

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

KENNETH H. DYBER,
Plaintiff,

v.

NORTHAMPTON COUNTY COMMUNITY
COLLEGE, TRUCK DRIVING ACADEMY,
INC., KENNETH SEZERBAR, JOHN CADY,
ROY HOFFMAN, GARY REYNOLDS AND
MATTHEW CONNELL,
Defendants.

Civil Action
No. 97-3641

Gawthrop, J.

December , 1997

M E M O R A N D U M

Before the court is a Motion to Dismiss, pursuant to Fed. R. Civ. P. 12(b)(6), by Defendants Northampton County Community College ("NCCC") and Matthew Connell, a dean at NCCC. Alternatively, defendants move for a more definite statement as permitted by Fed. R. Civ. P. 12(e). Defendants base their motion to dismiss on two grounds: 1) that plaintiff's complaint alleges a Title VII employment discrimination claim over which this court lacks jurisdiction; and 2) that plaintiff fails to state a claim for which relief can be granted under 42 U.S.C. §1983. Upon the following reasoning, I shall deny defendants' motion.

I. Background

NCCC hired the plaintiff as a truck-driving instructor in October, 1994, a position he retained until his termination in June, 1995. NCCC also had an agreement with Truck Driving Academy, Inc. ("TDA"), an Illinois-based corporation, for TDA to provide truck-driving instructors to NCCC.

The plaintiff alleges that during the time he was employed by NCCC as an instructor, NCCC and TDA discriminated against him, and conspired to discriminate against him, by assigning fewer teaching hours to him than to other instructors solely because of his Jewish faith. The plaintiff asserts that this alleged discrimination caused him to suffer a "loss of economic opportunity and earnings." In addition, Dyber claims that defendant Connell and the defendant instructors subjected him to "numerous taunts, insults, intimidation and derogatory statements."

Plaintiff asserts that the defendants had an obligation to protect him from the discrimination and harassment that he claims penalized him for exercising his First Amendment right to practice his religion. He brought this action pursuant to 42 U.S.C. §1983 and §1988, alleging violation of his rights guaranteed by the First, Second, Fourth, Fifth, and Fourteenth Amendments. He named NCCC and Matthew Connell as defendants, as well as TDA and four individual truck-driving instructors.

II. Standard of Review

In deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a court must accept as true the facts pleaded in the complaint and will draw all reasonable inferences in the plaintiff's favor. See D.P. Enterprises, Inc. v. Bucks County Community College, 725 F.2d 943, 944 (3d Cir. 1984). A court should dismiss a complaint for failure to state a cause of action only if it is clear that no relief could be granted under any set of facts consistent with the complaint's allegations. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

III. Discussion

The moving defendants argue that plaintiff's complaint alleges an employment discrimination claim that should have been brought under Title VII of the Civil Rights Act of 1964, not 42 U.S.C. § 1983. A court has jurisdiction over a Title VII claim only if the plaintiff has filed a claim with the Equal Employment Opportunity Commission ("EEOC"), and the agency has issued a right to sue letter. Here, there is no indication that the plaintiff has filed a discrimination claim with the EEOC or any other administrative agency. The defendants contend that the plaintiff is attempting to avoid the administrative procedures, and jurisdictional requirements, advanced by Congress by filing

his Title VII employment discrimination claim under the guise of a § 1983 claim.

The Third Circuit, however, disagrees. Specifically, that court has held that the comprehensive scheme provided in Title VII does not preempt § 1983, and that "discrimination claims may be brought under either statute, or both." Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1079 (3d Cir. 1990)(citations omitted) (collecting cases and noting consistency of decision with every other court of appeals that has decided the question). In Bradley, the court explained the relationship between Title VII and 42 U.S.C. § 1983: Title VII is a comprehensive anti-discrimination statute that prohibits discrimination in the employment context, while Section 1983 is a vehicle for vindicating rights secured by the United States Constitution or federal law and does not confer any substantive rights. Id.; see also Alexander v. Gardner-Denver Co., 415 U.S. 36, 48-49 (1974)("Title VII was designed to supplement, rather than supplant, existing laws and institutions relating to employment discrimination.").

Accordingly, although plaintiff may have brought his employment discrimination claim under Title VII, he is not preempted from bringing a § 1983 claim alleging religious discrimination in an employment context. This court, then, has subject matter jurisdiction over plaintiff's § 1983 claim, under

28 U.S.C. § 1343. I thus must deny defendants' Motion to Dismiss based on jurisdictional grounds and address defendants' second argument, that plaintiff has failed to state a claim under 42 U.S.C. § 1983.

To state a claim under § 1983, a plaintiff must allege that (1) the defendants deprived the plaintiff of a constitutional right, and (2) the defendants were acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). The moving defendants, a public college and its dean, have not contested the "state action" requirement. Thus, since it appears that the defendants were acting under color of state law, I shall only address whether plaintiff's allegations rise to the level of a constitutional violation.

Dyber pleads that the defendants treated him differently from the other instructors because of his Jewish faith and that this differential treatment caused him economic harm. Defendants urge that the claim of discrimination is not supported by sufficient factual allegations. "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Further, litigation under § 1983, including "litigation against municipal corporations based on claimed constitutional violations by their employees," follows

the liberal pleading standards set forth in the Federal Rules of Civil Procedure. Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 167 (1993).

Here, the plaintiff, a person of the Jewish faith, alleges that he was scheduled for fewer hours, and thus received less pay, because of his religious beliefs. A reduction in hours for improper reasons can be the basis of a discrimination claim under Section 1983. See Adams v. City of McMinnville, 890 F.2d 836 (6th Cir. 1989) (noting plaintiffs did not appeal jury verdict on that claim); Ferner v. Village of Sheffield, 656 F.Supp. 1017 (N.D. Ohio 1987). In addition, the District Court for the Northern District of California found that allegations similar to those in Dyber's complaint were sufficient to support a § 1983 claim and to withstand a motion for judgment on the pleadings. See Diem v. City and County of San Francisco, 686 F.Supp. 806 (N.D. Cal. 1988) (noting that plaintiff would bear the burden of proof at trial). In that case, a firefighter brought a Section 1983 claim against the city alleging that he was subjected to derogatory, ethnic slurs and anonymous threats because of his Jewish heritage. Id. Thus, plaintiff's allegations are sufficient to withstand a motion to dismiss since, if plaintiff were to prove his allegations, he would be entitled to relief.

Defendants also state that Dyber cannot proceed because he has not established a property right to the benefit he seeks.

However, this deficiency is not a complete bar to his bringing a claim under 42 U.S.C. § 1983 for violation of constitutional rights. See Habe v. Fort Cherry School Dist., 786 F.Supp. 1216, 1218 (W.D.Pa. 1992)(holding plaintiff could establish a claim under 42 U.S.C. § 1983 for violation of her Fourteenth Amendment rights without a corresponding property interest).

Thus, Dyber may proceed with his cause of action. Even under the generous standard governing motions to dismiss, however, Dyber has pleaded no facts and made no allegations that would support a claim of constitutional violation under the Second, Fourth, or Fifth Amendments. Accordingly, to the extent that his claims rely on these amendments, these claims are dismissed.

Finally, defendants request that, if their motion to dismiss is not granted, the court order Plaintiff to file an amended complaint under Federal Rule of Civil Procedure 12(e). A court will grant a Rule 12(e) motion if the plaintiff does not adhere to the Rule 8 guidelines. See Schaedler v. Reading Eagle Publication, Inc., 39 F.R.D. 22, 23 (E.D.Pa. 1965) (granting motion for more definite statement where complaint was so vague and ambiguous that defendant could not frame responsive pleading). Federal Rule of Civil Procedure 8(a) requires only "a short and plain statement of the claim," while Rule 8(e)(1) adds that "[e]ach averment of a pleading shall be simple, concise, and

direct." See Conley, 355 U.S. at 47-48 (1957) (stating that "all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests"); Rannels v. S. E. Nichols, Inc., 591 F.2d 242, 247 (3d Cir. 1979).

Here, Dyber has sufficiently set forth his cause of action according to Federal Rule of Civil Procedure 8. The complaint gives the defendants fair notice of the claims against them; plaintiff brings his action under § 1983 for violations of his constitutional rights guaranteed by the First and Fourteenth Amendments. Accordingly, the court shall not require the plaintiff to amend his complaint. Any further information which the defendants require to prepare an appropriate defense should be obtained during pre-trial discovery according to Federal Rules of Civil Procedure 26-37. Conley, 355 U.S. at 47-48 ("Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues.").

An order follows.

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O R D E R

AND NOW, this day of December, 1997, in consideration
of Defendant's Motion to Dismiss pursuant to Fed. R. Civ. P.
12(b)(6):

1. the Motion to Dismiss Plaintiff Dyber's claims pursuant
to 42 U.S.C. § 1983 under the First and Fourteenth
Amendments is DENIED;
2. the remainder of the Motion to Dismiss is GRANTED with
leave to amend the complaint. Plaintiff Dyber may file
an Amended Complaint within thirty (30) days of the
entry of this Order.

BY THE COURT

Robert S. Gawthrop, III, J.