

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-1982

Sandra Fay Denton,

Appellant,

v.

Central Arkansas Transit Authority,
originally sued as Central Arkansas
Transit; Mr. Keith Jones; John Davis,
Local 704 Union President,

Appellees.

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* Appeal from the United States
* District Court for the Eastern
* District of Arkansas.
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* [UNPUBLISHED]
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Submitted: February 16, 2005

Filed: March 4, 2005

Before MORRIS SHEPPARD ARNOLD, FAGG, and SMITH, Circuit Judges.

PER CURIAM.

Sandra Denton appeals the district court's dismissal of her employment-discrimination suit against the Central Arkansas Transit Authority (CATA) and CATA employee Keith Jones.¹

¹Ms. Denton also named John Davis, the president of her union local, but he does not appear to have been personally served, and he did not answer the complaint.

Ms. Denton was disciplined and later terminated for sick-leave absences from her job as a bus driver for CATA. CATA agreed to reinstate Ms. Denton if she took and passed a Department of Transportation (DOT) physical. Although she had previously passed a DOT physical, and this had been used as evidence that she was abusing her sick leave, she failed the physical and was not reinstated. She then filed the instant suit asserting that by failing to accommodate her with suitable work, and by terminating her employment, defendants violated her rights under Title VI and VII, the Family and Medical Leave Act (FMLA), the Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, the Fourteenth Amendment, and the Arkansas Civil Rights Act. The district court dismissed Ms. Denton's complaint for failure to exhaust DOT administrative remedies, citing Harris v. P.A.M. Transport, Inc., 339 F.3d 635 (8th Cir. 2003).

In Harris, the defendant refused to hire the plaintiff because a DOT physician found him unfit for duty under DOT regulations. The physician's report conflicted with a prior physician's report that had reached the opposite conclusion. Because DOT regulations provide appeal procedures where there is disagreement between the driver's physician and the physician for the motor carrier concerning the driver's qualifications, we held that the plaintiff first had to exhaust his administrative remedies. See Harris, 339 F.3d at 638. By contrast, Ms. Denton does not seek to challenge defendants' refusal to reinstate her based on the findings of the DOT physician; rather she challenges her earlier termination, which was a disciplinary matter, and defendants' failure to accommodate her. Thus Harris is inapposite, and we do not believe that Ms. Denton was required to exhaust her administrative remedies with DOT prior to bringing this suit.

We therefore reverse and remand this case to the district court for further proceedings consistent with this opinion.