



services limited

Accusations of the sexual Harassment of employees at a PepsiCo crisp factory in Poland

First published: 04 July 2005
Last updated: 04 May 2006

1 NUS Services contract details

Contracts

- 2-year compulsory on crisps in retail (finishes July 2006)
- 5-year compulsory carbonated packaged drinks (finishes July 2006)

Brands

Walkers, Nobby's, Pepsi.

Contacts

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2 Summary of the allegations

On 24 January 2005, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) published serious allegations relating to the PepsiCo snack food plant (Frito-Lay) located at Grodzisk Mazowiecki near Warsaw, Poland¹.

The allegations relate to the sexual harassment of employees by a supervisor. It is reported that 100 women work as packers on the night shift, with three male supervisors. It is alleged that, over a two-year period, some of these women were called into the night shift supervisor's office and sexually abused under threat of dismissal if they reported the incidents. The IUF report that, in December 2004, the night shift supervisor and HR manager called in at least eight women, one by one, and threatened them with disciplinary dismissal unless they resigned. According to the IUF, six of the women signed prepared letters of voluntary resignation under threat of discharge. Two other female employees refused to sign the letters and were dismissed.

On 03 January 2005, eight women filed charges of sexual harassment. Three women declared to the Labour Court that they themselves had been harassed, while the other five supported their charges. On 06 January 2005, the food secretariat of NSZZ Solidarność met with management to present these charges. The company agreed to evaluate them, but not to reinstate the workers. The supervisor in question was granted leave.

The IUF allege that by failing to take appropriate measures to protect its employees against sexual harassment, PepsiCo is infringing European and Polish legislation, as well as the human rights of its employees. It is also alleged that the immediate response by management was to

¹ www.iuf.org/den2811

mobilise certain workers to praise the supervisor in question and to denounce the women making the allegations.

3 Initial developments

January 2005

The IUF sent a letter to PepsiCo Chairman and CEO requesting that the company immediately investigate the charges, take appropriate action and reinstate all the workers involved in the issues.

06 May 2005

The NSZZ Solidarność union conducted a picket line at PepsiCo headquarters in Warsaw.

11 May 2005

It was reported that the supervisor at the centre of the allegations was being detained by local police².

4 Codes of conduct

According to the PepsiCo website, the Company has a 'Worldwide Code of Conduct' committing it to 'providing a workplace free from all forms of discrimination, including sexual and other forms of harassment'. It also contains a section that promises that the individuals who report ethical misconduct at PepsiCo should be protected, and that any PepsiCo official who retaliates against employees exercising their rights should be subject to discipline by the company and even criminal charges. The PepsiCo Code is available in 40 different languages, including English at www.pepsico.com/citizenship/coc/index.shtml.

5 Responses from PepsiCo

On 08 March 2005, the Ethical & Environmental Committee approached PepsiCo about these allegations. PepsiCo responded on 25 May 2005, and the resulting email exchange has resulted in the following responses (in *greyed italics*).

Suspension of the manager in question

Upon being advised of the allegations, we immediately suspended the individual manager against whom the allegations have been made. We also launched an investigation to determine the facts of this matter. Given the nature of the allegations, the local public prosecutor also launched an investigation, with which we cooperated fully.

We are confident that as the legal process proceeds, the facts will be determined and appropriate actions will be taken. However it is important to remember that, at this point, none of the allegations against the manager have been substantiated. Furthermore there have been developments that cast doubt on the validity of the allegations. For example, large numbers of employees who worked with the manager have been very vocal in his defense. Also, in recent weeks the wife of the manager introduced to the court a letter from a third party to whom one of the complainants allegedly acknowledged that the allegations were fabricated (JH, 25/05/05).

Code of conduct

PepsiCo has global standards which are applicable throughout all our operations. These are enshrined in our global code of conduct which is available on our corporate web site www.pepsico.com. Within this code of conduct, specific reference is made to the right of all our employees everywhere to work in an environment "free from all forms of discrimination, including sexual and other forms of harassment." We have made great efforts as a company to ensure that all employees understand their rights in this regard and that we as a company will always take immediate steps to investigate any such allegations made by any employee at any time. In short, there is a strict "zero tolerance" policy towards any form of harassment, particularly sexual harassment (JH, 28/06/05).

² www.iuf.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=2077&view_records=1&ww=1&en=1

Grievance reporting procedures

Employees are instructed and informed that there are various mechanisms by which they can raise such complaints. Naturally, it is always better to deal with these as locally as possible, but an international "hotline" does exist through which employees can raise serious issues of breach of company policy anonymously or confidentially. This hotline service is available in multiple languages. Locally, our employees are told that they can raise these issues with whoever they feel most comfortable talking to. This can be a line manager, the HR manager or even the General Manager. Instructions on how to contact these managers are made available.

It is worth underlining that despite the clear existence of the policy or the confidential reporting mechanisms at no point did any of the former employees who have made these allegations make use of them to raise complaints prior to them leaving the company. Further, no other employee at the plant had heard of any such allegations prior to them leaving. This in any circumstances is unusual. Typically, we would have expected rumours about such incidents - assuming they actually occurred - to have spread very quickly throughout an operation of this kind, especially as the allegations were made by more than one person. Despite this anomaly, at no point has PepsiCo taken sides on this issue: our primary focus has been to ensure that both the accused and the accusers are treated as fairly as possible and their full legal rights are protected and respected (JH, 28/06/05).

Workplace audits

We undertake regular, anonymous "health surveys" of all our operations. The last survey for the Polish plant in question took place in the summer of 2004 (just before this incident occurred). In that report nearly 90% of respondents said that they are "happy" with their workplace conditions and the overwhelming majority said they were "very happy". Indeed, the scores for this plant across a whole range of measures were either highest or the second highest in Europe (JH, 25/05/05).

6 IUF response to the above submissions

On 07 July 2005, the IUF provided the following comments on the above PepsiCo submissions.

- In relation to the grievance reporting procedures, neither the union representatives at the plant, nor the eight victims had been informed that such complaint mechanisms existed.
- The eight victims in this case did not leave voluntarily. They were fired or compelled to resign under threat.
- In relation to the statement on impartiality, the company is providing extensive legal assistance to the accused supervisor and human resources manager, and has done everything possible publicly to mobilise opinion against the victims. On the other hand, the Company has provided no assistance of any kind to the victims, who are under extremely difficult financial and psychological duress.

7 Additional questions submitted to PepsiCo

On 28 June 2005, the Committee submitted the following questions to PepsiCo. The Committee is awaiting a response to these questions.

- Has PepsiCo done anything to support the women that have made the claims of sexual harassment?
- Have those that resigned, or were dismissed, been offered their jobs back?
- Are they currently receiving any support (financial, counseling, etc.) from the Company in the interim?

PepsiCo has made a strong point of not taking sides in this case and we have offered to meet with the dismissed employees. However, as soon as the legal investigation began, the prosecutor asked us to refrain from contacting any of the dismissed employees for any reason. We have obviously respected this request. We are cooperating fully with the legal process. We continue to insist that all parties involved must be treated fairly and until the outcome of the court case is decided we will not be in a position to take any decisions (JH, 11/07/05).

8 IUF / Solidarność fact-finding visit on 22-23 June 2005

The IUF has made the Committee aware of a fact-finding visit in June 2005, the primary purpose of which was to obtain direct reports from the women concerned. The Committee have extracted the following information and allegations from the visit report.

8.1 Background to labour relations at the Factory

In 1993 PepsiCo bought Wedel, a family company, as well as two previous state owned plants. The union had a collective agreement at the Wedel plant, and this agreement covered all the PepsiCo plants, including the factory in Grodzisk. In 1998, Pepsi sold three of the four factories and only kept the one in Grodzisk. Pepsi gave notice of termination of the collective agreement, which, after the notice, ran for another year. Since then the union has tried, without success, to negotiate a new agreement. The Union has been unable to agree the minimum set of rules that, according to the labour legislation, should be established in the absence of collective agreement to regulate wages and conditions. Negotiations about wages never concluded because the company wanted to exclude certain categories of workers from such an agreement (which is against the law).

8.2 Resume of the events

- On 17 December 2004, Beata was dismissed.
- Grazyna was called to the supervisor's office after coming back from a training course. The supervisor made clear to her that if she did not accept his requests she would lose her job. She told him that if he ever dared to touch her she would call her husband to deal with him.
- On 29 December 2004, Grazyna, Dorota, Alexandra, Barbara, Elzbieta, Maria and Marzena were called, one by one, to the supervisor's office and, in the presence of the human resource manager, were offered 9,000 Zlotys (around to 3-4 monthly salaries) and forced to sign a resignation letter. No official reason for the dismissal was given. Two of the women refused to sign the voluntary resignation letter. All of the women had to leave the premises immediately after their dismissals. They were not allowed to meet, or talk, with other workers at the factory.
- The Union representative was not at work on 29 December. The women subsequently met with the representative outside the factory to inform him about the dismissals. As soon as he got their written statements he intervened at the factory level without success, and therefore referred the case to the Food Secretariat in Warsaw.
- On 06 January 2005, the Warsaw office of Solidarność tried to obtain a settlement with the PepsiCo headquarters in Warsaw. The Company refused to accept the presence of the local union and rejected the request for reinstatement of the women. As no settlement was reached, the union referred the case to the labour court.
- The company hired a psychologist who had individual talks with all the workers at the Frito Lay plant except the victims and the witnesses of the harassment. There is now a clear divide in the work force: those who support the dismissed women (it is alleged that very few dare to openly say so) and those who reject the dismissed women.

8.3 Additional allegations of sexual harassment

It is reported that temperature in the factory is very high and the women have to wear rather thin clothes to stand the heat. It is alleged that a supervisor often visits the showers when the women are in there.

8.4 Legal situation

Criminal case

- Solidarność and the Helsinki Foundation for Human Rights have instigated a criminal case against the supervisor and the human resource manager. A case has been filed against the human resource manager for breaking labour law provisions. Unlike the supervisor, the human resource manager is not in preventive detention.
- It is alleged that PepsiCo lawyers are trying to prolong the procedures. They have claimed that the public prosecutor, who is investigating the case, is unprofessional and is doing an

improper investigation, and have requested that the case should be move to a higher court. The general prosecutor has rejected this request.

- The Company has put the bill of indictment under appeal. The Company has cited that the wife of the defendant has organised petitions based on a letter from a friend of one of the women saying that they have lied and have done this to get compensation. Another letter in favour of the supervisor was addressed to the wife and cc'd to the manager. These new witnesses have caused further delays.
- It is not known when the court case will start.

Labour court

There have been several hearings in the Labour court since the case was filed in mid-January. On 22 June 2005, Grazyna, Mamul and Alexandra were called to the labour court, together with the secretary and the treasurer of the local union at Frito Lay, although the women have not yet been questioned. These three women have been called for further hearings in August, September and October. According to the union representatives, the case can take up to three years in the labour court. In the meantime, the women cannot take on a full time, fixed employment - if they do, law requires them to drop the case.

8.5 Additional allegations of labour relations issues

- It is alleged there is widespread repression against union members. One woman interviewed said that the management often interrupted in the middle of a sentence to ask if you were a union member or not. It is also alleged that the management uses non-union workers as spies, this explaining the dismissals of the witnesses as well as the victims. One of the women believes that their discussions during smoking breaks had been reported to the supervisor.
- None of the workers, or their union representatives, had ever seen PepsiCo's code of conduct or even heard of their written policies on harassment.
- The fact-finding delegation reported that their vehicles were followed by two detectives when they visited some of the dismissed women.

8.6 Information about the alleged victims

Due to the rules applying to cases at the Labour court, the plaintiffs cannot accept paid work and are not entitled to compensation. As a result, it is reported that the women are suffering from depression and extreme hardship. It is reported that cases at the Labour court can take up to three years.

9 Dismissal of the chairman of the local union at the Grodzisk factory

On 19 December 2005, the General Secretary of the IUF wrote to the Prime Minister of Poland to complain about the illegal dismissal of the chairman of the local union. The IUF allege that he was sacked because a media article claimed that he had exaggerated the number of unionised workers at the factory. They also allege that the Company management then asked every employee to declare whether he or she was a union member or not.

In response, on 28 December 2005, the President of the Board of Frito Lay Poland wrote to the IUF to deny the allegations, and clarify why the chairman was sacked. The President stated that there was good evidence that the chairman of the union had fabricated the number of unionised employees, and stated that they have evidence to prove this.

Both the above letters can be read on nussl.co.uk.

10 Distribution of a letter by Frito-Lay management to each worker

On 13 January 2006, a letter addressed to the union workplace committee in the factory was distributed to all employees. The letter consisted of a ready-to-fill-in form including the statements "*I declare that I do not consider myself a member of the workplace trade union organization*" and "*If therefore for any reason the board of the workplace commission of NSZZ Solidarnosc still considers me as a member of the workplace trade union organization I hereby state that it is my will to resign from my trade union membership as of today*". It is reported that no option was left to

affirm membership to the Union. The letter was to be filled in, signed at the presence of two witnesses and returned to management within the following five days.

11 IUF and NSZZ Solidarnosc take action through Organisation for Economic Co-operation and Development (OECD)

On 28 April 2006, the IUF and the Food Secretariat of NSZZ Solidarnosc made formal submissions to the OECD's National Contact Points in Poland and the USA in response to ongoing issues at at Grodzisk Mazowiecki. According to an IUF email alert³, the OECD procedures were launched to bring PepsiCo into direct negotiations with the trade union representing workers at the plant to reach a satisfactory solution. The complaint can be found in full at www.iufdocuments.org/www/documents/OECDPepsiCosexualharassment.pdf.

³ www.iuf.org/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=3431&view_records=1&ww=1&en=1