



**Profane, Sexually-Charged, Gender-Specific Language Can Give Rise to a  
Disparate Treatment Cause of Action**

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In *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798 (11th Cir. 2010), the 11th Circuit issued a unanimous en banc opinion holding that gender-specific profane words can give rise to a disparate treatment claim, even when the words are not explicitly directed toward the plaintiff.

From July 2001 to March 2004, the plaintiff, Ms. Ingrid Reeves (“Reeves”), was employed as a transportation sales representative in the Birmingham, Alabama branch of the shipping company C.H. Robinson. Reeves was the only woman who worked on the sales floor along with six (6) male co-workers. The sales floor was an open area that was structured into an open “pod” of cubicles. As a result, Reeves could hear her male co-workers as they spoke over the phone or with each other.

Reeves was a former Merchant Marine and testified that she was “no stranger to coarse language.” Still, Reeves claimed that the language used by her co-workers at C.H. Robinson was “unusually offensive.” Much of the vulgar language, while generally offensive, was not gender-specific. Reeves frequently heard generally indiscriminate vulgar language and discussions of sexual topics. She claimed that her co-workers regularly used the “f-word,” combined with various profanities and other obscene language. Additionally, her co-workers supposedly discussed sexual topics such as masturbation and bestiality.

Reeves also identified many instances where derogatory language aimed specifically at women as a group was used at C. H. Robinson. Although not speaking to Reeves directly, her male co-workers referred to individuals as “bitch,” “f-ing bitch,” “f-ing whore,” “crack whore,”

and a crude word describing female genitalia. On one occasion, Reeves was told to speak with “that stupid bitch on line 4.” Reeves also overheard her co-workers tell many lewd and offensive jokes, some with sexual references to sisters and mothers and other inappropriate “punch lines.” In addition, each day Reeves’ co-workers tuned the office radio to a crude morning show that featured regular discussions of women’s anatomy, including graphic discussions of women’s breasts. Further, one of Reeves’ co-workers displayed a pornographic image of a fully naked woman with her legs spread on his computer screen.

According to Reeves, this offensive conduct occurred “on a daily basis.” She complained to her co-workers, and to upper management, but according to her, these complaints “proved futile.” In particular, Reeves complained about both non-gender-specific vulgar conduct, as well as gender-specific offensive conduct.

Reeves resigned from C.H. Robinson in March 2004 and filed suit against the company in the United States District Court for the Northern District of Alabama in February 2006, alleging that she had been subjected to a hostile work environment in violation of Title VII. The District Court Judge granted C.H. Robinson’s motion for summary judgment, holding “that the offensive conduct was not motivated by Reeves’ sex, because the derogatory language in the office was not directed at her in particular.”

Reeves appealed to the 11th Circuit which reversed the lower court’s ruling. The 11th Circuit then granted C.H. Robinson’s motion for an en banc hearing. The opinion began by explaining the framework of Title VII. The 11th Circuit noted that in order to prove hostile work environment under 42 U.S.C. § 2000e-2(a)(1), a plaintiff must show “that her employer discriminated because of her membership in a protected group, and that the offensive conduct

was either severe or pervasive enough to alter the terms or conditions of employment.”<sup>1</sup> The 11th Circuit held that a plaintiff could prove a hostile work environment by showing severe or pervasive discrimination directed against her protected group, even if she herself was not individually singled out in the offensive conduct.

In more detail, the 11th Circuit described the issue in the case as “whether the conduct alleged to have pervaded C.H. Robinson created a hostile work environment that ‘exposed [Reeves] to disadvantageous terms or conditions of employment to which members of the other sex [were] not exposed.’” Thus, the 11th Circuit believed that Reeves’ case was properly evaluated under the disparate treatment framework as opposed to the disparate impact framework. In a footnote, the opinion notes that the hostile work environment that Reeves described was not “facially neutral” because she alleged that the office environment was permeated with gender-based derogatory slurs and conduct. As a result, “[t]he crux of Reeves’ actionable claim [was] that these gender-specific actions exposed her to humiliation and discrimination that none of her male co-workers faced. She presented evidence of ‘specific incidents,’ not ‘statistical disparities.’”

The 11th Circuit acknowledged the “bedrock principle that not all objectionable conduct or language amounts to discrimination under Title VII.” General vulgarity or references to sex that are indiscriminate in nature will not, standing alone, be actionable. However, the use of

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<sup>1</sup> Under 11th Circuit law, in order to prove a hostile work environment, the plaintiff must show:

- (1) that he or she belongs to a protected group;
- (2) that the employee has been subject to unwelcome sexual harassment, such as sexual advances, requests for sexual favors, and other conduct of a sexual nature;
- (3) that the harassment must have been based on the sex of the employee;
- (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and
- (5) a basis for holding the employer liable.

sexually offensive, gender-based profanity in the workplace, such as the words “bitch,” “slut,” and other sexually graphic language, could support a disparate treatment sexual harassment claim, even though the words are not explicitly directed toward the plaintiff. The 11th Circuit explained that “for purposes of establishing a claim of hostile work environment under Title VII, it is enough to hear co-workers on a daily basis refer to female colleagues as ‘bitches,’ and ‘whores’ ...,’ to understand that they view women negatively, and in a humiliating or degrading way; the harasser need not close the circle with reference to the plaintiff specifically, as in ‘and you are a bitch, too.’”

According to the 11th Circuit, Reeves had identified more than enough actionable conduct that a jury reasonably could find contributed to office conditions that were humiliating and degrading to women on account of gender, and therefore may have created a discriminatorily abusive working environment. “The terms ‘whore,’ ‘bitch,’ and ... the vulgar discussions of women’s bodies and breasts, and the pornographic image of a woman in the office were each targeted at Reeves’ gender.”

Of interest, the 11th Circuit briskly rejected C.H. Robinson’s argument that there was no proof of gender animus because Reeves’ co-workers had used gender-specific epithets before she arrived in the workplace. The Court explained, “[t]hat argument is inconsistent with the central premise of Title VII.” It further noted that “[a]t the end of the day, this is a question of intent” which, is difficult to discern. The Court, however, held that the employer’s intent was a question for the jury to decide.

Finally, the 11th Circuit rejected C.H. Robinson’s argument that words such as “bitch” and “whore” were not gender-specific because at C.H. Robinson they are used to refer to both men and women. Ms. Reeves specifically disputed this fact, stating that she had never heard any

man call another man “bitch” in the office. Little, if any, credence was given to this factual dispute. Instead, the Court reasoned that calling men these words did not make them any less offensive to women. “Calling a man a ‘bitch’ belittles him precisely because it belittles women. It implies that the male object of ridicule is a lesser man and feminine, and may not belong in the workplace. Indeed, it insults the man by comparing him to a woman, and, thereby, could be taken as humiliating to women as a group as well.”

In sum, the 11th Circuit decided that a jury reasonably could find that C.H. Robinson’s workplace exposed Reeves to disadvantageous terms or conditions of employment to which members of the other sex were not exposed. Thus, the case was reversed and remanded for further proceedings.