

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAY LUCARELLI

v.

CONSOLIDATED RAIL CORP.

CIVIL ACTION  
No. 98-5904

MEMORANDUM

Broderick, S.J.

April 5, 2000

Presently before the Court are Defendant Consolidated Rail Corporation's ("Conrail's") motion to dismiss Plaintiff's complaint pursuant to Fed.R.Civ.P 12(b)(6) for failure to exhaust administrative remedies and Plaintiff's opposition thereto. For the reasons stated below, Defendant's motion will be GRANTED in part and DENIED in part.

**Background**

Accepting as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them, the facts of this case are as follows. Plaintiff Lucarelli began working for Defendant Conrail in 1994 as a machinist. Plaintiff had been diagnosed with appendicle cancer when he was hired by Defendant. In or about November 1996, Plaintiff's cancer required that he undergo treatment for which he missed approximately two to three months work. During the beginning of 1997, Plaintiff attempted to return to work with Defendant. Although he was in remission, Plaintiff's treating physicians had placed a permanent "light

duty" restriction on Plaintiff because of his ongoing condition.

Plaintiff identified a job in the oil lab that was within his qualifications, within his restrictions, and available at the time he attempted to return. However, Defendant's accommodations group refused to place him, citing an impending merger with Norfolk Southern and CSX as reasons for not being able to place him. Moreover, although Plaintiff's treating physicians had notified Defendant Conrail that his condition was permanent, the medical director of Conrail, Dr. Nancy Hartenbaum, informed Plaintiff that he would not be able to return until his condition improved.

Plaintiff brings claims against Defendant under two federal statutes: (1) the Rehabilitation Act, 29 U.S.C. § 701 et seq.; and (2) the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Plaintiff alleges that Defendant intentionally and unlawfully discriminated against him with malice or in reckless disregard for his rights under the ADA and the Rehabilitation Act. Plaintiff filed the instant lawsuit on November 6, 1998.

Prior to filing the instant lawsuit, however, Plaintiff was a member of a class action that was filed in the Western District of Pennsylvania. See Mandichak v. Consolidated Rail Corp., Civ. Act. No. 94-1701 (W.D. Pa). The Mandichak court certified a class consisting of current and former Conrail employees who, since July 25, 1992, had been denied employment or employment

benefits by Conrail because of their disabilities. The Mandichak court certified the class for injunctive relief only, and denied the motion to certify a Rule 23(b)(3) class for damages. The case was tried before the court which found for Conrail on the merits, a decision affirmed on appeal. See Mandichak v. Consolidated Rail Corp, 178 F.3d 1279 (3d Cir. 1999)(table). The district court in Mandichak vacated its previous order certifying the class and entered judgment for Conrail, without prejudice to former class members to assert any individual claims against Conrail. See Mandichak v. Consolidated Rail Corp., Civ. Act. No. 94-1071 (W.D. Pa. August 20, 1998).

Plaintiff Lucarelli was a member of the Mandichak class, which included plaintiffs who had timely filed administrative charges. However, Plaintiff Lucarelli never filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), the Pennsylvania Human Relations Commission ("PHRC"), or any other administrative agency.

### **Legal Standard**

When considering a motion to dismiss a complaint for failure to state a claim under Rule 12(b)(6), the court must accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Markowitz v. Northeast

Land Co., 906 F.2d 100, 103 (3d Cir. 1990). A court may dismiss a complaint when it is certain that no relief could be granted under any set of facts that could be proved. Ranson v. Marrazzo, 848 F.2d 398, 401 (3d Cir. 1988). Nevertheless, a court need not credit plaintiff's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

## **Discussion**

Defendant argues for dismissal on the grounds that Plaintiff failed to exhaust his administrative remedies under the Rehabilitation Act and the ADA. The Court will consider each of Plaintiff's claims separately.

### The Rehabilitation Act Claim

Plaintiff seeks relief under section 504 of the Rehabilitation Act, which bars private entities that receive federal funding from discriminating on the basis of disability. There is no question that Defendant receives federal funding and is prohibited from discriminating on the basis of disability. See Freed v. Consolidated Rail, 201 F.3d 188, 192 (3d Cir. 2000). Defendant contends that Plaintiff's Rehabilitation Act claim must be dismissed for his failure to exhaust administrative remedies.

The Rehabilitation Act requires that some plaintiffs exhaust administrative remedies before seeking judicial relief. See id.

Plaintiffs suing under section 501 must exhaust administrative remedies. Id. In addition, federal employees must exhaust administrative remedies before filing suit against a federal employer under section 504 of the Rehabilitation Act. Id., citing Spence v. Straw, 54 F.3d 196 (3d Cir. 1995).

However, Plaintiff is not suing under section 501, nor is he a federal employee. In Freed v. Consolidated Rail Corporation, the Third Circuit recently considered whether a non-federal employee must exhaust administrative remedies before filing a section 504 case in federal court. Id. The Freed court reaffirmed the "long-standing position that section 504 plaintiffs may proceed directly to court without pursuing administrative remedies." Id. at 194. Therefore Plaintiff's section 504 Rehabilitation Act claim survives Defendant's Rule 12(b)(6) challenge as he need not have exhausted his administrative remedies before initiating this lawsuit. Defendant's motion shall be denied with respect to Plaintiff's Rehabilitation Act claim.

#### The ADA claim

Defendant contends that Plaintiff's claim under the ADA must be dismissed because Plaintiff failed to exhaust his administrative remedies. Plaintiff contends that as a member of a previously certified class, he should be able to rely on the charges filed by the class representatives under the "single

filing rule." The Third Circuit has held that the single filing rule can apply "to the extent that the class was properly certified...." McNasby v. Crown Cork and Seal, Co., Inc., 888 F.2d 270, 282 (3d Cir. 1989) cert. denied 494 U.S. 1066 (1990). Pursuant to the Third Circuit in McNasby, certified class members may "piggyback" their claims on the class member who has properly exhausted administrative remedies. In the instant case, however, the Mandichak class has been decertified, and the Third Circuit has never held that the single filing rule is applicable where a class is decertified.

In the absence of specific guidance from the Third Circuit, United States district courts in Pennsylvania have reached conflicting decisions on this issue with regard to similarly situated former Mandichak class action members. For example, several Western District cases have held that former Mandichak class members are not required to exhaust administrative remedies before seeking judicial determination of an ADA claim. See Mayo v. Consolidated Rail Corp., Civ Act No. 96-656 (W.D. Pa June 23, 1999); In re Consolidated Rail Corp. ADA Lit., Civ Act Nos. 98-1669; 98-1671, 98-1672, & 98-1759 (W.D. Pa, March 23, 1999). While acknowledging that the Third Circuit has not ruled on this precise issue, and that the federal circuit courts are not in agreement on whether the single filing rule applies where a class is decertified, these courts allowed the single filing rule to

apply to former Mandichak class members.

Here in the Eastern District, however, district courts have determined that former Mandichak class members may not rely on other class members' EEOC filings to satisfy the exhaustion requirement on the ground that the class was decertified. See Foreman v. Consolidated Rail Corp., 2000 WL 233471 (E.D. Pa); Payne v. Consolidated Rail Corp., 2000 WL 190229(E.D. Pa); Koban v. Consolidated Rail Corp., 1999 WL 672657 (E.D. Pa). The Eastern District courts have noted that the Third Circuit has never held that the single filing rule is applicable where a class is decertified. Foreman, 2000 WL at \*1; Payne, 2000 WL 190229 at \*4; Koban, 1999 WL 672657, at \*1. These courts have held that piggybacking is inconsistent with the requirement that individuals file an administrative charge before seeking judicial relief.

This Court agrees with the results reached in Foreman, Payne and Koban. Plaintiff may not rely on the charges filed by the named plaintiff in a previously decertified class. Therefore, the Court will grant Defendant's motion to dismiss Plaintiff's ADA claim.

An appropriate Order follows.

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O R D E R

**AND NOW**, this 5th day of April, 2000; Defendant having filed a motion to dismiss Plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6); Plaintiff having opposed; for the reasons stated in the memorandum filed on this date;

**IT IS ORDERED**: Defendant's motion to dismiss Plaintiff's complaint (Docket No. 4) is **GRANTED IN PART** and **DENIED IN PART**:

1. Defendant's motion to dismiss Plaintiff's complaint is **GRANTED** with respect to Plaintiff's Americans with Disabilities Act claim and such claim is **DISMISSED**;

2. Defendant's motion to dismiss Plaintiff's complaint is **DENIED** with respect to Plaintiff's Rehabilitation Act claim.

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RAYMOND J. BRODERICK, J.