

A.C.L.U. Must Reinstate Employee Falsely Accused of Racist Language, Court Rules

The case put the legal group on the spot for taking positions on free speech and workers' rights that seemed at odds with its mission.



By Jeremy W. Peters

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The American Civil Liberties Union lost a case about offensive speech and workers' rights — over its own workplace.

A judge ruled on Wednesday that the A.C.L.U. had illegally fired an employee, Kate Oh, from her job as senior policy counsel. The group had accused her of using language that was racist and that singled out people of color in the office.

Michael A. Rosas, an administrative law judge, said that the A.C.L.U.'s accusation that she had targeted people of color "is not borne out by the facts." He noted that her complaints were not about colleagues but superiors within the organization, and that she had also complained about white managers.

Ms. Oh never uttered a racial slur or invoked race, court filings showed. She said that she considered herself a whistle-blower and advocate for other women in the office, drawing attention to an environment she said was rife with sexism and fear. Her frequent, sometimes intemperate, complaints irritated her bosses, she argued, so they retaliated by firing her.

The case placed one of the nation's leading defenders of workers' rights under scrutiny for violating the very workplace protections it typically seeks to enforce.

The judge ordered the A.C.L.U. to reinstate Ms. Oh, who was fired in May 2022, and to give her back pay.

Ms. Oh said the ruling sent a message that "no one is above the law," according to a statement she issued through the Nonprofit Professional Employees Union, which represented her. That includes, Ms. Oh added, "powerful management officials claiming to champion civil liberties with their words while illegally doing the opposite with their actions."

The A.C.L.U. said it planned to appeal and insisted that Ms. Oh had engaged in “abusive behavior toward colleagues of color” and “rank insubordination.”

“Employment at the A.C.L.U. is a privilege,” the organization said in a statement, adding that Ms. Oh had “forfeited that privilege by her discriminatory and unacceptable behavior.”

The ruling stemmed from a complaint Ms. Oh filed with the National Labor Relations Board accusing the A.C.L.U. of violating federal worker protections when it fired her. The

N.L.R.B. agreed that Ms. Oh’s complaint had merit and pursued the case on her behalf.

The case essentially revolved around the question of whether Ms. Oh’s complaints against A.C.L.U. managers added up to racism or were just harshly worded and occasionally belligerent criticisms of bosses who happened to be Black.

In one instance, she told a manager that she was “afraid” to talk with him. In another, she said that she had considered a conversation with a superior to be “chastising.” And in a meeting, she repeated a satirical phrase likening her bosses’ behavior to suffering “beatings.”

The final straw leading to Ms. Oh’s termination, according to the A.C.L.U., came when she wrote on social media that she was “physically repulsed” having to work for “incompetent/abusive bosses.”

A.C.L.U. managers and their lawyers argued that the language Ms. Oh used may not have been overtly or intentionally racist, but that it nonetheless caused harm to Black employees. And when their warnings to her went unheeded, the organization said, it was justified in firing her.

This position struck some legal experts as unusual — even hypocritical. The organization, which has a long history of defending the right to free speech even at its most odious and offensive, argued in legal filings for an expansive definition of what constitutes racist or

racially coded speech.

In recent years, as the A.C.L.U. adopted a political posture more aligned with liberal and progressive social justice groups, some critics have accused it of veering away from its commitment to free speech and the principle that it might not like what someone says but will defend their right to say it. The organization rejects that criticism, noting its defense of clients like the National Rifle Association in a major First Amendment case.

Judge Rosas noted that while the A.C.L.U. legitimately sought to promote “a work culture free of discrimination, harassment and retaliation,” it also invalidated legitimate workplace concerns Ms. Oh had raised.

Her language may have been harsh and impulsive, the judge found, but it was not sufficient grounds for terminating her. “Oh’s language,” said Judge Rosas, “was typical of heated commentary by employees in many a workplace criticizing their managers or working conditions.”

Jeremy W. Peters is a Times reporter who covers debates over free expression and how they impact higher education and other vital American institutions. More about Jeremy W. Peters

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