

DEC 24 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY GRAY,

Plaintiff - Appellant,

v.

MASTERFOODS USA, a division of  
Mars Incorporated, a Delaware  
corporation,

Defendant - Appellee.

No. 07-15995

D.C. No. CV-05-00341-LRH

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Argued and Submitted December 12, 2008  
San Francisco, California

Before: B. FLETCHER and McKEOWN, Circuit Judges, and HART, \*\* District  
Judge.

Gary Gray appeals the district court's decision granting summary judgment  
in favor of his former employer, Masterfoods USA. Gray sued Masterfoods

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The Honorable William T. Hart, Senior United States District Judge  
for the Northern District of Illinois, sitting by designation.

alleging that Masterfoods terminated him in retaliation for his complaint to the Nevada Equal Rights Commission and for his opposition to conduct that violated Title VII. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Masterfoods had a legitimate, non-discriminatory reason for terminating Gray, because he failed to follow the company's "lock out/tag out" safety procedure. Masterfoods had a zero-tolerance policy for violations of lock out/tag out, and Masterfoods had previously terminated at least one other employee for failing to lock out/tag out. Gray admitted to management that he had not followed the procedure. In opposing Masterfoods' motion for summary judgment, Gray did not identify evidence sufficient to show that this reason was pretextual, either by showing that Masterfoods' explanation of the termination is unworthy of credence or that Masterfoods was motivated by retaliation when it terminated Gray. *See Davis v. Team Elec. Co.*, 520 F.3d 1080, 1088-89 (9th Cir. 2008).

**AFFIRMED.**