

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

BRUCE E. PRITCHETT : CIVIL ACTION
 :
 v. :
 :
 IMPERIAL METAL AND CHEMICAL CO. : NO. 96-0342

M E M O R A N D U M

WALDMAN, J.

September 5, 1997

I. BACKGROUND

Plaintiff is suing Imperial Metal and Chemical Company, for alleged race discrimination and retaliation in violation of PHRA and Title VII. Presently before the court is defendant's motion for summary judgment. Plaintiff opposes summary judgment on the retaliation claim but concedes that defendant is entitled to summary judgment on his race discrimination claims.

II. LEGAL STANDARD

In considering a motion for summary judgment, the court must determine whether the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact, and whether the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold-Pontiac-GMC, Inc. v. General Motors Corporation, 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case under applicable law are "material." Anderson, 477 U.S. at 248.

All reasonable inferences from the record must be drawn in favor of the non-movant. Id. at 256. Although the movant has the initial burden of demonstrating an absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)).

The pertinent facts as uncontroverted or taken in a light most favorable to plaintiff are as follow.

III. FACTS

Imperial Metal and Chemical Company ("Imperial") is a former manufacturer of lithographic plates for printing.¹ Plaintiff began working at Imperial in January 1989. Throughout his employment plaintiff was a member of a bargaining unit represented by the United Steelworkers of America, AFL-CIO, Local 12241 (the "Union"). In March 1994, plaintiff was promoted to the position of gang shear operator. As gang shear operator, plaintiff cut metal plates to customer specifications. After cutting a stack of plates, plaintiff was required to inspect the plates' length, width and "squareness." Plaintiff received two days training on the gang shear machine.

Imperial adopted a disciplinary policy in 1962. The policy establishes certain minimum rules of conduct for

1. Imperial ceased operations in April 1996.

employees. It also sets forth penalties for infractions of plant rules and regulations. Rule No. 24 of the policy provides for "Mistakes Due to Carelessness." Pursuant to Rule No. 24, the sanction is three days suspension for a first offense of carelessness, one week suspension for a second offense and discharge for a third offense.

On December 8, 1994, plaintiff received a work order from his supervisor Gerald Baklycki for an Imperial customer, Hiott Printing. The original order was for 500 sheets of "S-330" metal. Plaintiff found no available S-330 metal in stock and Mr. Baklycki instructed him to use S-400 metal.

In January 1995, Hiott Printing complained that the plates received from Imperial did not conform to order specifications. Barbara Gayda, Production Manager, investigated the complaint and traced the error to plaintiff. On January 6, 1995, Mr. Baklycki, at the direction of Ms. Gayda, issued a Notice of Disciplinary Action to plaintiff scheduling a disciplinary meeting for January 9, 1995. According to the Notice, plaintiff was to be suspended without pay for three days. At the January 9, 1995 meeting, plaintiff attempted to defend his actions with respect to the Hiott Printing order and told Ms. Gayda, "I do what I'm told, I do what the supervisors tell me to do." According to plaintiff, Ms. Gayda responded with the following remark, "so what you're saying is you just run around here like a monkey." In the meeting plaintiff's suspension was reduced to one day. The January 9, 1995 discipline was

plaintiff's first disciplinary action for anything other than time and attendance infractions.

On February 22, 1995, plaintiff received an order to cut 200 plates for an Imperial customer, the St. Louis Dispatch. According to plaintiff, at some date prior to receiving that order, he notified management that the gang shear machine he operated was cutting material "out of square." A repairman came on February 22, 1995 to repair the machine plaintiff used on that day to cut the plates for the St. Louis Dispatch order. After checking the machine, the repairman wrote, "[w]ill complete repairs next week," and indicated on the work order that the service was not complete. The repairman returned on February 28, 1995 and March 1, 1995 to work on the machine. On February 22, 1995, plaintiff cut the plates for the St. Louis Dispatch order. They were checked by "quality control" personnel at Imperial before being sent to the customer.

On May 8, 1995, plaintiff was given a second Notice of Disciplinary Action from then Production Supervisor, William Gessell.² According to the Notice, on February 22, 1995 plaintiff had "carelessly" gang sheared the St. Louis Dispatch order and plates of an "unacceptable quality" were sent to the customer. Imperial contends that it discovered the error in early May 1995 when it received a complaint from the St. Louis

2. Mr. Gessell also held the position of Human Resources Manager at Imperial.

Dispatch. As a result, plaintiff was suspended for five days, from May 8, 1995 through May 12, 1995.

On February 28, 1995, Imperial received an order from Paris Business Forms. Work for this customer was checked by Imperial's President, Harry Moroz, before shipment. Plaintiff states that after he cut these plates he checked them for compliance with specifications. After the order was shipped, however, Imperial received a complaint in May 1995 from the customer that six to twelve of the plates delivered had errors in the grain direction.

Mr. Gessell terminated plaintiff from employment with Imperial on May 19, 1995.

On January 17, 1995, after his first discipline, plaintiff filed a race discrimination complaint against Imperial with the Pennsylvania Human Relations Commission ("PHRC"). On March 8, 1995, William Gessell, Imperial's Human Resources Manager, was notified by PHRC that a Fact Finding Hearing was scheduled for April 10, 1995. The PHRC hearing was attended by both Ms. Gayda and Mr. Gessell. On July 18, 1995, the PHRC issued its decision that there was no probable cause to credit plaintiff's claims of race discrimination.

Pursuant to the collective bargaining agreement, the Union filed grievances on plaintiff's behalf challenging the five day suspension and the discharge. After both grievances were denied by Imperial, the Union demanded arbitration. On November 9, 1995 a hearing was held before Arbitrator John Skonier. On

January 30, 1996, the arbitrator ruled that Imperial had just cause for the third and final discipline, but that Imperial did not have just cause for the second discipline because the gang shear machine was not functioning properly. Accordingly, the arbitrator held that the third discipline should be treated as though it were plaintiff's second Rule 24 infraction, warranting a one week suspension and not discharge. The arbitrator directed Imperial to reinstate plaintiff with seniority and back pay.

Imperial paid plaintiff back wages but did not reinstate him because he would have been laid off in any event in December 1995 when Imperial laid off twenty-two employees.

Plaintiff now contends that Imperial retaliated against him for filing a race discrimination complaint with PHRC.

IV. DISCUSSION

To establish a prima facie case of retaliation, a plaintiff must show that he engaged in protected activity, that he was subsequently or contemporaneously subject to an adverse employment action, and that there was a causal link between the protected activity and the adverse action. Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997); Barber v. CSX Distribution Services, 68 F.3d 694, 701 (3d Cir. 1995); Jalil v. Avdel Corp., 873 F.2d 701, 708 (3d Cir. 1989), cert. denied, 493 U.S. 1023 (1990). If the plaintiff establishes a prima facie case of retaliation, the burden then shifts to the defendant to offer a legitimate, nondiscriminatory reason for the adverse employment action. Jalil, 873 F.2d at 708. The defendant's

burden at this stage is "relatively light" and is satisfied if the defendant articulates any legitimate reason. The defendant need not prove that the stated reason was the actual reason. Woodson v. Scott, 109 F.3d at 920. To sustain the retaliation claim, plaintiff must then show that any legitimate nondiscriminatory reason proffered by defendant is false from which a factfinder may infer that the real reason was retaliatory or otherwise present evidence from which one reasonably can find that retaliation was more likely than not a determinative cause of the adverse employment action. Lawrence v. National Westminster Bank of New Jersey, 98 F.3d 61, 66 (3d Cir. 1996); Charlton v. Paramus Board of Education, 25 F.3d 194, 201 (3d Cir.), cert. denied, 513 U.S. 1022 (1994); Geary v. Visitation of the Blessed Virgin Mary Parish School, 7 F.3d 324, 329 (3d Cir. 1993); Quiroga v. Hasbro, Inc., 934 F.2d 497, 501 (3d Cir. 1991); Jalil, 873 F.2d at 708.

To discredit a legitimate reason proffered by the employer, a plaintiff must present evidence demonstrating such weaknesses, implausibilities, inconsistencies, contradictions or incoherence in that reason that one could reasonably conclude it is incredible and unworthy of belief. Fuentes v. Perskie, 32 F.3d 759, 764-65 (3d Cir. 1994); Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 531 (3d Cir. 1992), cert. denied, 510 U.S. 826 (1993). "To discredit the employer's proffered reason, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether

discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent." Fuentes, 32 F.3d at 765. See also Holder v. City of Raleigh, 867 F.2d 823, 829 (4th Cir. 1989) ("A reason honestly described but poorly founded is not a pretext") (citation and internal quotations omitted); Hicks v. Arthur, 878 F. Supp. 737, 739 (E.D. Pa.) (that a decision is ill-informed or ill-considered does not make it pretextual), aff'd, 72 F.3d 122 (3d Cir. 1995); Orisakwe v. Marriott Retirement Communities, Inc., 871 F. Supp. 296, 299 (S.D. Tex. 1994) (employer who wrongly believes there is legitimate reason to terminate employee does not discriminate when he acts on that belief).

It is clear that plaintiff can satisfy the first two elements of a prima facie case of retaliation. He filed a race discrimination complaint on January 17, 1995. He was suspended on May 8, 1995 and ultimately terminated on May 19, 1995.

Plaintiff contends that the element of causation can be inferred from the timing of the events in this case.

Plaintiff filed his complaint with PHRC on January 17, 1995, Imperial received notice of the complaint on March 8, 1995 and the PHRC Factfinding Conference was held on April 10, 1995. On May 8, 1995, plaintiff received his second disciplinary notice and on May 19, 1995, he received his third disciplinary notice resulting in discharge.

Temporal proximity of the adverse action to the plaintiff's protected conduct can give rise to an inference of

causation. Jalil, 873 F.2d at 708 (finding evidence of a prima facie case of retaliatory discharge where plaintiff was discharged two days after filing an EEOC complaint). As the Third Circuit has noted, however, "[i]t is important to emphasize that it is causation, not temporal proximity itself, that is an element of plaintiff's prima facie case, and temporal proximity merely provides an evidentiary basis from which an inference can be drawn." Kachmar v. Sungard Data Systems, Inc., 109 F.3d 173, 178 (3d Cir. 1997). Timing alone is not sufficient to prove discriminatory motive. See Delli Santi v. CNA Ins. Companies, 88 F.3d 192, 199 n.10 (3d Cir. 1996); Woods v. Bentsen, 889 F. Supp. 178, 188 (E.D. Pa. 1995) (holding temporal proximity insufficient to support inference of causation in case where plaintiff filed discrimination complaint five months before adverse employment action); Banner v. Albert Einstein Medical Center, 1995 WL 262537, *2 (E.D. Pa. Apr. 27, 1995), aff'd, 70 F.3d 1254 (3d Cir. 1995) (same); Nixon v. Runyon, 856 F. Supp. 977, 988 (E.D. Pa. 1994) (holding temporal proximity insufficient to show causation in case where adverse employment action occurred four months after protected activity).

Plaintiff has offered nothing in addition to the timing of events to show causation. The proximity of events in this case is not sufficient alone to show causation. Two months passed between the date on which Imperial was notified of plaintiff's complaint and any adverse action.

Moreover, even assuming that plaintiff has established a prima facie case of retaliation, he has not shown that Imperial's articulated nondiscriminatory reasons were pretextual or that discrimination was more likely than not a determinative factor in the adverse employment decision.

Defendant's stated reasons for plaintiff's second and third disciplinary notices are his infractions of Rule 24 by cutting plates for customers that did not meet applicable specifications and failing adequately to check the plates before shipping. Plaintiff attempts to discredit Imperial's reasons for all three disciplinary notices.³

Plaintiff contends that because the gang shear machine was malfunctioning at the time he cut the plates for the St. Louis Dispatch, he should not have been disciplined. That the machine was being repaired, however, does not refute a charge of carelessness by plaintiff. Plaintiff contends that all of the plates cut by him for the Paris Business Forms order were proper and thus there was no basis to discipline him on that occasion. He also notes that there were others responsible for quality control on that order besides plaintiff. Plaintiff states that Mr. Gessell testified in his deposition that "all plates cut by plaintiff had the proper grain direction." The deposition testimony, however, does not state that. According to the

3. As plaintiff received the first disciplinary notice before he filed his PHRC complaint, this action could not possibly have been in retaliation for the filing of that complaint.

deposition, when Imperial received the complaint from Paris Business Forms, Mr. Gessell checked a sample of Imperial's inventory to see if the grain direction on the plates in inventory was proper and found that plates in inventory cut by plaintiff had the proper direction. Mr. Gessell further testified that his investigation to determine who was responsible for the faulty plates sent to Paris Business Forms revealed that "[t]he only source could be that when he [plaintiff] cut some of those plates, he [plaintiff] cut them improperly."

Plaintiff also argues that the stated reasons are not true because Imperial has not shown that new plates were provided or money refunded to the customers. Defendant, however, never asserted financial loss as a reason for the discipline, but rather plaintiff's violation of Rule 24.

There is no evidence that others believed to have violated Rule 24 were not similarly disciplined in accordance with defendant's policy. There is no showing that Imperial did not truly believe plaintiff was responsible for defects reported by these customers.

V. CONCLUSION

The essence of plaintiff's case is that two and two and a half months after learning he had filed a race discrimination claim with the PHRC, defendant disciplined him and that it was wrong or unfair for defendant to fault him or him alone for "mistakes due to carelessness." An employee cannot effectively secure immunity from workplace rules for some period of months by

filing a complaint of discrimination. That plaintiff was disciplined two months after defendant learned of his complaint will not alone sustain a finding of retaliation. An employee who is disciplined will often earnestly feel it is not deserved or that others should share the blame. One cannot reasonably conclude from the competent evidence of record, however, that defendant did not truly believe plaintiff had made mistakes in processing the two orders in question due to carelessness or that plaintiff was treated differently than other employees found to have violated Rule 24.

A judgment cannot be based on speculation or conjecture. Defendant is entitled to judgment on plaintiff's claims on the record presented. Accordingly, defendant's motion will be granted. An appropriate order will be entered.

