

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

JESSE P. BROWN III : CIVIL ACTION
:
v. :
:
PHILADELPHIA HOUSING AUTHORITY : No. 96-5708

MEMORANDUM

NORMA L. SHAPIRO, J., October 17th, 1997

In this pro se action, plaintiff, suing the Philadelphia Housing Authority ("PHA"), alleges PHA violated his civil rights when it terminated his employment as a PHA police officer after a misunderstanding regarding his shift relief and an ensuing altercation with two white officers. This court dismissed plaintiff's first complaint without prejudice allowing him to file an amended complaint.

Plaintiff's amended complaint alleges violations of Title VII and § 1981. Defendant has filed an amended motion to dismiss and plaintiff has filed a response thereto. The motion will be granted.

Title VII Claim

To file a civil complaint for a violation of Title VII of the Civil Rights Act of 1964 a plaintiff must obtain a right to sue letter from the Equal Employment Opportunity Commission ("EEOC"). See 42 U.S.C. § 2000e-5; Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 104 n.12 (1979)("Under [2000e-5], . . . a complainant . . . must obtain a "right-to-sue" letter before proceeding in federal court."); Carr v. Jefferson University Hospital, No. 87-2748, 1987 WL 1331 (E.D.Pa. 1987)("In order to bring suit under Title VII . . . plaintiff must file his

charge with the Equal Employment Opportunity Commission in a timely manner, he must receive a 'right to sue' letter from the Commission and then he must institute suit within the mandated time period." (citing Jones v. United Gas Improvement Corporation, 383 F. Supp. 420, 424 (E.D. Pa. 1975)).

In Carr, the plaintiff's cause of action was dismissed as frivolous because the plaintiff instituted a Title VII suit without having first obtained a 'right to sue' letter. Id. at *1. Similarly, Brown has failed to allege that he has obtained a right to sue letter from the EEOC in his amended complaint. Plaintiff's response to the defendant's amended motion does not address whether or not he has procured a right to sue letter from the EEOC. Accordingly, his Title VII claim must be dismissed.

§ 1981 Claim

To state a claim under § 1981, a plaintiff must plead that the allegedly disparate treatment suffered by the plaintiff was the result of "intentional or purposeful discrimination" by the defendant. Armstrong v. School Dist. of Philadelphia, 597 F.Supp. 1309 (E.D.Pa. 1987). Moreover, § 1981 "does not extend to facially neutral conduct having the consequence of burdening one race more than the other." Croker v. Boeing Co., 662 F.2d 975, 989 (3d Cir. 1981).

Plaintiff has not alleged any "intentional or purposeful discrimination" in his amended complaint. Instead, he simply alleges that PHA acted in a "biased" manner in believing the account of the white officers involved in the altercation instead of himself. Paragraph 19 of plaintiff's amended complaint attempts alleging a biased application of PHA's rules and regulations, but it summarizes a case holding rather than alleging wrongdoing. The remainder of plaintiff's amended complaint alleges misapplication of the PHA's rules and

regulations, not that such rules and regulations were applied against him in an intentionally discriminatory manner. Because plaintiff has failed to allege any intentional discrimination his complaint must be dismissed for failure to state a claim under Rule 12(b)(6).

Finally, plaintiff's response to the defendant's amended motion to dismiss fails to make any allegation of intentional discriminatory conduct, but only alleges the PHA rules and regulations were misapplied in his case.

An appropriate order follows.

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ORDER

AND NOW, this th day of October, 1997, in accordance with the Memorandum filed this date, it is ORDERED that Defendant's motion to dismiss is GRANTED and the complaint is DISMISSED.

Norma L. Shapiro, J.