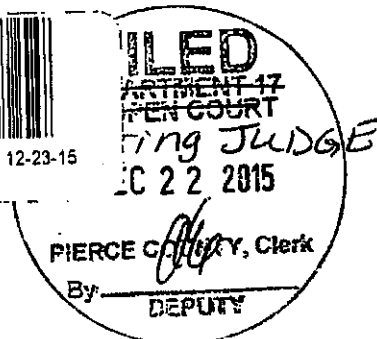




11-2-09974-7 46098840 FNFCL 12-23-15



IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

No: 11-2-09974-7

JOSEPH AND JULI ALONSO, husband and wife
and the marital community thereof,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Plaintiffs,

v.

QWEST CORPORATION, and BERNARDO
MARTINEZ, in his individual and managerial
capacities.

Defendants.

This matter came on for trial on August 24, 25, 31, September 1 and October 12, 2015 on claims of disparate treatment and hostile work environment. The Court considered testimony of approximately 15 witnesses, as well as all exhibits admitted into evidence and argument of counsel. The Court hereby makes its' findings of fact and conclusions of law by a preponderance of the evidence:

I. FINDINGS OF FACT

A. The Court is making its' findings as to the credibility of witnesses based upon their testimony, recollection, demeanor during their testimony and/or while present in the courtroom, presentation and the Court's perception upon hearing the testimony and observing the witnesses as they testified.

1. Juli Alonso's testimony was generally credible. She did not have much direct information for the Court's consideration.
2. Joseph Alonso's (JA) testimony was generally credible. With that said, he did have some inconsistent testimony from his deposition and had trouble answering the

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1 questions asked of him in court. This included questions from his lawyer, as well as
2 on cross examination. It appeared that Mr. Alonso did not always understand the
3 question being asked. The court considered all of his testimony, including some
4 impeachment questions when ultimately determining that Mr. Alonso's testimony
5 was generally credible.

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3. Defendant Ben Martinez's testimony was not very credible. Defendant Martinez was very hostile when he testified, was not forthcoming with answers and was argumentative. He presented as very arrogant and not a good reporter. Defendant Martinez was often sarcastic as he provided answers and spoke with disdain.

His testimony was not credible when he claimed that no one had ever complained to him about Plaintiff JA's speech or that anyone had ever mocked Plaintiff JA's speech.

Mr. Martinez attempted to bully Plaintiff's counsel during cross examination. At the point near the end of his examination Mr. Martinez said "huh", smirked, rolled his eyes, did a very loud and exaggerated sigh and then stepped down off of the stand.

This presentation carried on in the courtroom while Mr. Martinez listened to the testimony of other witnesses. He would sigh loudly, moved around in an agitated state in his chair, rolled his eyes and acted inappropriately. The only time Mr. Martinez's in courtroom behavior changed was when he was sitting next to Stephanie Miles, a corporate manager with Centurylink. Ms. Miles appeared to see me watching Mr. Martinez. Ms. Miles leaned over and said something to Mr. Martinez (the court does not know what) and his behavior immediately changed for a time. Ms. Miles was not in the courtroom for all of the trial and Mr. Martinez's inappropriate behavior continued when she was not there.

Mr. Martinez's testimony and his in courtroom behavior supported Plaintiff's claims, as will be further addressed below.

4. Stephanie Rybicki's testimony was sometimes credible, but other times not credible. Ms. Rybicki clearly has a stake in the outcome of this case as Ben Martinez's former supervisor during a large portion of the time at question in this case. Ms. Rybicki was clearly protective of Mr. Martinez. Additionally, she was responsible for ensuring an appropriate work place. Her testimony that she didn't know or shouldn't have reasonably known about the behaviors of many staff, including Jose Zuniga, is not credible.
5. Juanita Wright's testimony was very credible.
6. William Kling's testimony was very credible.

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7. Matt Dillon's testimony was credible.
 8. Stephanie Miles' testimony was credible.
 9. Margaret Buchel's testimony was credible.
 10. Shawn Breer's testimony was somewhat credible. He and Plaintiff JA had a previous negative interaction at work where Mr. Breer testified Plaintiff JA was completely out of line.
 11. Jose Zuniga's testimony was sometimes credible and other times not credible. Mr. Zuniga denied he engaged in certain actions which multiple other witnesses had testified he had done (such as using derogatory terms and profanity). Mr. Zuniga took responsibility for some of his inappropriate actions, but the Court does not find credible that he stopped "messing around with certain people" when the lawsuit was filed. Mr. Zuniga tried to explain away some of his behaviors in a way which did not make sense. Further, Mr. Zuniga has a relationship with Defendant Martinez. They have been to each others houses. Additionally, Mr. Zuniga's testimony that he believed that he conducted himself appropriately at work and consistent with the policies and procedures was not credible.

Further, Mr. Zuniga was in the courtroom in the gallery during other testimony after his testimony was completed. At one point he was sitting near Mr. Breer and they were chuckling together during testimony which was very inappropriate during a serious trial.
 12. Brett McKinney's testimony was credible. However, the court gave his testimony little weight because he manages from a different state and has little direct information.
 13. Brad Tuttle's testimony was not very credible. He clearly dislikes Plaintiff JA and it showed throughout his entire testimony and it colored his testimony. He also clearly feels a sense of competition with Plaintiff JA as well. The Court did not find credible Mr. Tuttle's testimony that Plaintiff JA used the term "wet back". Mr. Tuttle testified to things which he alleged were observed by many people who no one else testified to as it related to Plaintiff JA's behaviors. This was not credible.
 14. Johnathan King's testimony was credible.

1 B. Joseph (JA) and Juli Alonso are husband and wife and have been married for over twenty
2 years. They have no minor children. They reside in the state of Washington and have at
all times material hereto.

3 C. Plaintiff JA has been continuously employed by Qwest Corporation, nka Centurylink,
4 from June 1999 to present.

5 D. Plaintiff JA is Mexican-American and speaks with a heavy accent. This was known to
6 his co-workers and supervisors. Plaintiff JA's speech was so difficult to understand that
Margaret Buchel requested to not work Plaintiff JA because she couldn't understand him.

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8 E. Plaintiff JA speech/heavy accent does not constitute an impairment that is medically
9 cognizable or diagnosable, exists as a record or history or is perceived to exist.

10 F. Plaintiff JA is a military war veteran from the United States Army. His veteran status
11 was known to his co-workers and supervisors.

12 G. Plaintiff has a disability rating with the Veteran's Administration. His disability status
13 was unknown to his co-workers and supervisors prior to the filing of this lawsuit.

14 H. Defendant Qwest Corporation is a fully-owned subsidiary of CenturyLink, Inc.
15 Currently, Qwest does business in Washington as CenturyLink.

16 I. Defendant Bernardo Martinez is a supervisor at Qwest. He has been Plaintiff JA's
17 supervisor since June of 2008.

18 J. Defendant Martinez is a Mexican-American and a veteran of the United States Army.

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20 K. Many of Plaintiff JA's co-workers are veterans and/or veterans of war.

21 L. During Plaintiff JA's employment with Qwest he has never been demoted, docked pay or
22 disciplined.

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24 M. Plaintiff JA's employment with Qwest has never been terminated.

- 1 N. Plaintiff JA was never meaningfully denied overtime and was not treated differently as to
2 the application of overtime.
- 3 O. There was extensive testimony on the issue of per diem (excessive testimony). Portions
4 of the Collective Bargaining Agreement (CBA) were admitted into evidence. The Court
5 is familiar with CBAs in general. The Court is familiar with per diem. The Court did not
6 need multiple witnesses to testify to the same thing regarding what the CBA stated or
7 what and how per diem worked. The portions of the CBA admitted, specifically page 35,
8 were clear on its face.
- 9 P. Plaintiff JA was never meaningfully denied per diem and was not treated differently as to
10 the application of per diem. Per diem is not an employment benefit.
- 11 Q. Plaintiff JA is and was a very hard worker. He was not the type of employee who would
12 steal company time or "milk" overtime.
- 13 R. Plaintiff JA had no previous problems with anyone who supervised him during his
14 employment with Qwest.
- 15 S. Plaintiff JA has been employed as a Central Office Equipment Installation Technician
16 (COEIT) during all of his employment at Qwest.
- 17 T. In this position, a COEIT can perform work at Qwest's central office or work directly at
18 client sites. Completing installation at a client site is known as Automated Quote and
19 Contract Billing (AQCB).
- 20 U. COEIT and AQCB are paid at the same rate. The work is essentially the same. Such
21 employees are part of a union and subject to a Collective Bargaining Agreement.
- 22 V. One primary difference between COEIT and AQCB is that for AQCB, a technician is
23 working at a client's business. As there is direct client contact, technicians working
24 AQCB are generally given one of the newer vehicles to drive and are provided a cell
25 phone.
- W. From 2006 until June 1, 2010, Plaintiff JA primarily worked AQCB.
- X. In April/May 2010 Stephanie Rybicki instructed Defendant Martinez to rotate different
employees to the AQCB work. She did this in response to a request by the union.

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2 Y. Soon thereafter, Defendant Martinez informed Plaintiff JA that he would be returning to
central office installation. This was not a change of job or a transfer.

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4 Z. In mid-April 2010, Ms. Rybicki informed her supervisors, including Mr. Martinez, there
5 were budget concerns and that overtime needed to be closely managed and evenly spread
out among the crew.

6 AA. The week following "V" above, Defendant Martinez sent an email to everyone in his
7 crew, except Plaintiff JA about the new overtime policy (Ex. 144).

8 BB. CenturyLink has an "Advice Line" which a number employees can call to make
9 complaints.

10 CC. Ex. 120 evidences that Plaintiff JA complained to the CenturyLink Advice Line that
11 Defendant Martinez allowed inappropriate behavior in the workplace, among other
12 things.

13 DD. On April 30, 2010, Plaintiff JA called the Advice Line and made a complaint. He
14 reported that Defendant Martinez allows vulgar conversation in the workplace. Plaintiff
15 JA reported that Defendant Martinez gives better assignments to those he favors which
16 include the employees who laugh at the vulgar conversations. Plaintiff indicated there
were 4 people which Defendant Martinez favored. Plaintiff indicated he did not discuss
this complaint with management or human resources because he did not feel comfortable
doing so.

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18 EE. Thereafter, Plaintiff JA made other calls to the Advice Line as a follow up to the first
19 complaint and to make new complaints. This included complaints about overtime.

20 FF. On or about May 20, 2010, there was a safety meeting presided over by Defendant
21 Martinez. The crew he supervised, including Plaintiff JA, were present. Defendant
22 Martinez specifically mentioned that there had been a call to the Advice Line with a
23 complaint. Mr. Martinez clearly was not happy about the complaint and made it clear at
the meeting that he knew Plaintiff JA had made the complaint. Mr. Martinez referred to
himself as the Big Dog in this meeting and made it clear that employees should not try
and cross the Big Dog.

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25 GG. On or about May 24, 2015 Ms. Rybicki met with Plaintiff JA about the May 20, 2015
meeting. Plaintiff JA indicated he felt singled out. They discussed the possibility of a

transfer to a different section so that Defendant Martinez would no longer be Plaintiff JA's supervisor.

HH. On May 26, 2010, Plaintiff JA contacted the CenturyLink Advice Line and lodged a complaint alleging that Defendant Martinez retaliated against him for lodging a previous complaint against Defendant Martinez with the Advice Line. Plaintiff JA reported that his desk had been vandalized and that Defendant Martinez reported to other employees that Plaintiff Alonso had reported incidences to the Advice Line. Plaintiff JA also alleged that as a result of his initial reporting and complaint to the Advice Line that he subject to a higher level of scrutiny. Plaintiff JA stated he felt he was being singled out by Defendant Martinez. Plaintiff JA reported what occurred in "Z" above.

II. Plaintiff JA called the Advice Line on more than 1 occasion to follow up on his complaint(s) and/or to check the status of any investigation. He reported an incident when Brad Tuttle and Jose Zuniga put a goeey liquid on his phone receiver. Plaintiff JA reported that Defendant Martinez favors Jose Zuniga and Brad Tuttle. Plaintiff JA specifically indicated he did not report this incident to management for fear of retaliation. Plaintiff JA reported more than once he believed that Defendant Martinez was questioning his work performance when he had not done so in the past.

JJ. Plaintiff JA did not use the word hostile work environment in his complaints.

KK. Plaintiff JA did not report that he felt the treatment he was receiving was because of his race, sex or other characteristic protected by law. People who are not lawyers or who do not work in the legal profession do not speak the same way as those who do. Plaintiff JA made clear reports that his work environment was not good, that the inappropriate behaviors had raised to the level that he felt he needed to make a report and he did not feel comfortable going to one of his managers (Defendant Martinez or Ms. Rybicki) to discuss his concerns.

LL. Qwest/CenturyLink had strict policies on how employees could behave at work. It was Ms. Rybicki's job to enforce the policies and stop inappropriate behavior. Qwest had a Code of Conduct in place in 2010 and excerpts were admitted under Ex. 133. The Code of Conduct was reviewed with the employees every year. It indicates in part:

...you have an obligation to treat...fellow employees... with courtesy, respect and dignity. In short, you are responsible for maintaining a professional...work environment...High standards of professional behavior and workplace conduct make good business sense. Your actions will either enhance, maintain or damage Qwest's standards, reputation and work environment...When considering decisions or actions, ask yourself if you would be comfortable reading about them in the newspaper.

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2 MM. Defendant Martinez, as supervisor, was responsible for setting the example for the
3 employees he supervised. The environment in Defendant Martinez's crew was high
4 school like. There were "cliques" and favorites, Defendant Martinez's favorites,
5 including Jose Zuniga and Brad Tuttle. Such favoritism by Defendant Martinez was also
6 described as being on Ben's good side or not on his good side. It was not a good
7 environment.

8 Employees engaging in "pranks and practical jokes" was an accepted form of behavior.
9 Such "pranks" included when someone glued a computer mouse to the mouse pad on the
10 computer which Plaintiff JA regularly used. Margaret Buchel, Jose Zuniga and
11 Defendant Martinez were present and laughed when Plaintiff JA tried to use the mouse.
12 Plaintiff JA was visibly upset. This was unprofessional conduct in violation of Qwest's
13 Code of Conduct referenced in "LL" above. Defendant Martinez and Ms. Rybicki were
14 aware of this behavior and did nothing to stop it.

15 Defendant Martinez used inappropriate language at work related to race. Although he
16 was Mexican-American, Defendant Martinez would use the terms "spic" and "wetback".

17 Jose Zuniga, who was one of the employees on Defendant Martinez's crew is Mexican-
18 American.

19 NN. Defendant Martinez did not like Plaintiff JA. It was clear from the way Defendant
20 Martinez interacted with Plaintiff. Juanita Wright told Stephanie Rybicki that she felt
21 Plaintiff JA was treated unfairly by Defendant Martinez and addressed how people made
22 fun of Plaintiff JA's speech. Ms. Rybicki stated it was just a personality conflict.

23 OO. In 2009 there was a complaint about Jose Zuniga's use of profanity in the workplace,
24 including use of the "F" word. Defendant Martinez discussed with Jose Zuniga and he
25 stopped the use of the word for a short time period. This is the only time Defendant
Martinez ever intervened or requested profanity to be discontinued. After this, the crew
started using "lighter" or "softer" profanity which was regularly tolerated and unchecked,
such as "shit, hell and dumb ass". They would also use stronger words. Defendant
Martinez did nothing, even when there were further complaints, such as from Juanita
Wright.

PP. Profanity in the work place violated this Code of Conduct. Many employees used
profanity, including Ms. Rybicki and Defendant Martinez.

QQ. Jose Zuniga used profanity at work. Defendant Martinez used profanity at work. Ms.
Rybicki used profanity at work. Employees were aware that Plaintiff JA did not like the
use of profanity at work.

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2 RR. Profanity itself does not create a hostile work environment. However, the extensive
3 testimony on this issue was relevant in helping to paint the picture of the general work
4 environment in Defendant Martinez's crew. Additionally, it is highly relevant that such
5 behavior as is set forth above clearly violated Qwest's Code of Conduct, but the
6 supervisors never enforced the Code of Conduct, except on the one occasion in 2009. It
7 clear that violations for profanity and unprofessional conduct in the work place happened
8 prior to 2009 (once Defendant Martinez took over management) and well after 2009 as
9 well.

10 SS. Jose Zuniga regularly made fun of other employees behind their backs. He made
11 inappropriate "jokes". He mimicked people's voices, including Plaintiff's voice. Mr.
12 Zuniga made derogatory comments about women. Mr. Zuniga's "jokes" were sometimes
13 mean. It included mean comments/statements about Plaintiff JA and other. The tone,
14 intensity and frequency of his statements directed at or making fun of Plaintiff JA made it
15 clear that Mr. Zuniga did not like Plaintiff JA. Sometimes, these "jokes" or statements
16 were made in the presence of Defendant Martinez who did nothing.

17 TT. Jose Zuniga spoke negatively about Plaintiff JA. He made fun of Plaintiff JA's speech
18 on countless occasions. He did this on many occasions and it was witnessed by many
19 people. Mr. Zuniga, in making fun of Plaintiff JA's speech referred to Plaintiff JA's
20 speech as "ghetto". Defendant Martinez witnessed and heard such statements many
21 times and did nothing.

22 Jose Zuniga testified he only stopped "messing around with certain people" once Plaintiff
23 JA filed this lawsuit. Although this is not credible and the evidence is that Mr. Zuniga
24 has continued his inappropriate comments and has continued to make fun of and harass
25 Plaintiff JA.

26 Jose Zuniga statements during his testimony make his harassment of Plaintiff JA clear.
27 Mr. Zuniga testified that he did not "mimic" Plaintiff JA's speech, rather he made jokes
28 about his speech. He made fun of Plaintiff JA's speech to everyone on the crew at some
29 point. Defendant Martinez was present at least 1-2 times and did nothing. Mr. Zuniga
30 was never written up or verbally counseled for making fun of Plaintiff's speech. Mr.
31 Zuniga admitted that some of his "jokes" could have been inappropriate. He then went
32 on to defend himself indicating that if anyone laughed, they could not have been
33 offended. Mr. Zuniga will only stop his behavior if he is told to stop. He does not have
34 an internal ability to determine when he is inappropriate and stop himself.

35 Jose Zuniga testified that he made fun of Plaintiff JA's speech by speaking with an
36 accent. Mr. Zuniga testified that Plaintiff JA spoke with a Mexican accent. Although
37 Mr. Zuniga is also Mexican-American, he has no discernable accent.

1 Jose Zuniga testified he mimicked others speech, including "Sean's speech". Mr. Zuniga
2 testified that Sean spoke like "a black guy". He went on to clarify he spoke with some
3 kind of accent.

4 The only two accents which Mr. Zuniga made fun of were that of a Mexcian-American
5 accent and an "accent" of an African American.

6 UU. At least 1 employee, William Kling, left Defendant Martinez's crew, in part, because he
7 wanted to get out of that work environment.

8 VV. Defendant Qwest's Advice Line is a way for Qwest to promptly correct discriminatory
9 harassment. However, in this case, it did not work. The first complaint was forwarded to
10 Ms. Rybecki who did nothing to curb Defendant Martinez's behavior or management
11 and/or lack of management of his crew. She did not complete a fair or reasonable
12 investigation.

13 WW. Plaintiff JA tried to use what Qwest had in place to address his concerns of disparate
14 treatment and hostile work environment. He may have not used those words, but his
15 complaints were of a general nature that with any real investigation would have produced
16 the evidence which the court heard at trial and is as set forth above.

17 XX. There is no evidence of lost wages for Plaintiff JA.

18 YY. Plaintiff JA has suffered emotional distress, humiliation, pain and suffering, personal
19 indignity, embarrassment, fear, anxiety, and anguish and continues to suffer such. This is
20 supported by his testimony and his wife's brief testimony. There is no medical evidence
21 that Plaintiff JA's work environment impacted his physical health.
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II. CONCLUSIONS OF LAW

Based upon the findings above, the court makes the following conclusions of law:
The court has jurisdiction to hear this matter.

A. Plaintiff JA never experienced a tangible, adverse employment action, because of his national origin, veteran status, disability or any other reason.

B. None of the Defendants engaged in disparate treatment of Plaintiff JA.

C. The use of derogatory language by at least Mr. Zuniga towards Plaintiff JA was pervasive. The act of making fun of Plaintiff JA's heavy, Mexican-American accent was motivated by Mr. Zuniga's desire to make fun Plaintiff JA because of his race. This is true even though both Plaintiff JA and Mr. Zuniga are Mexican-American.

D. Mr. Zuniga's language was unwelcome. It was undesirable and offensive to many.

E. Mr. Zuniga's conduct/speech was so offensive and pervasive that it created an abusive work environment. His speech and conduct was not casual, isolated or trivial.

F. Defendant Martinez was aware of Mr. Zuniga's conduct and language. He participated in the conduct/language by laughing and not correcting Mr. Zuniga. Further he knew of the conduct and language and took no corrective action.

G. Ms. Rybicki knew or should have known about Mr. Zuniga's conduct and language. The investigation she completed was substandard and she failed to take any corrective action.

H. Plaintiff JA was working in a hostile work environment.

I. Defendant Qwest has failed to prove its affirmative defense.

1 J. Plaintiff JA has suffered emotional distress, humiliation, pain and suffering,
2 personal indignity, embarrassment, fear, anxiety, and anguish and continues to suffer in the
3 amount of \$175,000.

4 K. Issues of attorney fees which may be appropriate under the law shall be addressed
5 at a future hearing.

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7 DATED this 18th day of December, 2015.

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9 JUDGE CHRISTINE SCHALLER

