about the comments Guinee had made to her. T. I, 159-175. Carlson was appalled that Guinee was to be Guinee in 1993. He called Complainant and told her that Guinee was going to be Camp Director and had offered him a position saying "We can put everything that went on, you know, last summer, we can put it behind us and, you know, we can work together." Carlson told Complainant that he had told Guinee that he would not work for him. T. I, 72.

27. Complainant felt outraged that Guinee would be returning to work for Respondent as the Camp Director because it seemed to her that it meant that Respondent had not taken her complaints seriously. T. I, 73. On February 2, 1993, Complainant wrote a letter addressed to the Indianhead Council stating that the rehiring of Guinee gave her great cause for concern. Exs. 18 and 108. In the letter, she detailed the incidents described in the foregoing Findings that she considered to be sexual harassment, plus a few other allegations which were either not alleged or not proved in this proceeding, or which went beyond the allegations and proof made in this proceeding. The letter requested immediate action on the matter.

28. By letters of February 11, 1993, Carlson wrote to Nordrum, Sulzbach and John Andrews, the Director of Program Services, also complaining about the rehiring of Guinee and detailing his opinion of Guinee. Exs. 26, 27 and 28.

29. Within a few days after sending her letter on February 2, 1993, Complainant received a call from Sulzbach saying they were going to investigate the situation. T. I, 79. Andrews took over the investigation and also called Complainant and had her come into the office where he went over the complaints in her letter. He told her that he took the matter seriously, that he would talk with Guinee and others, and that if things appeared as she alleged, they would have to reconsider the rehiring of Guinee. T. I, 79-81; III, 251-255. Complainant told Andrews, as she had stated in her letter, that other than Guinee, her experience had been a very good experience. Andrews asked her if there was a chance she could come back that summer of 1993 and she told him no, that she had classes to take. T. II, 125; III, 255.

30. Andrews did further investigate the matter and met with Guinee. They went over Complainant's letter. At that point in time, Andrews told Guinee that they would hold off hiring him and Guinee agreed that he would not take the job that had been offered to him. T. II, 263-264; III, 264-267. On March 1, 1993, Andrews wrote Guinee stating that it was best that he decided not to pursue returning to camp that summer and stating that Respondent would remove the letters from his file after he completed a program regarding gender awareness/rights and conducted a seminar or presentation on sexual harassment awareness. Finally, it stated that Guinee should not visit Tomahawk Scout Reservation during the 1993 season. Exs. 15 and 109. The terms in the letter were generally conditions that Andrews had discussed with Complainant and Complainant had demanded. Guinee has never returned to employment with Respondent since that time. T. III, 267-268.

Based upon the foregoing Findings of Fact and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following

CONCLUSIONS OF LAW

1. The Department of Human Rights and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 363.071, subd. 1, and 14.50.

2. Although all the material facts in this case concerned conduct that took place in Wisconsin, there are more than sufficient contacts with Minnesota in this matter to justify subject matter jurisdiction over the employment relationship and the application of Minnesota law. Respondent is a Minnesota-based organization with its offices in Minnesota and the employment agreement with Complainant arose in Minnesota. *All State Insurance Co. v. Hague*, 449 U.S. 302, reh'g denied, 450 U.S. 971 (1981); *Counter v. Farmland Industries, Inc.*, No. C3-88-1158, 1988 W.L. 134800 (Minn. App. 1988).

3. Complainant failed to prove a *prima facie* case of hostile environment sexual harassment in that the facts proved are not sufficiently severe or pervasive to be actionable and in that even if a sexually-hostile environment did exist, Respondent took timely and appropriate action when it was made aware of the harassment.

4. Because Complainant failed to demonstrate the existence of a hostile environment and because Respondent took timely and appropriate action to eliminate that environment, the complaint must be dismissed.

5. The statements made in Respondent's Motion for Summary Judgment in describing Complainant's deposition testimony were set forth in a light most favorable to Respondent, but were not misrepresentations of that testimony. Therefore, there is no basis for Rule 11 sanctions against counsel for Respondent as requested by Complainant.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

1. Complainant's Charge of Discrimination against Respondent is DISMISSED.
2. Complainant's Motion for Rule 11 sanctions against Respondent is DENIED.

Dated: August ____, 1995

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Transcript, 4 Volumes
Janet Shaddix & Associates
(Volume 4 prepared from tape recording)

NOTICE

Pursuant to Minn. Stat. § 363.071, subd. 2, this is the final decision in this case and under Minn. Stat. § 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 through 14.69.

MEMORANDUM

Before addressing the sexual harassment issues, it is necessary to comment on the credibility of the witnesses in this matter. In general, none of the witnesses was completely truthful. Eric Hynnek and Eric Carlson seem to have separate agendas based upon personal dislike or personal jealousies regarding Guinee that seem to cause them to go to extraordinary lengths to make negative comments about Guinee and to embellish those comments. Guinee seemed generally more truthful, but denied

certain incidents that he apparently found personally embarrassing. Despite the influences of Eric Hynnek and Carlson, Complainant appeared generally truthful, although she occasionally overstated the facts. In most situations, the Administrative Law Judge has credited her version of the various fact situations involved in this proceeding.

The three-step analysis established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) applies to sexual harassment under the Minnesota Human Rights Act. *Danz v. Jones*, 263 N.W.2d 395 (Minn. 1975). In order to make a *prima facie* case of sexual harassment under a hostile environment theory, Complainant must show:

1. Complainant belongs to a protected group.
2. Complainant was subject to unwelcome sexual harassment.
3. The harassment complaint was based on sex.
4. The harassment complaint affected a term, condition or privilege or employment or created a hostile working environment, and
5. The employer knew or should have known of the harassment and failed to take prompt remedial action.

Bersie v. Zycad Corp., 399 N.W.2d 141; Minn. Stat. § 363.01, subd. 41. Complainant's evidence falls short on the last two elements. The acts of sexual harassment that Complainant was subjected to were not sufficiently severe to create a hostile working environment and it has not been shown that Respondent knew or should have known of the harassment and failed to take prompt remedial action.

A few of Guinee's actions complained of by Complainant did not constitute sexual harassment at all. The directive from Guinee to Complainant to put her shirt on when entering the dining room wearing a bikini top she knew was inappropriate was a directive to comply with the rules. The comment at the Birchwood Festival about firing her if she wore the shorts she was wearing there in camp is a closer question, because it was more a comment about her appearance in some apparently very short shorts than about their inappropriateness in camp. However, the comment, like the "lick your leg" and "I got laid over there last year" comments made later that night were done outside of work. While they no doubt added to Complainant's personal dislike of Guinee, they can be considered to have added only marginally to a hostile work environment. Finally, the "clit" comment made by Guinee in a group of males cannot in any way be considered sexual harassment of Complainant. It was not made to her and was not intended to be relayed to her. Moreover, it was a rather sophomoric attempt at humor in response to Schweiger's comment about his male staffers being a bunch of "dicks".

Thus, we are left with a few comments and one physical touching by Guinee. They are: About May 25, Guinee made the "cut him off" comment; about June 7, he made the "nicest ass" comment; about June 10, he made the comments about changing

naked in the tent and having a bigger dick than her boyfriend; the same day, he picked her up and immediately put her down; and about July 17, the comments at the Birchwood Festival were made. These incidents are simply insufficient to demonstrate a hostile working atmosphere. There is no asking for sexual favors, no threatening to change job conditions if sex is refused, no touching of private parts, no hugging, and nothing at all that was ongoing and unavoidable by Complainant. Denise Kiecker, the Assistant Camp Director, disliked Guinee's management style and some of his personal habits regarding uniforming, drinking, and sexual jokes, but found the "clit" comment, which had been incorrectly relayed to her as Guinee having called the women a "bunch of clits", to be the only incident of sexual harassment she was personally aware of all summer. Even Complainant never complained to anyone in authority at the camp, other than to Guinee himself about the "cut him off" comment, until after the "clit" comment had been made. An actionable hostile environment did not exist. Klink v. Ramsey County, 397 N.W.2d 894 (Minn. App. 1986, rev. denied, (February 13, 1987)); Bersie v. Zycad Corp., 417 N.W.2d 288 (Minn. App. 1987), rev. denied (May 5, 1988).

Even if Guinee's actions had amounted to a hostile environment, it must be concluded that Respondent took prompt appropriate action when it knew or should have known of the harassment. Notice to the employer is not required where a supervisor engages in the violative conduct where the supervisor is an owner or other chief official of the employer as in *Kay v. Peter Motor Co.*, 483 N.W.2d 481 (Minn. App. 1992). However, an employer is not strictly liable for acts of harassment perpetrated by one of its supervisors. *Tretter v. Liquipak Int'l., Inc.*, 356 N.W.2d 713 (Minn. App. 1984). In this case, Complainant made no complaint to anyone above Guinee until August 11, 1992. Respondent did not have a sexual harassment policy in place at the time and only had a general grievance policy. Nonetheless, Complainant was well aware of that policy and of the more frequently used informal policy of simply complaining directly to the Reservation Director Nordrum. She had used that procedure to complain about Guinee to Nordrum previously. When Nordrum was notified, on August 11, 1992, of at least the "clit" comment, he took immediate and appropriate action. He spoke to Guinee about the incident, he removed him as Camp Director, and he sent him to the farthest point in the camp working in a lesser position for the remainder of the season. That action was clearly adequate. *Fore v. Health Dimensions, Inc.*, 509 N.W.2d 557 (Minn. App. 1993); *Tretter v. Liquipak Int'l. Inc.*, 356 N.W.2d 713 (Minn. App. 1984). Complainant has no right to demand or expect that Guinee never work again for the Boy Scouts, at least on account of the incidents of sexual harassment to which she was subjected. The Boy Scouts may have higher and different standards, but they are not enforced under the Human Rights Act. Nordrum's action immediately resolved the hostile environment that existed for the summer of 1992. The summer of 1993 is a separate issue, particularly where Complainant never applied to return to work for Respondent.

Complainant has moved that Respondent's counsel be sanctioned under Minn.R.Civ.P. 11 for misrepresenting Complainant's deposition testimony in the Motion for Summary Disposition. Under Minn. R. 1400.7050, the Administrative Law Judge has specific authority in human rights cases to impose any sanctions available in civil cases in the district courts of Minnesota. Having reviewed the Respondent's

representation of Complainant's deposition testimony in its Motion for Summary Disposition, it appears that such statements are only as slanted as attorneys typically cast the facts in the light most favorable to their clients. The depositions were provided along with the motion for review by the Administrative Law Judge and were clearly subject to counter-interpretations by Complainant. The Administrative Law Judge finds no misrepresentation.

S.M.M.