

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

WILLIE F. WILLS : CIVIL ACTION  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 :  
 CONSOLIDATED RAIL CORP. :  
 :  
 Defendant : NO. 99-CV-2811

MEMORANDUM

**Padova, J.**

**April 7, 2000**

Plaintiff Willie F. Wills filed the instant action against Consolidated Rail Corporation alleging violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Rehabilitation Act of 1973, 29 U.S.C. § 794. Before the Court is Defendant's Motion to Dismiss the Complaint. For the following reasons, the Court grants in part and denies in part Defendant's Motion.

**I. BACKGROUND**

Plaintiff worked as a car inspector and supervisor for Consolidated Rail Corporation ("Conrail") from 1973 until January of 1995. In February of 1993, Plaintiff sustained an injury to his neck and went on sick leave. Both in June of 1993 and in January of 1995, Plaintiff unsuccessfully attempted to return to his position of car inspector. In each instance, Plaintiff immediately reinjured his neck allegedly due to Conrail's failure

to accommodate his medical condition. After the January 1995 incident, Plaintiff's supervisor forbade Plaintiff from returning to work with any restrictions.

Plaintiff originally brought his claims as part of a class action filed in 1996 by current and former Conrail employees in the United States District Court for the Western District of Pennsylvania, alleging that Conrail had engaged in a pattern and practice of violating the Americans with Disabilities Act ("ADA") and the Rehabilitation Act of 1973 ("Rehabilitation Act"). Mandichak v. Consolidated Rail Corporation, Civ. A. No. 94-1071 (W.D.Pa. 1998). The class to which Plaintiff belonged was originally certified on October 26, 1996. After trial on August 20, 1998, however, the Mandichak court decertified the class, leaving the class members free to assert individual claims against Conrail. See Mandichak, No. 94-1071 (W.D.Pa. August 20, 1998)(order entering judgment). Plaintiff filed the instant lawsuit on June 2, 1999.

## **II. STANDARD OF REVIEW**

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle him to relief. ALA, Inc. v. CCAIR, Inc., 29 F.3d 855, 859 (3d Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.

## **III. DISCUSSION**

Defendant argues for dismissal on the ground that Plaintiff failed to exhaust the administrative remedies required under the ADA and Rehabilitation Act prior to filing the instant suit.

A. Rehabilitation Act Claim

Plaintiff asserts a claim under section 504 of the Rehabilitation Act, which bars private entities who receive federal funding from discriminating on the basis of disability. See 29 U.S.C. § 794 (1994).<sup>1</sup> The United States Court of Appeals for the Third Circuit has recently held that plaintiffs raising claims under section 504 who are not federal employees need not pursue administrative remedies as a prerequisite for filing suit in court.<sup>2</sup> Freed v. Consolidated Rail Corp., 201 F.3d 188, 194 (3d Cir. 2000). The Court, therefore, denies Defendant's Motion with respect to Plaintiff's Rehabilitation Act claim.

B. ADA Claim

Plaintiff also seeks relief under the ADA. Prior to filing suit under the ADA, a plaintiff must first file a charge with the Equal Employment Opportunity Commission ("EEOC") or a comparable state administrative agency, and obtain a right-to-sue letter in accordance with procedures established for other discrimination

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<sup>1</sup>The Court assumes for the purpose of this Motion that Defendant receives federal funding and is subject to section 504.

<sup>2</sup>Freed also involved a former Mandichak class member who had failed to exhaust her administrative remedies prior to initiating her individual suit against Conrail. See id. at 190.

claims under Title VII, 42 U.S.C. § 2000e (1994). See 42 U.S.C. § 12117(a) (1994); Reddinger v. Hospital Central Services, Inc., 4 F. Supp. 2d 405, 409 (E.D.Pa. 1998). Such a charge must be filed within either 180 or 300 days of the alleged discriminatory act. See 29 C.F.R. § 1601.13 (2000). The purpose of requiring plaintiffs to file charges with the EEOC is to give notice to the charged party and promote voluntary compliance without litigation through informal administrative conciliation. Ingels v. Thiokol Corp., 42 F.3d 616, 625 (10th Cir. 1994); Reddinger, 4 F. Supp. 2d at 409.

Plaintiff admits that he has not individually satisfied the administrative exhaustion requirement. However, Plaintiff contends that he is excepted from any exhaustion requirement under 'the single filing rule,' because of his prior membership in the Mandichak class. The 'single filing rule' relieves class members in discrimination cases of the obligation to individually exhaust administrative remedies where the class representatives have done so. McNasby v. Crown Cork & Seal Co., 888 F.2d 270, 282 (3d Cir. 1989); Payne v. Consolidated Rail Corp., Civ. A. No. 99-2801, 2000 WL 190229, at \*3 (E.D.Pa. Feb. 10, 2000). Plaintiff contends that the Mandichak court's subsequent decertification of the class should not affect his exemption from the exhaustion requirements because the notice to Conrail and conciliation opportunity created by the class representatives' EEOC charges satisfies the purpose of the exhaustion requirement.

Federal courts within Pennsylvania have reached conflicting decisions on this issue. United States district courts in the Western District of Pennsylvania hold that former Mandichak class members need not exhaust administrative remedies before bringing an individual claim under the ADA. Ray v. Consolidated Rail Corporation, Civ. A. No. 98-1757, at 7 (W.D.Pa. June 29, 1999); McKernan v. Consolidated Rail Corp., Civ. A. No. 98-1758, at 6 (W.D.Pa. June 29, 1999); Hilton v. Consolidated Rail Corp., Civ. A. No. 98-364, at 6 (W.D.Pa. June 23, 1999); Mayo v. Consolidated Rail Corp., Civ. A. No. 96-656, at 9 (W.D.Pa. June 23, 1999); In re Consolidated Rail Corp. A.D.A. Litig., Civ. A. Nos. 98-1669, 98-1671, 98-1672, and 98-1759, at 9-10 (W.D.Pa. Mar. 23, 1999). The In re Consolidated Rail Corp. court reasoned that since the rationale of the exhaustion requirement had already been fulfilled by the class representatives while the class was still certified, no additional purpose would be served by requiring members to file individual charges individually after decertification of the class. In re Consolidated Rail Corp., at 9.

Where the class-wide nature of the allegations is made clear in the class representative's administrative charge, the party charged and the administrative agency has notice of the claims and conciliation can be pursued. Thus, filing a class-wide charge effectively places the EEOC and the party charged in the same position they would be in if all of the class members had filed individual charges.

Id. The court, therefore, allowed the plaintiff to "piggyback on

the timely-filed charges of the class plaintiffs." Id. at 10. Subsequent cases in the Western District followed the In re Consolidated Rail Corp. result expressly for the sake of consistency within the district. Ray, Civ. A. No. 98-1757, at 8; McKernan, Civ. A. No. 98-1758, at 8; Hilton, Civ. A. No. 98-364 at 7; Mayo, Civ. A. No. 96-656 at 10.

On the other hand, federal district courts in the Eastern District of Pennsylvania have uniformly required former class members to individually exhaust their administrative remedies prior to filing suit under the ADA. Foreman v. Consolidated Rail Corp., No. Civ. A. 99-2804, 2000 WL 233471, at \*2 (E.D.Pa. Feb. 25, 2000); Payne v. Consolidated Rail Corp., No. CIV. A. 99-2801, 2000 WL 190229, at \*4 (E.D.Pa. Feb. 10, 2000); Koban v. Consolidated Rail Corp., No. Civ. A. 98-5872, 1999 WL 672657, at \*2 (E.D.Pa. Aug. 13, 1999). In Koban, the court noted the lack of Third Circuit precedent for extending the single filing rule to a decertified class. Koban, 1999 WL 672657, at \*2. The Payne court disagreed with the reasoning set forth in In re Consolidated Rail by pointing out that in class action discrimination cases, neither the administrative agency nor the charged party has the opportunity to attempt conciliation with unknown potential class members who failed to file administrative charges. Payne, 2000 WL 190229, at \*4.

The Court agrees with the reasoning and result reached by the Koban and Payne courts. Allowing former class members to

circumvent the administrative relief process directly contravenes Congress' intent to foster voluntary compliance with discrimination laws. Furthermore, the Third Circuit Court of Appeals has not endorsed the extension of the single filing rule in this manner. Given the lack of precedent and the harm to Congressional intent that would result from allowing decertified class members to evade the exhaustion requirements, the Court grants Defendants' Motion with respect to Plaintiff's ADA claim. An appropriate Order follows.

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**O R D E R**

**AND NOW**, this day of April, 2000, upon consideration of Defendant's Motion to Dismiss (Doc. No. 3), Plaintiff's Opposition thereto (Doc. No. 6), and Defendant's Reply thereto (Doc. No. 8), **IT IS HEREBY ORDERED** that Defendant's Motion is **GRANTED** in part and **DENIED** in part.

1. Plaintiff's claim under the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., is **DISMISSED** with prejudice.
2. Plaintiff's claim under the Rehabilitation Act of 1973, 29 U.S.C. § 794, may proceed.

BY THE COURT:

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John R. Padova, J.