

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

ABDJUL L. MARTIN,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 00-CV-6029
v.	:	
	:	
ENTERPRISE RENT-A-CAR,	:	
	:	
Defendant.	:	

MEMORANDUM AND ORDER

BUCKWALTER, J.

January 15, 2003

Presently before the Court is Defendant's Motion for Summary Judgment, Plaintiff's Response, and Defendant's Reply thereto. For the reasons stated below, Defendant's Motion for Summary Judgment is **GRANTED**.

I. BACKGROUND

Abdul L. Martin (hereinafter referred to as "Martin" or "Plaintiff"), an African-American and a Seventh Day Adventist, was hired by Enterprise Rent-A-Car (hereinafter referred to as "Enterprise" or "Defendant") as a management trainee in or about April 1998. Def.'s Mot. Summ. J.-Ex. B, Martin Dep. (hereinafter referred to as "Martin Dep.") at 110. At the time of his hire, Plaintiff claims he informed Defendant that as a result of his affiliation with the Seventh Day Adventists,¹ he would be unable to work on Saturdays. Id. at 120.

1. As a Seventh Day Adventist, Martin observes Saturday as the Sabbath. Martin Dep. at 63. As such, Martin is required to worship on Saturday and prefers not to work on that day.

Martin began his career with Enterprise at Defendant's Allentown branch on April 22, 1998. Def.'s Mot. Summ. J.-Ex. E, Martin Dev. Plan. Although Martin was the only African-American employee at the Allentown branch, he was not the only management trainee. Along with Martin, Mike Bauer ("Bauer") and Rebecca Rommeney ("Rommeney"), both of whom are white, also worked at the Allentown branch as management trainees. The Allentown branch also consisted of Adam Lieb ("Lieb"), who served as the assistant manager, and Edward Davidheiser ("Ed Davidheiser"), who served as the branch manager. Ed Davidheiser, Lieb, and Bauer were already working at Allentown when Martin started. Rommeney started in June 1998 and worked at Allentown until the fall of 1998 when she asked to be transferred to another branch. Def.'s Mot. Summ. J.-Ex. G, Rebecca Rommeney Statement (hereinafter referred to as "Rommeney Statement") at ¶ 2, ¶ 15.

Management trainees participate in an on-going training program designed to prepare them for the position of assistant manager. Martin Dep. at 168-170, 182, 185. The program does not provide any form of lockstep advancement procedures for employees. Id. at 168-170, 182, 185. Rather, each individual employee and his manager share the responsibility for ensuring that the employee is moving forward in the learning process. Id. at 182, 185. Every employee's path toward promotion is different, based upon the individual's skills and qualification, and the training provided by his manager. Id. at 168-170, 182, 185.

Management trainees are evaluated periodically and are required to take certain tests to confirm they have mastered certain skills. Id. at 182-83. A management trainee must pass the Management Qualification Interview ("MQI") to become eligible for promotion to the position of assistant manager. Id. at 183-84. The branch manager is expected to train

management trainees to take the MQI. Id. at 182-83. According to Martin, the time at which a trainee takes the MQI is “not set in stone.” Id. at 182. Management trainees are not guaranteed promotion to the assistant manager position after a stated period of training. Id. at 169-70. Martin noted it could take as long as eighteen months for a trainee who successfully passed the MQI to be promoted to assistant manager. Id. at 170.

As the Allentown branch manager, Ed Davidheiser was expected to prepare the management trainees for the MQI. Id. at 182-83. Martin, Rommeney, and Bauer all complained that Ed Davidheiser did not train them for the MQI. See Def.’s Mot. Summ. J.-Ex. A, Meredith Hudson Statement (hereinafter referred to as “Hudson Statement”) at ¶ 9; Def.’s Mot. Summ. J.-Ex. G, Rommeney Statement at ¶ 12. Martin even complained about the lack of training to Meredith Hudson (“Hudson”), the Group Rental Manager, on behalf of all the Allentown management trainees. Hudson Statement at ¶ 10. He told Hudson that Ed Davidheiser was not training any of the management trainees. Id. In the absence of such training, none of the management trainees could take the MQI which was necessary for promotion. Martin Dep. at 183-84.

As a Seventh Day Adventist, Martin views Saturday as the Sabbath, and thus, prefers to worship rather than work on Saturday. At Enterprise, management trainees were not required to work every Saturday; rather Saturdays rotated among the employees at the branch. Id. at 155-56. During his first month of employment at the Allentown branch, Martin was put on the schedule to work a Saturday. Id. at 154-55. Martin claims to have brought this concern to Ed Davidheiser’s attention, and Ed Davidheiser told Martin he would take care of it. Id. at 156-57. According to Martin, his name was not removed from the schedule, and he worked that Saturday.

Id. at 158. Martin claims this continued throughout his tenure at Allentown and that he worked several Saturdays between April, 1998 and January, 1999. Id. at 160.

In addition to his dissatisfaction with the lack of training and occasional work on Saturday, Martin also became concerned by what he felt to be a hostile work environment at Enterprise's Allentown branch. Martin describes certain incidents that he found offensive to either his race, religion, or both.

On one occasion, a man of Indian descent who smelled strongly of body odor came into the Allentown branch while Martin and Ed Davidheiser were working. Id. at 194-195. After the man left, Ed Davidheiser commented, "Why don't those people use deodorant?" Id. at 195. Martin concluded this comment constituted both racial and religious harassment. Id. at 196.

Second, Martin contends that Ed Davidheiser came in to work "hung over" twice. Id. at 213. Martin concluded that Ed Davidheiser's hangovers were "intolerable" and "unbearable," and constituted harassment of Martin based on both his race and religious beliefs. Id. at 213.

Third, on a "handful" of occasions, Ed Davidheiser made "degrading" comments about women—"[b]asically stating that women can be bitches." Id. at 195. Ed Davidheiser also said "that even his girlfriend acts like a bitch." Id. Martin felt these comments constituted harassment on the basis of his religion, but not his race. Id. at 195-196.

Finally, on one occasion while he was working at the Allentown branch, Kurt Davidheiser made a comment to Martin that a foreign born co-worker's language barrier made him ill-suited to working at Enterprise. Id. at 197. Although the co-worker was not African-

American, Martin considered this comment to constitute racial, but not religious, discrimination. Id.

In January 1999, Martin transferred to Enterprise's Quakertown branch where he worked until March 1999. Id. at 193. Martin was transferred there to provide him with the opportunity to improve his skills to become an assistant manager. Id. at 222. Martin also states that he was transferred due to the claims he made that Ed Davidheiser did not train him properly. Id. Martin alleges that when he told Quakertown branch manager Kurt Weiland ("Weiland") that he did not want to work on Saturdays due to his religious beliefs, Weiland stated that "working on weekends is part of the atmosphere that you have to deal with in order to get promoted." Id. at 227. Martin claims that Weiland also told him that he would "have to make accommodations if [he] want[ed] to be promoted and if [he] want[ed] to take the MQI exam." Id. at 228. Despite these comments, Martin states that no one at the Quakertown branch, including Weiland, told him that he would be denied a promotion if he wanted to go to church on Saturdays. Id. at 229.

On or about April 1, 1999, Martin transferred to Enterprise's Easton branch, where he worked for two weeks until he quit on April 16, 1999. Id. at 193. While there, Martin complains that Mark Buckwalter ("Buckwalter"), the City Manager for that region, said "Abdjul, you're not a team player. Guys find that you're not a team player, being the only guy here, so we're going to have to get around that." Id. at 203. Martin found this comment to be offensive from a racial standpoint. Id. at 204-05.

Martin resigned from Enterprise on Friday, April 16, 1999. Def.'s Mot. Summ. J.-Ex.L, Martin Resignation Letter. In his letter of resignation, Martin stated that he addressed

such problems as “vulgarity in the work place, the inability to work on Saturdays due to religious beliefs and not receiving any training from managers.” Id.

Martin filed the instant lawsuit alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, and Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, for failure to train and failure to promote based on race and religious discrimination, for failure to accommodate religious beliefs, a hostile work environment, and constructive discharge. Defendant filed a Motion for Summary Judgment, to which the Plaintiff responds.

II. STANDARD OF REVIEW

A motion for summary judgment will be granted where all of the evidence demonstrates “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). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Since a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted is “whether reasonable minds may differ as to the verdict.” Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

III. DISCUSSION

Title VII makes it unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Since Plaintiff in this case seeks to establish disparate treatment discrimination through indirect evidence, the Court follows the evidentiary framework first set forth by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and subsequently refined in Texas Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). Under this framework, Plaintiff/employee must show, by a preponderance of the evidence, a prima facie case of discrimination. McDonnell Douglas, 411 U.S. at 802. If the employee is able to do this, the burden shifts to the employer to articulate some legitimate, nondiscriminatory reason for its actions against the employee. Id. If the employer can meet this burden, then the burden shifts back to the employee to prove, by a preponderance of the evidence, that the reasons articulated by the defendant were actually pretext for discriminatory practices. Id. at 804. Summary judgment is appropriate on behalf of the employer if the employee fails to meet its burden at either the prima facie or pretext stage in the framework.

The Court also notes that the legal standard for a § 1981 case is identical to the standard in a Title VII case. See Lewis v. Univ. of Pittsburgh, 725 F.2d 910, 915, n.5 (3d Cir. 1983); Bullock v. Children’s Hosp. of Philadelphia, 71 F.Supp.2d 482, 485 (E.D. Pa. 1999). Thus, the Court will analyze Martin’s claims only under Title VII below; however, the analysis and conclusions are equally applicable to Martin’s claims of discrimination in violation of § 1981. See Bullock, 71 F.Supp.2d at 485.

A. Race Discrimination

Plaintiff alleges two violations of race discrimination under Title VII—failure to train and failure to promote. The Court will address each separately.

(1) Failure to Train

To establish a prima facie case of failure to train under Title VII, Martin must present evidence that he: (1) is a member of a protected class; (2) is qualified for the position; (3) suffered an adverse employment action under the circumstances that would give rise to an inference of discrimination; and (4) is similarly situated to individuals who are not of the same class and were treated more favorably. See Briody v. American Gen. Fin., Co., No. 98-2728, 1999 U.S. Dist. LEXIS 8405, at *6 (E.D. Pa. May 27, 1999). “The Supreme Court has defined a tangible, adverse employment action as a ‘significant change in employment status, such as hiring, firing, failing to promote, reassignment, or a decision causing a significant change in benefits.’” Weston v. Pennsylvania, 251 F.3d 420, 430-31 (3d Cir. 2001) (quoting Burlington Indus. Inc. v. Ellerth, 524 U.S. 742, 749 (1998)).

As an African-American male, Plaintiff is a member of protected class, thereby fulfilling the first prong of his prima facie case. For the purposes of this analysis, the Court assumes that Plaintiff fulfills the second element as well—that he was qualified for the position. But Plaintiff fails to establish the third and fourth elements of the prima facie case—that an adverse employment action occurred giving rise to an inference of discrimination and that he was treated negatively vis-a-vis similarly situated individuals who were not members of the protected class.

Plaintiff alleges that he was denied training for the MQI test based on his race. To prevail on this claim, Martin must show that someone not in his protected class was (1) trained for the MQI, (2) permitted to take the MQI, and (3) promoted to assistant manager by Ed Davidheiser in a shorter time period than he. Martin, however, fails to do this. He merely alleges that the two other management trainees in the Allentown office, Bauer and Rommeney, both of whom are white, received some training from Ed Davidheiser. There is no evidence, however, that Ed Davidheiser was training these white employees for the MQI. In fact, Martin, Bauer, and Rommeney all complained that Ed Davidheiser did not adequately train them for the MQI. See Hudson Statement at ¶ 9-10; Rommeney Statement at ¶ 12. There is no evidence that either Rommeney or Bauer took the MQI, and the record indicates that neither Bauer nor Rommeney was ever promoted to the position of assistant manager. See Def.'s Mot. Summ. J.-Ex. I, Shannon Moyers Statement (hereinafter referred to as "Moyers Statement") at ¶ 4, 7.

Plaintiff also alleges that a comment made by City manager Buckwalter while Martin was employed at Enterprise's Easton branch indicates that race was a factor in denying Plaintiff training for the MQI. According to Martin's testimony, Buckwalter told him, "Abdul, you're not a team player. Guys find that you're not a team player being the only guy here, so we're going to have to get around that." Martin Dep. at 203. Martin contends that being described as the "only guy here" when he was the only African-American management trainee in the region is evidence that Martin's race was a factor in being denied such training. See Pl.'s Resp. at Section B(1). There is no evidence, however, that Buckwalter's alleged "team player" comment was linked to Martin's race. Without more, Plaintiff has failed to make a prima facie showing that he was treated differently than a similarly situated person in an unprotected class.

(2) Failure to Promote

Plaintiff also contends that he was passed over for promotion to assistant manager in favor of white employees who had less work experience and lower sales numbers. Pl.'s Compl. at ¶ 15. To present a prima facie claim for the failure to promote, Plaintiff must show, in addition to his protected-class status, that he: (1) applied for and had the requisite qualifications for an available job; (2) was rejected for that position; and (3) after Plaintiff's rejection, Defendant continued to seek applications from individuals with Plaintiff's qualifications. See Bray v. Marriot Hotels, 110 F.3d 986, 990 (3d Cir. 1997) (citing McDonnell Douglas, 411 U.S. at 802); Kovoor v. Sch. Dist. of Philadelphia, 211 F.Supp.2d 614, 624 (E.D. Pa. 2002). Though a plaintiff must have applied for the position in order to satisfy his prima facie case for failure to promote, courts have not interpreted this requirement rigidly. If a plaintiff has not submitted a formal application for a position, he may still make out a claim "as long as the plaintiff made every reasonable attempt to convey his interest in the job to the employer." EEOC v. Metal Serv. Co., 892 F.2d 341, 348 (3d Cir. 1990). Additionally, Plaintiff must show that a similarly situated individual from a non-protected class was promoted instead of him. Moss v. Koolvent Aluminum Prods., Inc., 962 F.Supp. 657, 669 (W.D. Pa. 1997). Similarly situated employees are ones who "must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." Morris v. GE Financial Assurance, No. 00-3849, 2001 WL 1558039, at *6 (E.D. Pa. Dec. 3, 2001); accord O'Neill v. Sears, Roebuck and Co., 108 F.Supp.2d 433, 439 (E.D. Pa. 2000); Watkins v. Children's Hosp., No. 97-1510, 1997 U.S. Dist. LEXIS 19268, at *5 (E.D. Pa. Dec. 3, 1997).

Plaintiff fails to establish a prima facie case for failure to promote as he does not show that similarly situated individuals from a non-protected class were promoted instead of him. Martin claims that Bauer, Eric Gramlich (“Gramlich”), Anthony Chaney (“Chaney”), and Chris Colipetro (“Colipetro”) were promoted to assistant manager over him. Def.’s Mot. Summ. J.-Ex. M, Pl.’s Answers to Interrogs. at ¶ 3. Gramlich, Chaney, and Colipetro, however, all had different managers from Martin. Martin Dep. at 191. Even if they were promoted to assistant manager as Martin alleges, Martin Dep. at 191, this evidence is insufficient to prove a prima facie case as these employees were employed at different locations, subject to different supervisors employing different management decisions. See Morris, 2001 WL 1558039, at *6 (stating that similarly situated employees are ones who “must have dealt with the same supervisor”). Martin did work alongside Bauer in the same branch, and both were under the supervision of Ed Davidheiser. Despite this, Martin produces no evidence that Bauer ever took and passed the MQI, Martin Dep. at 192, and the record indicates that Bauer was not promoted to the position of assistant manager. Moyers Statement at ¶ 4. As such, Martin produces no evidence that similarly situated employees were promoted instead of him. Accordingly, summary judgment in favor of Defendant is appropriate.

B. Religious Discrimination

Plaintiff also alleges that Defendant failed to train and promote him due to his affiliation with the Seventh Day Adventists.

To prove a claim under the “disparate treatment” theory of religious discrimination,² the plaintiff must demonstrate that (1) he is a member of a protected class, (2) he was qualified and rejected for the position sought, and (3) nonmembers of the protected class were treated more favorably. Abramson v. William Patterson College of New Jersey, 260 F.3d 265, 281-82 (3d Cir. 2001). As in the case of a claim for discrimination based on race under Title VII, if an employee shows, by a preponderance of the evidence, a prima facie case of discrimination, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for its actions against the employee. McDonnell Douglas, 411 U.S. at 802. If the employer can meet this burden, then the burden shifts back to the employee to prove, by a preponderance of the evidence, that the reasons articulated by the defendant were actually pretext for discriminatory practices. Id. at 804.

As with his claim for race discrimination, Plaintiff fails to establish a prima facie case for religious discrimination under Title VII. Plaintiff does satisfy the first prong as he is a member of a protected group, the Seventh Day Adventists. Plaintiff fails to demonstrate, however, how nonmembers of the protected class were treated more favorably.

Plaintiff does not set forth sufficient evidence that non-Seventh Day Adventist employees were treated more favorably. Although Martin claims that his co-workers at the Allentown branch, Rommeney and Bauer, neither of whom are Seventh Day Adventists, received training, Martin Dep. at 189, there is no evidence that they were trained for the MQI. Additionally, there is no evidence that either took the MQI, and the record is clear that neither

2. Employees may assert two theories of religious discrimination: “disparate treatment” and “failure to accommodate.” The “disparate treatment” prima facie case for religious discrimination differs from the prima facie case for failure to accommodate, discussed infra at Subsection D.

Bauer nor Rommeney was ever promoted to the position of assistant manager. Moyers Statement at ¶ 4, 7. Martin also points to comments allegedly made by Quakertown branch manager Weiland that Martin was not a team player and that he would have to work on weekends in order to take the MQI exam. Martin Dep. at 228. Martin, however, admits that no one at Enterprise, including Weiland, stated that he would be denied a promotion if he did not work on Saturdays. Id. at 229. Accordingly, Defendant's Motion for Summary Judgment based on Plaintiff's claim of religious discrimination is granted.³

C. Hostile Environment

In order to establish a hostile work claim, a plaintiff must show that (1) he suffered intentional discrimination because of his race or religion; (2) the discrimination was pervasive and regular; (3) it detrimentally affected him; (4) it would have detrimentally affected a reasonable person of the same protected class in his position; and (5) there is a basis for vicarious liability. Hussein v. Genuardi's Family Mkt., No. 00-CV-4905, 2002 WL 56248, at *8 (E.D. Pa. Jan. 15, 2002) (citing Cardenas v. Massey, 269 F.3d 251 (3d Cir. 2001)). The Supreme Court has emphasized that "whether an environment is 'hostile' or 'abusive' can be determined only by looking at the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Aman v. Cort

3. Martin also asserts that he was not trained and was refused promotion on the basis of religion in violation of § 1981. It is well established, however, that a § 1981 claim based on allegations of religious discrimination cannot be maintained. See Powell v. Independence Blue Cross, Inc., No. 95-2509, 1997 U.S. Dist. LEXIS 3866, at *17 (E.D. Pa. Mar. 26, 1997). Thus, Enterprise is entitled to summary judgment as a matter of law on all of Martin's § 1981 claims based on religion.

Furniture Rental Corp., 85 F.3d 1074, 1081 (3d Cir. 1996) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993)).

Martin's claim of a harassing and hostile work environment can be summarized by the following incidents:

- (1) Ed Davidheiser's comment about a man of Indian descent with body odor: "Why don't those people use deodorant?" Martin Dep. at 196.
- (2) "Twice," Ed Davidheiser came in to work "hung over." Id. at 213-14.
- (3) On a "handful" of occasions, Ed Davidheiser "stat[ed] that women can be bitches" and on one of those occasions had also said "that his own girlfriend acts like a bitch." Id. at 195-196.
- (4) Once, Kurt Davidheiser "made a comment that Jeri had a language barrier, and he was better off becoming an accountant than working for Enterprise because he couldn't communicate." Id. at 197.
- (5) One comment by Mark Buckwalter that "Abdjul, you're not a team player. Guys find that you're not a team player, being the only guy here, so we're going to have to get around that." Id. at 203.

Based on these incidents and comments, Plaintiff cannot demonstrate a prima facie case of a hostile work claim.

First, none of these comments constitutes "intentional discrimination based on his race or religion." In fact, none of the comments refers to Martin's race or religion. Only the comment made by Buckwalter referring to Martin as "the only guy here" refers to Martin as an individual. Plaintiff also fails to establish the second prong of the prima facie test as there is no evidence that these comments and incidents were "pervasive and regular." Finally, these comments would not detrimentally affect a *reasonable* person of the same protected class.

In an attempt to offer support for his claim that he was subjected to a hostile environment, Martin also cites instances where co-workers complained of his work performance as evidence of a hostile work environment. See Pl.'s Resp. at Section C. The record is completely devoid of facts that any of these comments were related to Martin's race or religion. As the Fourth Circuit in Hawkins v. Pepsico, Inc. noted:

Personality conflicts and questioning of job performance are unavoidable aspects of employment. They are an inevitable byproduct of the rough edges and foibles that individuals bring to the table of their interactions. Law does not blindly ascribe to race all personal conflicts between individuals of different races. To do so would turn the workplace into a litigious cauldron of racial suspicion. Instead, legally sufficient evidence is required to turn an ordinary conflict such as that between [the plaintiff] and [the supervisor] into an actionable claim of discrimination. 203 F.3d 274, 282 (4th Cir. 2000).

In the present case, Martin has not produced legally sufficient evidence that his conflicts with his co-workers were based on his race or religion, and thus cannot sustain his hostile environment claim. Accordingly, Defendant's Motion for Summary Judgment relating to Plaintiff's hostile environment claim is granted.

D. Failure to Accommodate Religious Beliefs

Martin claims that Enterprise failed to accommodate his religious beliefs by requiring him to work on Saturday. To establish a claim of failure to accommodate on religious grounds under Title VII,⁴ Martin must show that: (1) he holds a sincere religious belief that conflicts with a job requirement; (2) he informed Enterprise of the conflict; and (3) he was disciplined for failing to comply with the conflicting requirement. Shelton v. Univ. of Med. &

4. The Court notes, once again, that § 1981 does not extend to claims of discrimination on religious grounds, see Powell, 1997 U.S. Dist. LEXIS 3866, at *17, thus plaintiff's remedy for this claim is under Title VII only.

Dentistry of New Jersey, 223 F.3d 220, 224 (3d Cir. 2000). Once the employee establishes a prima facie case, the employer may defend in two ways: (1) by demonstrating that it has offered a “reasonable accommodation;” or (2) by demonstrating that the accommodation sought cannot be accomplished without undue hardship. See United States v. Bd. of Educ. for Sch. Dist. of Phila., 911 F.2d 882, 886-87 (3d Cir. 1990).

In the light most favorable to Plaintiff, Martin established by his testimony that he holds a sincere religious belief as a Seventh Day Adventist, in which he honors the Sabbath from sundown Friday through sundown Saturday.

The parties, however, disagree as to whether Martin informed Enterprise that his religious beliefs conflicted with work. Enterprise has provided verified statements from Martin’s supervisors and co-workers demonstrating that Martin did not request Saturdays off so that he could attend church and that he did not make this request until the day before he quit. Martin, however, claims that he notified Enterprise beginning with his initial employment interview with Enterprise that he was a Seventh Day Adventist and that he regularly notified management throughout the course of his employment that religion required him to attend worship services on Saturday rather than work. Martin, however, never puts forth evidence of any formal requests he may have made to have off on Saturday.

The key to the analysis, though, is that Martin fails to demonstrate the third prong of the prima facie case—that he was disciplined for failing to comply with the conflicting requirement. Plaintiff has failed to produce any evidence that Enterprise took any adverse employment action against him, an indispensable requirement under Title VII. The only possible discriminatory action taken against him is, as Martin alleges, Enterprise’s failure to promote him

and his resignation from Enterprise.⁵ First, this Court has already determined that Martin failed to demonstrate a prima facie case of religious discrimination for failure to promote, as Martin admits that no one at Enterprise stated that he would be denied a promotion if he did not work on Saturdays. Martin Dep. at 229. Second, even though Martin did resign from Enterprise, Plaintiff has produced no evidence from which a reasonable fact-finder could infer that this was a result of “discipline for failing to comply with a conflicting requirement.” He points to no facts in the record indicating that a refusal to work on Saturdays would lead to an inevitable termination. See e.g., Cooper v. Oak Rubber Co., 15 F.3d 1375, 1378 (6th 1994) (employee who observed Saturday Sabbath received a verbal warning when she accumulated points for unexcused absences and ultimately resigned to avoid a tenth unexcused absence, which she claimed would have lead to her “inevitable termination”); see also Johnson v. Kmart Corp., 942 F.Supp. 1070, 1071 (W.D. Va. 1996) (finding that plaintiff failed to produce any evidence that employer took an adverse employment action against employee and stating that “aside from assertions that [employee] was ‘forced’ to leave, plaintiff has produced not an iota of evidence from which a reasonable fact-finder could infer that defendants wanted plaintiff to quit her job.”). Accordingly, Martin’s claim for failure to accommodate his religious beliefs must fail, and Defendant is entitled to summary judgment based on Plaintiff’s claim for failure to accommodate his religious beliefs.

E. Constructive Discharge

Martin claims that he was constructively discharged because he was refused promotion, subject to a hostile environment, and refused religious accommodation. He contends

5. Plaintiff makes no claim that Defendant actually fired him.

that “any reasonable person faced with the same circumstances would have likewise been forced to resign.” Pl.’s Compl. at ¶ 18.

In order to establish a constructive discharge claim, Plaintiff must demonstrate that the discriminatory conditions of employment were so intolerable that a reasonable person subject to them would have felt compelled to resign. See Konstantopoulos v. Westvaco Corp., 112 F.3d 710, 718 (3d Cir. 1997). Courts employ an “objective test in determining whether an employee was constructively discharged from employment: whether ‘the conduct complained of would have the foreseeable result that working conditions would be so unpleasant or difficult that a reasonable person in the employee’s shoes would resign.’” Gray v. York Newspapers, Inc., 957 F.2d 1070, 1079 (3d Cir. 1992) (quoting Goss v. Exxon Office Sys. Co., 747 F.2d at 887-88 (3d Cir. 1984)).

In light of the Court’s finding that Plaintiff failed to establish prima facie cases of failure to train and failure to promote on the basis of race and religion, that Plaintiff failed to establish a prima facie case of a hostile environment claim, and that Plaintiff failed to establish a prima facie case of failure to accommodate religious beliefs, the Court grants summary judgment in favor of Defendant on Plaintiff’s constructive discharge claim.

F. Conspiracy to Deprive Plaintiff of Equal Protection Under the Law

In his Complaint, Martin alleged that “Defendant, in the persons of Bob Espich, Edward Davidheiser and Kurt Davidheiser, conspired together to prevent Plaintiff from receiving the promotions to which he was entitled as a result of his exemplary work record and relative time of employment by passing him over in favor of other employees who did not share Plaintiff’s racial characteristics or religious beliefs.” Compl. at ¶ 22. But in his Brief in

Response to Defendant's Motion for Summary Judgment, Plaintiff "concur[s] that the allegations in Martin's complaint, to the extent they deal with conspiracy, should be stricken." Pl.'s Resp. at Section F. Accordingly, Defendant's Motion for Summary Judgment on Plaintiff's conspiracy claims is granted.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion for Summary Judgment is granted.

An appropriate Order follows.

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

ABDJUL L. MARTIN,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 00-CV-6029
v.	:	
	:	
ENTERPRISE RENT-A-CAR,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 14th day of January, 2003, upon consideration of Defendant Enterprise Rent-A-Car's Motion for Summary Judgment (Docket No. 37), Plaintiff's Response (Docket No. 41), and Defendant's Reply thereto (Docket No. 44), it is hereby **ORDERED** that Defendant's Motion is **GRANTED**. Judgment is entered in favor of Defendant Enterprise Rent-A-Car and against Plaintiff Abdjul L. Martin.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.