

## Business Recovers Millions in Fees, Expenses, and Costs After Claims by EEOC Found to be "Frivolous"



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A district court awarded nearly \$4.7 million in fees, expenses, and costs to a trucking business after the court found Title VII claims brought by the Equal Employment Opportunity Commission ("EEOC") to be "frivolous, unreasonable and/or groundless." Title VII permits courts to exercise discretion in awarding attorney fees and costs to the prevailing party. In a complex appellate record stretching over a decade and reaching the United States Supreme Court, the Eighth Circuit Court of Appeals recently affirmed the district court's finding that the EEOC must pay millions in fees, expenses, and costs to a business targeted by the EEOC.

The initial EEOC charge alleged that the complainant, a truck driver, was subject to unwanted sexual advances and unwelcome sexual remarks amounting to sex discrimination in violation of Title VII. Following an investigation of only the complainant's Title VII claim, the EEOC filed suit on behalf of the complainant and other unnamed similarly situated female employees. In a prior ruling, the Eighth Circuit found that the EEOC used discovery to engage in a "fishing expedition" to uncover more potential Title VII violations.

### Observations

**EEOC Chided for "unreasonable litigation tactics."** The business was entitled to fees based in part on the district court's finding that "the EEOC's practice of presenting a moving target of claimants was an unreasonable litigation tactic, the direct result of which was these claims." The Eighth Circuit agreed that the EEOC failed to satisfy Title VII's presuit requirement to conciliate and investigate the additional Title VII claims of the similarly situated employees. The court found that this was an "unreasonable litigation tactic that resulted in frivolous, unreasonable, or groundless claims." Going even further, the Eighth Circuit agreed that "[t]he EEOC could not hold a reasonable belief that it satisfied its presuit obligations when it 'wholly failed to satisfy' them."

**EEOC Foots the Bill for Bringing Frivolous Claims.** Upon making the finding that the vast majority of the EEOC's additional Title VII claims were "frivolous," the Eighth Circuit then had to rule on recoverable fees attributable to frivolous claims versus non-frivolous claims. The Eighth Circuit rejected an approach that required "mathematical precision," and instead agreed with the district court's allocation of fees that used a "flexible and commonsense approach." The Eighth Circuit followed the Supreme Court's guidance that "frivolous claims may increase the cost of defending a suit in ways that are not reflected in the number of hours billed." In an opinion that grasped the economic realities facing a business forced to respond to numerous frivolous claims brought by the EEOC, the Eighth Circuit saddled the EEOC with the bill for its costly "fishing expedition."

**Meticulous Analysis Not Disturbed on Appeal.** In veiled commendation of the district court’s analysis, the Eighth Circuit described its review of the “detailed order in which [the district court] exhaustively explained its rationale.” In upholding the district court, the Eighth Circuit “decline[ed] the EEOC’s invitation to engage in a de novo review of the facts of each claim.” At first blush, this observation might appear to be a roadmap for a district judge seeking to write an appeal-proof opinion, but it should also serve as a guidepost for attorneys briefing a case in this type. By carefully laying out the facts in an organized fashion, the skilled lawyer will allow a judge to write a thorough opinion based on the relevant facts. This lays the groundwork for a solid opinion in the district court that can survive an appeal. In this case, such an opinion ended up being worth millions of dollars to the business in recoverable fees, expenses, and costs.

Case reference: *EEOC v. CRST Van Expedited, Inc.*, No. 18-1446 (8th Cir. Dec. 10, 2019).