

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

KATRINA NORTHERN

v.

CITY OF PHILADELPHIA,  
FIRE DEPARTMENT and  
COMMISSIONER HAROLD B. HAIRSTON  
in his individual capacity

CIVIL ACTION

NO. 98-6517

M E M O R A N D U M

Broderick, J.

May 13, 1999

Plaintiff, Katrina Northern ("Northern" or "Plaintiff"), a former Philadelphia firefighter, brings this action against Defendants, the City of Philadelphia, Fire Department ("City"), and Fire Commissioner Harold B. Hairston ("Hairston") in his individual capacity (collectively "Defendants"), alleging race and sex discrimination in violation of Title VII, 42 U.S.C. § 2000e, and the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. § 951 et seq. Plaintiff claims that she was subjected to harassing and discriminatory working conditions during her tenure as a Philadelphia firefighter. Plaintiff also alleges that she was discriminatorily fired by Hairston and that Defendants have taken no action to remedy the discrimination or to reinstate her as a firefighter, despite requests that they do so.

Presently before the Court is a motion brought by Defendant Hairston to dismiss Counts IV, V, and VI of Plaintiff's Complaint for failure to state a claim upon which relief can be granted

pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff has filed a response thereto. For the reasons stated below, Defendant Hairston's motion will be denied.

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) the Court "'primarily considers that allegations in the complaint, although matters of public record, orders, items appearing in the record of the case and exhibits attached to the complaint may also be taken into account.'"

Giusto v. Ashland Chemical Co., 994 F. Supp. 587, 592 (E.D. Pa. 1998) (quoting 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure, Civil 2d § 1357 (1990); see also Chester County Intermediate Unit v. Penna. Blue Shield, 896 F.2d 808, 812 (3d Cir. 1990). The Court must accept as true the facts as alleged in Plaintiff's complaint and must "draw all reasonable inferences from those facts in the light most favorable to the plaintiff." Giusto, 994 F. Supp. at 592-93; Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990).

Counts IV through VI of Plaintiff's complaint allege that the City and Hairston committed unlawful race and sexual discrimination against her in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq. Specifically, as to Defendant Hairston, Count IV alleges that Hairston "failed to take prompt and effective remedial action to eliminate the discrimination based on sex and thereby aided and abetted the

unlawful conduct, policy and practices" of the City which violated Plaintiff's rights. Pl.'s Compl. at ¶ 47. Similarly, Counts V and VI allege that Hairston aided and abetted unlawful race discrimination (Count V) and unlawful sex plus race discrimination (Count VI). Each of these counts seeks to hold Defendant Hairston liable pursuant to 43 P.S. § 955(e).

The PHRA provides, in relevant part:

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, . . . , or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania: . . .

(a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. . . .

(e) For any person, employer, employment agency, labor organization or employe, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice. . . .

43 P.S. § 955. Thus, according to the terms of the PHRA, an individual may be liable for aiding and abetting sex and/or race discrimination by the employer. 43 P.S. § 955. The Third Circuit has recognized that allegations against a supervisory employee, if proven, that he "knew or should have known that the

Plaintiff was being subject to harassment" and that "he repeatedly refused to take prompt action to end the harassment directed at Plaintiff" would constitute aiding and abetting under the PHRA. Dici v. Commonwealth of Pa., 91 F.3d 542, 553 (3d Cir. 1996).

Plaintiff's complaint alleges that Hairston discharged Plaintiff after an incident where she allegedly was derelict in her duty, despite a finding by the Fire Board of Investigation that she was not guilty of the offenses charged. Plaintiff's complaint also alleges that this discharge was discriminatory because she was treated differently from other officers based on her sex and race. Plaintiff's complaint specifically alleges that Hairston failed to "take prompt remedial measures after having been notified that discriminatory actions had occurred." Pl.'s Compl. at ¶ 33.

Accepting as true the allegations of Plaintiff's complaint, as the Court must in deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), it is apparent that Plaintiff's complaint states a claim against Defendant Hairston for aiding and abetting in unlawful discrimination under the PHRA. Defendant Hairston, as fire Commissioner, was Plaintiff's supervisor at the time of the alleged discrimination. Plaintiff alleges that Defendant Hairston was informed of the alleged discrimination and took no action to remedy it. Plaintiff's

claim is similar to the claim made by the plaintiff in Dici which the Third Circuit specifically held that, if proved, would constitute aiding and abetting under the PHRA. Therefore, the Court has determined that Plaintiff's complaint adequately states a cause of action against Defendant Hairston for aiding and abetting discrimination under the PHRA and Hairston's motion to dismiss Counts IV, V, and VI of Plaintiff's complaint will be denied.

An appropriate Order follows.

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ORDER

**AND NOW**, this 13th day of May, 1999; Defendant, Commissioner Harold B. Hairston ("Hairston"), having filed a motion to dismiss Counts IV, V and VI of Plaintiff's complaint for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6); Plaintiff having filed a response thereto; for the reasons stated in the Court's Memorandum of this same date;

**IT IS ORDERED** that Defendant Hairston's Motion to Dismiss Counts IV through VI of Plaintiff's complaint (Document No. 3) for failure to state a claim upon which relief can be granted pursuant to Fed. R. Civ. P. 12(b)(6) is **DENIED**;

**IT IS FURTHER ORDERED** that Defendant Hairston shall file an answer to Plaintiff's complaint on or before May 27, 1999.

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RAYMOND J. BRODERICK, J.