

United States Court of Appeals For the First Circuit

No. 22-1175

SARA CARUSO,

Plaintiff, Appellant,

v.

DELTA AIR LINES, INC.,

Defendant, Appellee,

Before

Barron, Chief Judge,
Lynch, Thompson, Kayatta, Gelpi,
Montecalvo, Rikelman, and Aframe,
Circuit Judges.

ORDER OF COURT

Entered: October 18, 2024

The petition for rehearing having been denied by a majority of the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

Petitioner Caruso has made no allegations that Delta had previous knowledge of the alleged harassment by a coworker and no allegation that the allegedly harassing coworker was ever proximate to the plaintiff during or following the investigation. Thus, the panel was not presented with a case in which the allegedly harassing employee was proximate to the plaintiff

during or following the investigation. In this case, there is no such proximity such that the failure to investigate harassment that was not previously known to the employer could cause a hostile work environment going forward. Nor has Petitioner Caruso developed any argument about how, on different facts than presented in the record of this case, the hostile environment persisted in consequence of the alleged harassment. To the extent that Caruso's petition for rehearing contends that the panel opinion established that "reharassment of a sexual assault victim is a prerequisite for a finding of co-worker sexual harassment, even where the employer's investigation into the allegations is negligent," Caruso misreads the majority opinion, which does not so hold.

THOMPSON, Circuit Judge, dissents from the denial of panel rehearing.

By the Court:

Anastasia Dubrovsky, Clerk

cc:

Hon. Nathaniel M. Gorton

Robert Farrell, Clerk, United States District Court for the District of Massachusetts

Eric Raymond LeBlanc

Michaela C. May

Lisa Stephanian Burton

Patrick Michael Curran Jr.

Lorenzo R. Cabantog