

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

JOSEPH R. RICCIARDI : CIVIL ACTION  
 :  
 v. :  
 :  
 CONSOLIDATED RAIL CORPORATION : NO. 98-3420

**MEMORANDUM AND ORDER**

HUTTON, J.

February 5, 1999

Presently before the Court are Defendant Consolidated Rail Corporation's Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 3), Plaintiff Joseph R. Ricciardi's reply (Docket No. 7), and Defendant's sur reply thereto (Docket No. 8). For the reasons stated below, the Defendant's Motion is **GRANTED IN PART AND DENIED IN PART.**

**I. BACKGROUND**

The Plaintiff, Joseph Ricciardi, alleged the following facts in his complaint. Defendant Consolidated Rail Corporation employed the Plaintiff in its safety department. On May 20, 1996, the Plaintiff suffered an injury while performing his job. On July 23, 1996, the Defendant terminated the Plaintiff's employment. Subsequently, Plaintiff brought a suit against the Defendant in this district under the Federal Employers' Liability Act (FELA). In late 1997, a jury found in favor of the Defendant.

Thereafter, Plaintiff filed this action. The complaint has three counts: (1) a state law claim for wrongful discharge alleging failure to afford due process rights prior to termination- Count I; (2) a state law claim for wrongful discharge alleging retaliation for filing the FEHA lawsuit- Count II; and (3) a claim under the Americans with Disabilities Act (ADA) - Count III. On September 8, 1998, the Defendant filed this motion to dismiss or, in the alternative, for summary judgment.

## **II. DISCUSSION**

### **A. Standards**

#### **1. Motion to Dismiss Standard**

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Accordingly, the plaintiff does not have to "set out in detail the facts upon which he bases his claim." Conley v. Gibson, 355 U.S. 41, 47 (1957). In other words, the plaintiff need only to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Id.

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure

12(b)(6),<sup>1</sup> this 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). The Court will only dismiss the complaint if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 249-50 (1989) (quoting Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)).

## **2. Motion for Summary Judgment Standard**

The purpose of summary judgment is to avoid a pointless trial in cases where it is unnecessary and would only cause delay and expense. See Goodman v. Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). 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 a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has

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<sup>1</sup> Rule 12(b)(6) states as follows:

Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6).

the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmoving party. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

## **B. Defendant's Motion**

Defendant argues that all three counts of Plaintiff's complaint should be dismissed. First, Defendant argues that Plaintiff's Count I and II, claims for wrongful discharge, should be dismissed because wrongful discharge claims are only available to at-will employees and Plaintiff was not an at-will employee. Second, Defendant argues that Count II should be dismissed because it is preempted by the Railway Labor Act. Third and finally, Defendant contends that Plaintiff's Count III, a claim under the ADA, should be dismissed because it is time barred. The Court addresses each of these arguments in turn.

### **1. Count I and II- Wrongful Discharge Claims**

Defendant first argues that Plaintiff has set forth no facts in his complaint that would establish that he is an at-will employee and, thus, permitted to bring wrongful discharge claims under Pennsylvania law. An action for wrongful discharge may be brought only where such discharge is either made with specific intent to harm the employee or is against public policy. See Veno v. Meredith, 515 A.2d 571, 577 (Pa. Super. Ct. 1991); see also Geary v. United States Steel Corp., 319 A.2d 174 (Pa. 1974); Booth v. McDonnell Douglas Truck Servs., Inc., 585 A.2d 24 (Pa. Super. Ct. 1991). The Pennsylvania tort action for wrongful discharge, however, is available only when the employment relationship is at-will. See Engstrom v. John Nuveen & Co., 668

F. Supp. 953, 958 (E.D. Pa. 1987) ("Pennsylvania recognizes a cause of action for wrongful discharge only when the employment is at-will because terminated employees who are not at-will may pursue their claims under breach of contract theories."). Where alternative remedies may be pursued such as the filing of a grievance or a request for relief through administrative channels, the plaintiff does not have a cause of action for wrongful discharge or termination. See id.

In this case, it is undisputed that the Plaintiff was not an at-will employee. Rather, the Plaintiff's employment with the Defendant was covered under a collective bargaining agreement. Indeed, in his response to the motion to dismiss, the Plaintiff failed to address Defendant's argument that his wrongful discharge claims should be dismissed because he was not an at-will employee. Therefore, the Court dismisses Counts I and II of Plaintiff's complaint.<sup>2</sup>

Moreover, as Count II alleges wrongful discharge based upon failure to afford due process rights provided under the collective bargaining agreement, this claim should also be dismissed pursuant to the Railway Labor Act ("RLA"). Section 3 of the Railway Labor Act provides for the administrative

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<sup>2</sup> While the legal cause of action is the same in Count I and II, the factual theories are different. Count I alleges that the Defendant failed to afford the Plaintiff due process rights prior to termination. Count II alleges that the Defendant discharged him for filing a lawsuit under the FELA. While Plaintiff's Count II is labeled "Retaliation," like Count I, it is nonetheless based upon a cause of action for wrongful discharge.

adjudication by the National Railway Adjustment Board ("NRAB") of "minor disputes" between employees and a railroad that grow out of grievances or an interpretation of a collective bargaining agreement. See 45 U.S.C. § 153(i) (1994). In most cases, the administrative procedures provided by the RLA are considered the exclusive procedures available to employees who have "minor disputes" with a railroad. See Andrews v. Louisville & Nashville R.R., 406 U.S. 320, 322 (1972). As a general matter, disagreements about whether a discharge from employment was proper are matters within the jurisdiction of the NRAB. See id. at 324; Capraro v. United Parcel Serv. Co., 993 F.2d 328, 333 (3d Cir. 1993) (noting that a claim of wrongful discharge is a "minor dispute" under the RLA and, thus, a matter usually within the exclusive jurisdiction of the NRAB).

In this case, the wrongful discharge claim under Count II requires an interpretation of Plaintiff's due process rights prior to termination afforded to him under the collective bargaining agreement. Plaintiff's complaint states: "Plaintiff was terminated from his employment with the defendant without due process as provided in, but not exclusively by, the collective bargaining agreement governing plaintiff's employment with the defendant." Pl.'s Compl. at ¶ 9. While the Plaintiff argues that this claim is not exclusively based upon the collective bargaining agreement as his wrongful discharge claim under Count

II does not even mention the collective bargaining agreement, it is well settled that a plaintiff cannot avoid the RLA by resort to this type of artful pleading. See Capraro, 993 F.2d at 333 (noting that, if this type of artful pleading were allowed, the RLA would have little or no effect as plaintiffs could avoid the statute by merely asserting independent rights and claims). Therefore, Count II must also be dismissed under the RLA.\<sup>3</sup>

## **2. Count III - ADA Claim**

Finally, the Defendant argues that the Plaintiff cannot maintain his employment discrimination claim under the ADA because he did not satisfy the statutory filing requirements of 42 U.S.C. § 2000e-5(e), which requires prospective ADA plaintiffs to file charges with the EEOC within 300 days of the alleged discrimination before bringing suit.\<sup>4</sup> Plaintiff concedes that

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<sup>3</sup> There are several exceptions to the exclusive jurisdiction of the NRAB. See Sisco v. Consolidated Rail Corp., 732 F.2d 1188, 1190 (3d Cir. 1984) (noting that some of the exceptions include: "(1) when the employer repudiates the private grievance machinery; (2) when resort to administrative remedies would be futile; and (3) when the employer is joined in a [duty of fair representation] claim against the union."). Nevertheless, the Plaintiff does not argue that this case fits any of the recognized exceptions in the Third Circuit, and indeed, this appears to be the case.

<sup>4</sup> In relevant part, section 2000e-5(e)(1) reads:

A charge under this section shall be filed [with the EEOC] within one hundred and eighty days after the alleged unlawful employment practice occurred . . . , except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within

(continued...)

his EEOC charge was untimely but asks this Court to equitably toll the limitations period. Plaintiff contends that equitable tolling is warranted in this case because the EEOC lost his original, timely-filed charge which forced him to refile after the 300 day limitations period.

Under the ADA, an employer is prohibited from discriminating against a "qualified individual with a disability, because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a) (1994). A "qualified individual with a disability" is defined as "an individual with a disability, who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." Id. § 12111(8). In adjudicating cases brought under the ADA, courts apply the burden-shifting framework applicable to cases brought under Title VII of the Civil Rights Act of 1964. See id. § 12117; McNemar v. Disney Stores, Inc., 91 F.3d 610, 619 (3d Cir. 1996), cert. denied, 117 S. Ct. 958 (1997).

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<sup>4</sup>(...continued)  
three hundred days after the alleged employment practice  
occurred . . . .

42 U.S.C. § 2000e-5(e)(1).

The ADA adopts the enforcement scheme and remedies of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17. See 42 U.S.C. § 12117(a). The Civil Rights Act requires a claimant who wishes to bring a civil suit, to first file a charge of discrimination with the EEOC within 180 days of the last alleged act of discrimination. See 42 U.S.C. § 2000e-5(e)(1) (1994); Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1385 (3d Cir. 1994). However, if a claimant initially files a complaint with a state or local agency with authority to adjudicate the claim, a charge can be filed with the EEOC up to 300 days after the discriminatory act. See id.

The timely exhaustion of administrative procedures is therefore a precondition to the maintenance of a civil suit under the ADA. See Brown v. Gen. Servs. Admin., 425 U.S. 820, 832 (1976). The rationale supporting this requirement, according to the Supreme Court, lies in affording the EEOC the "opportunity to settle disputes through conference, conciliation, and persuasion before the aggrieved party [is] allowed to file a lawsuit." Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974). Thus, timely filing with the EEOC is not a jurisdictional requirement. See Zipes v. Trans World Airways, Inc., 455 U.S. 385, 393 (1982). As a mere condition precedent to suit, it is subject to "waiver as well as tolling when equity so requires." Id. The Third

Circuit has noted that equitable tolling is particularly appropriate in cases involving "lay persons unfamiliar with the complexities of the administrative procedures.'" Kocian Getty Refining & Marketing Co., 707 F.2d 748, 754 (3d Cir. 1983) (quoting Hart v. J.T. Baker Chemical Co., 598 F.2d 829, 832 (3d Cir. 1979)); see also Bronze Shields, Inc. v. New Jersey Dep't of Civil Serv., 667 F.2d 1074, 1085 (3d Cir. 1981).

This Court finds sufficient justification for equitable tolling. While the Defendant concedes that it is "plausible" that the EEOC lost his first, timely-filed charge, the Defendant submits that the Plaintiff is simply fabricating this story. See Def.'s Mem. of Law in Reply at 5. At this stage of the proceeding, however, the Court must accept the Plaintiff's version of the facts. See Johnson v. C & L, Inc., No.CIV.A.95-6381, 1996 WL 308282, at \*3 (N.D. Ill. June 6, 1996) ("[I]n light of the remedial intent of Title VII, where relevant facts are in dispute at the motion to dismiss phase, the court will not dismiss Title VII counts for a possible failure to meet filing requirements."). Thus, this Court must accept the Plaintiff's sworn affidavit which states that he filed a timely charge in November 1996 that the EEOC lost. See Pl.'s Aff. at ¶¶ 1-5. Under these circumstances, the Court finds that equitable tolling is appropriate because the Plaintiff should not be punished for the EEOC's failure to maintain their records. See Johnson, 1996

WL 308282, at \*3 (refusing to grant defendant's motion to dismiss where the parties disputed whether plaintiff filed the charge timely on June 11 or untimely on July 18 because it is not entirely impossible that the EEOC, "oft criticized for delay and bureaucratic confusion, misplaced and failed to promptly stamp a timely-filed charge"). Accordingly, the Court denies Defendant's motion to dismiss.

An appropriate Order follows.

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O R D E R

AND NOW, this 5th day of February, 1999, upon consideration of the Defendant Consolidated Rail Corporation's Motion to Dismiss or, in the Alternative, for Summary Judgment (Docket No. 3), IT IS HEREBY ORDERED that:

(1) The Defendant's Motion to Dismiss or, in the Alternative, for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**; and

(2) Counts I and II of Plaintiff's complaint are **DISMISSED**.

BY THE COURT:

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HERBERT J. HUTTON, J.