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**The Employer
Advisory**

Employment Case Analysis You Can Use

**EMPLOYER WINS DISCRIMINATION, HARASSMENT, AND RETALIATION SUIT WHERE
THERE'S NO DIRECT EVIDENCE**

Joella Wyninger ("Wyninger") filed suit against her former employer, New Venture Gear ("NVG"), claiming gender discrimination, hostile work environment, and retaliation. Wyninger alleges that she was terminated in retaliation for reporting incidents of alleged harassment while employed during a probationary period with NVG.

At trial, the court granted NVG's motion for summary judgment because Wyninger failed to prove discrimination. Upholding that decision, the appellate court rejected evidence of another female employee's claim of sexual harassment. The frequency and severity of the alleged conduct involving Wyninger did not rise to the level of abuse. Wyninger's performance specifically that causing a plant shutdown, was unsatisfactory. The terms of the probationary period did not guarantee a permanent position.

Wyninger did not have any direct evidence to support her claims. She could not point to another employee in her same exact circumstances that was treated more fairly than herself. NVG prevailed because it took prompt action to investigate Wyninger's complaints of harassment.

Courts impose heavy burden of proof on employees in discrimination and harassment cases. Employees without proof must show that the company took no action once notified.

Joella K. Wyninger, No. 03-1632. March 19, 2004.

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