

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

Anthony T. Peek, : CIVIL ACTION
Plaintiff :
 :
v. :
 :
Philadelphia Coca-Cola :
Bottling Company and :
Delta Investigations, :
Defendants : No. 97-3372

MEMORANDUM AND ORDER

VanARTSDALEN, S.J.

July 31, 2003

Plaintiff instituted this action in the Court of Common Pleas of Philadelphia County. Defendant Coca-Cola Bottling Company ("Coca-Cola") thereafter removed the case to this court and has now filed a motion to dismiss, or in the alternative for summary judgment. Plaintiff has filed a cross motion to remand. For the reasons set forth below, Coca-Cola's motion will be granted and the remaining state law claims against defendant Delta Investigations ("Delta") will be remanded. The resolution of Coca-Cola's motion therefore makes consideration of plaintiff's motion to remand unnecessary, and it will be denied as moot.

I. Factual and Procedural Background

Plaintiff, a former and current employee of Coca-Cola, is a member of the International Brotherhood of Teamsters Union Local 830, which is a party to a collective bargaining agreement ("CBA") with Coca-Cola governing the terms and conditions of plaintiff's employment. On April 30, 1996, Coca-Cola discharged plaintiff for theft, misrepresentation, and loafing. Article

XII(a) authorizes Coca-Cola to terminate an employee for "any reasonable cause," and Coca Cola determined, on the basis of a finding that plaintiff had stolen time and falsified documents, that such reasonable cause existed.

Pursuant to the CBA, plaintiff submitted a demand for arbitration. After a hearing, the arbitrator determined that although Coca-Cola did not have reasonable cause to terminate plaintiff, a two week suspension was warranted. Accordingly, on April 11, 1997, the arbitrator ordered that plaintiff be reinstated with full back pay, less the suspension and any interim earnings.

On April 10, 1997, the day before the arbitrator issued his award, plaintiff commenced this action in the Court of Common Pleas of Philadelphia County. Plaintiff asserts claims for slander, negligence, and gross negligence¹ against Coca-Cola and Delta. Plaintiff alleges that Stan Werner, a Coca-Cola manager, engaged in a campaign of retaliation against plaintiff in response to a grievance plaintiff had successfully pursued after he was not called out for service during Labor Day weekend 1995.

Plaintiff contends that Werner began a pattern of retaliation that included publicizing false statements that

1. Plaintiff's complaint also includes a count labeled "respondeat superior." The doctrine of respondeat superior does not establish a separate tort, but merely a principle by which employers can be held liable for the tortious acts of their employees. Accordingly, I will specifically address only plaintiff's claims for slander, negligence, and gross negligence, as the "respondeat superior" claim has no separate viability.

plaintiff was a loafer and a thief. Furthermore, plaintiff alleges that Coca-Cola negligently hired Delta to investigate plaintiff. According to plaintiff, Delta found no evidence of wrongdoing, but nonetheless accused plaintiff of theft, misrepresentation, and loafing. On this basis, Coca-Cola discharged plaintiff, and plaintiff asserts that Stan Werner and Delta slandered him by making false statements about plaintiff to other Coca-Cola employees. Plaintiff further alleges that the investigation continued even after his discharge.

Contending that such conduct constitutes slander, negligence, and gross negligence, plaintiff seeks to recover compensatory and punitive damages. Plaintiff did not raise these claims in his grievance and arbitration proceedings. In fact, in the instant complaint, plaintiff does not refer at all to the CBA or his ultimate arbitration award. Nonetheless, Coca-Cola removed the action to this court on the ground that plaintiff's claims in fact arise under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 ("LMRA"). At the time of the notice of removal, Delta had apparently not been served with the complaint and therefore did not join in the notice of removal.

II. Legal Standard

Because both parties have submitted, and I have considered, matters outside the pleadings, I will treat Coca-Cola's motion as one for summary judgment. The Federal Rules of Civil Procedure provide that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists where a reasonable jury could return a verdict in favor of the nonmoving party. See Anderson, 477 U.S. at 248. A court must consider the evidence, and all inferences drawn therefrom, in the light most favorable to the nonmoving party. Tigg Corp. v. Dow Corning Corp., 822 F.2d 358, 361 (3d Cir. 1987).

III. Discussion

A. Section 301 Preemption

Generally, a case arises under federal law only if a federal question appears on the face of the complaint. See Gully v. First Nat'l Bank, 299 U.S. 109 (1936). Pursuant to the "artful pleading doctrine," however, courts are not always bound by a plaintiff's characterization of his claims. When a federal statute completely preempts an area of state law, any complaint alleging claims under that area of law is considered to be a claim arising under the applicable federal law. See Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987). Accordingly, a plaintiff cannot avoid federal jurisdiction merely by failing to plead necessary federal questions. See Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 22 (1983).

The Supreme Court has determined that, under appropriate circumstances, § 301 of the LMRA can completely preempt applicable state law. See Franchise Tax Bd., 463 U.S. at 23. Such complete preemption is motivated by concern for uniformity in the law applied to labor contracts. Furillo v. Dana Corp. Parish Div., 866 F. Supp. 842 (E.D. Pa. 1994) (citing Allis-Chalmers v. Lueck, 471 U.S. 202, 211 (1985)). Accordingly, § 301 preempts a state law claim when "evaluation of the [state law] claim is inextricably intertwined with consideration of the terms of the labor contract." Allis-Chalmers, 471 U.S. at 213. If, however, "the necessary elements of the state law claim can be ascertained without recourse to interpretation of the CBA," § 301 does not preempt state law remedies. Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 413 (1988). Accordingly, I must first determine whether resolution of plaintiff's slander, negligence, and gross negligence claims requires an interpretation of the CBA. If these claims do rely on construction of the CBA, then they are preempted by § 301 and are deemed to arise under the LMRA. I must then consider the effect of federal labor law on plaintiff's ability to pursue this action.

1. Preemption of Plaintiff's Slander Claims

To set forth a prima facie case for defamation under Pennsylvania law, a plaintiff must establish the following elements:

- (1) The defamatory character of the communication.

- (2) Its publication by the defendant.
- (3) Its application to the plaintiff.
- (4) The understanding by the recipient of its defamatory meaning;
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff.
- (6) Special harm resulting to the plaintiff from its publication.
- (7) Abuse of a conditionally privileged occasion.

42 Pa. C.S.A. § 8343(a). The defendant, in contrast, has the burden of proving:

- (1) The truth of the defamatory communication.
- (2) The privileged character of the occasion on which it was published.
- (3) The character of the subject matter of defamatory comments as of public concern.

42 Pa. C.S.A. § 8343(b). Statements made for proper motives and in a proper manner may, in appropriate circumstances, be protected by a conditional privilege that defeats liability for defamation. See Furillo, 866 F. Supp. at 848 (citing Rutherford v. Presbyterian-University Hospital, 612 A.2d 500 (Pa. 1992)).

Such a conditional privilege has been found, for example, to protect management-level communications about an employee's job performance. See id. It is clear that the existence and scope of any such privilege will often depend on an employer's authority pursuant to a CBA, and liability under state law would thus require an interpretation of the CBA. See id.

Not all statements made by employees about other employees, however, implicate an employer's authority under a CBA. Rather, most courts have adhered to a distinction between defamatory statements made in the context of an investigation, grievance, or disciplinary proceeding, and statements made outside the context of such proceedings. See Furillo, 866 F. Supp. at 848; Monsour v. Delco Remy Plant, 851 F. Supp. 245, 246 (S.D. Miss. 1994). The cases in this district also appear to follow this distinction.

In Furillo, the court determined that § 301 did preempt plaintiff's defamation claims where the communications at issue occurred during disciplinary meetings and arbitration proceedings. See Furillo, 866 F.2d at 850-51. "Only by examining the terms of the grievance procedure within the CBA could a court determine whether the defendants were privileged to make any alleged defamatory statements." Id. at 851.² The court

2. Plaintiff has attempted to distinguish Furillo on the ground that the defamatory statements at issue there occurred during formal grievance proceedings, while the instant plaintiff's claims arise from conduct outside those proceedings. Several cases, however, have found that claims relating to an employer's conduct during an investigation are preempted. See, e.g. Mock v. T.G. & Y. Stores Co., 971 F.2d 522, 530 (10th Cir. 1992) (finding that state law claims arising out of the conduct of an investigation were preempted because "an analysis of whether [the employer] acted properly or not [would] inevitably require an analysis of what the CBA permitted"); Sweigart v. Delmotte, 1994 WL 724987, at *4 (E.D. Pa.) (finding state tort claims arising from the manner in which an employer conducted an investigation of plaintiff preempted because the wrongfulness of the conduct could be assessed only through an interpretation of the CBA). Accordingly, I find that an employer's conduct during an investigation, as well as during formal grievance proceedings,

(continued...)

in Meier v. Hamilton Standard Electronic Systems, Inc., in contrast, held that plaintiff's claims, based on defamatory statements made to individuals who were not themselves employed by the defendant, were outside the scope of the CBA and thus, were not preempted by § 301. 748 F. Supp. 296, 299 (E.D. Pa. 1990). The court recognized, however, that preemption was unwarranted only "[t]o the extent that [plaintiff] . . . alleged . . . that defamatory statements were made outside the limited context of the investigation . . . or to individuals who had no connection with the grievance procedures he initiated following his discharge" Id. at 300.

Accordingly, any slander claims arising from Coca-Cola's investigation or the subsequent grievance and arbitration proceedings are preempted. The CBA authorizes Coca-Cola to discharge an employee for reasonable cause, and has a broad management rights clause securing to Coca-Cola the right to manage its affairs and maintain discipline of its employees. Plaintiff admittedly does not challenge Coca-Cola's authority, as part of its management rights, to conduct investigations. The application of state defamation law therefore requires a consideration of the scope and existence of any privilege created by the CBA as part of Coca-Cola's investigative authority. Plaintiff therefore can avoid preemption of his slander claims

2. (...continued)
can implicate the employer's authority under a CBA.

only by alleging defamatory communications made separate from the investigation and subsequent proceedings.

Although it is conceivable that plaintiff could state a cause of action for slander based solely on statements made outside the context of the investigation, plaintiff has failed to do so here. The allegations in the instant complaint overwhelmingly relate to conduct that formed the substance of plaintiff's grievance and arbitration proceedings. See Furillo, 866 F. Supp. at 852 ("[T]o make a determination regarding the elements of defamation in this case, a court would have to conduct the same factual inquiry into the events surrounding the grievance procedure as that which has already been conducted by the arbitrator . . . the possibility of inconsistent results arising from such a double inquiry is precisely the type of situation that the preemption doctrine was meant to address."). Plaintiff alleges that a Coca-Cola manager, Stan Werner, publicized defamatory statements about plaintiff as part of a campaign of retaliation. Although plaintiff insists that the allegedly defamatory statements were not made in the course of the formal grievance proceedings, it is impossible to determine from the complaint whether any of these communications occurred separate from the investigation.

In his response to Coca-Cola's motion, plaintiff does argue that his slander claims are unrelated to the investigation and the CBA. Plaintiff insists that he is not challenging the conduct of the investigation itself, but only "the resulting

slander." Statements made during the course of the investigation, however, are part of the conduct of the investigation and implicate the employer's authority under the CBA. Even communications that in fact exceed the scope of an employer's authority implicate the CBA, and are therefore preempted, if they occur as part of an investigation into employee misconduct. See Durette v. UGI Corp., 674 F. Supp. 1139, 1143 (M.D.Pa. 1987) ("Plaintiff [sic] allegations that he . . . was slandered by statements made by Defendant's agents against him during the events surrounding his discharge are necessarily preempted by § 301 as they all relate to and are inextricably intertwined with the question of whether the Defendants properly discharged the Plaintiff.").

Plaintiff further argues that the CBA does not give Coca-Cola the right to defame plaintiff. The CBA can, however, create a privilege, recognized by state law, to publish defamatory statements in the course of a disciplinary investigation. See Furillo, 866 F. Supp. at 851. Furthermore, the mere fact that the arbitrator did not address these slander claims is irrelevant; preemption is not contingent on the plaintiff's raising the claims during grievance and arbitration proceedings.

Plaintiff does not even attempt to explain, as a factual matter, how the alleged slander is separate from the investigation. For example, if plaintiff alleged that a Coca-Cola manager made defamatory statements about plaintiff to other

Coca-Cola employees merely as part of water cooler gossip, plaintiff's claim would not be preempted, because the challenged conduct would in no way implicate Coca-Cola's authority under the CBA.³ The entire matter would be outside the scope of the labor contract. In the instant complaint, however, plaintiff has failed to allege slander claims sufficiently independent of the CBA. Rather, plaintiff's allegations overwhelmingly relate to Werner's campaign of retaliation and the propriety of his discharge -- matters which implicate the CBA and were considered by the arbitrator. Plaintiff asserts that these allegations were included in the complaint as mere "background" information; however, they constitute virtually all of plaintiff's assertions. Because plaintiff has failed to identify, in either his complaint or his response to Coca-Cola's motion, any defamatory statements made outside the context of the investigation and subsequent grievance and arbitration proceedings, I find that plaintiff's slander claims against Coca-Cola are preempted by § 301.

2. Preemption of Plaintiff's Negligence and Gross Negligence Claims

Plaintiff's allegations of negligence and gross negligence against Coca-Cola, also arising from the above-described conduct, are likewise preempted by § 301. Plaintiff

3. It appears that the statute of limitations has not yet run on plaintiff's claims, and this decision in no way precludes plaintiff from bringing in state court an action alleging slander entirely separate from the investigation. My holding here is simply that plaintiff has failed to state such separate claims in the instant complaint.

contends that Coca-Cola, by negligently hiring, training, and supervising its employees, created a situation in which plaintiff was wrongfully accused of being a thief and a loafer. Plaintiff further alleges that Coca-Cola acted negligently by tolerating Werner's retaliatory behavior towards plaintiff, by failing to conduct an independent investigation, and by failing to keep private the accusations against plaintiff.

All negligence claims are premised on the alleged violation of a duty. See Wenrick v. Schloemann-Siemag Aktiengesellschaft, 564 A.2d 1244, 1248 (Pa. 1989).⁴ These claims, however, "are preempted where reference to a collective bargaining agreement is necessary to determine whether a 'duty of care' exists or to define 'the nature and scope of that duty, that is, whether, and to what extent, the [employer's] duty extended to the particular responsibilities alleged by [the employee] in h[is] complaint.'" McCormick v. AT&T Tech., Inc., 934 F.2d 531, 536 (4th Cir. 1991), cert. denied, 502 U.S. 1048 (1992) (quoting AFL-CIO v. Hechler, 481 U.S. 851, 862 (1987)).

In the instant case, it does not appear that plaintiff's negligence and gross negligence claims derive from

4. Plaintiff has failed to specifically identify the duty allegedly owed to him by Coca-Cola. Some courts have found such an omission could itself be fatal to a plaintiff's claim. See Almonte v. Coca-Cola Bottling Co. of N.Y., Inc., 959 F. Supp. 569, 576-77 (D. Conn. 1997) ("It does appear that plaintiff has failed to specify the nature and origin of any duty of care owed to him by defendants. The failure to set forth this essential element of a negligence claim is probably a sufficient reason to grant defendants' motion for summary judgment.").

any general duty of care owed by Coca-Cola to all persons. Rather, plaintiff's claims are premised on his employment relationship with Coca-Cola, as defined by the CBA. The wrongfulness of Coca-Cola's conduct can be assessed only by reference to the rights and obligations created by the CBA. In his response to Coca-Cola's motion, plaintiff has failed to even attempt to explain the source of Coca-Cola's duty or how the scope of that duty could be evaluated without reference to the CBA.

Several district courts have already determined that similar negligence claims are preempted by § 301. In Weatherholt v. Meijer, the court concluded that § 301 preempted negligent hiring and supervision claims. "Because any duty relating to the hiring, supervision, or retention of employees in the collective bargaining context would arise solely from the collective bargaining agreement, resolution of these types of claims would require interpretation of the agreement." Weatherholt v. Meijer Inc., 922 F. Supp. 1227, 1233 (E.D. Mich. 1996). Furthermore, the court in Almonte determined that "whether defendants acted negligently or in an extreme and outrageous manner in their investigation . . . will depend on plaintiff's and defendants' rights and obligations with regard to discipline and termination of employees under the CBA." Almonte, 959 F. Supp. at 577.

Accordingly, I find that plaintiff's negligence and gross negligence claims against Coca-Cola are preempted by § 301.⁵

B. Exhaustion of Contractual Remedies

Recast, pursuant to the preemption doctrine, as § 301 claims, plaintiff's claims must be evaluated according to principles of federal labor law. It is well settled that the remedies provided by a CBA are binding on employees and must be exhausted before an employee may maintain an action in district court against his employer. See, e.g. Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Ames v. Westinghouse Elec. Corp., 864 F.2d 289, 292 (3d Cir. 1988).⁶ Plaintiff has exhausted his contractual remedies, but his claims are nonetheless barred.

The CBA at issue provides for "final and binding" arbitration. "If the parties agree that they may not institute civil suits and that the grievance procedures are final, those provisions will be enforced." Orlando v. Interstate Container Corp., 100 F.3d 296, 300 (3d Cir. 1996). Plaintiff is therefore bound by the CBA to submit disputes to final and binding arbitration.

5. Although it is not necessary for me to consider all of plaintiff's arguments in support of his motion to remand, my finding that plaintiff's claims against Coca-Cola are preempted by federal labor law indicates that federal jurisdiction is appropriate.

6. An exception to this exhaustion requirement may apply where an employee alleges that his union breached its duty of fair representation. Because plaintiff does not allege any such breach, the exception is inapplicable in the instant case.

Plaintiff, as in Furillo, already proceeded to arbitration on claims arising out of the same conduct alleged in the instant suit. He "has already been reinstated to his former position. He is now trying to circumvent the very process that produced this desired result by alleging a state claim of defamation. We will not permit him to obtain the benefit of his bargain without holding up his end of the bargain." Furillo, 866 F. Supp. at 853. To allow plaintiff to sidestep his contractual remedies would undermine the effectiveness of arbitration and would threaten the principles of certainty and uniformity that guide federal labor policy. See id. The CBA therefore precludes plaintiff from bringing this action, and Coca-Cola is entitled to summary judgment on plaintiff's claims.

This ruling on Coca-Cola's motion resolves all federal claims raised by plaintiff's complaint. I will therefore remand plaintiff's remaining state law claims against Delta to the Court of Common Pleas of Philadelphia County. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343 (1988).

An appropriate order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Anthony T. Peek,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
Philadelphia Coca-Cola	:	
Bottling Company and	:	
Delta Investigations,	:	
Defendants	:	No. 97-3372

ORDER

For the reasons set forth in the accompanying memorandum, IT IS ORDERED that defendant Coca-Cola's motion to dismiss, or in the alternative for summary judgment (filed document number 3), is GRANTED, and judgment is entered in favor of defendant Philadelphia Coca-Cola Bottling Company and against plaintiff Anthony T. Peek. Plaintiff's motion to remand (filed document number 5) is DENIED AS MOOT.

IT IS FURTHER ORDERED that plaintiff's remaining state law claims against Defendant Delta Investigations are REMANDED to the Court of Common Pleas of Philadelphia County.

BY THE COURT,

Donald W. VanArtsdalen, S.J.

July 8, 1997