

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CIRO ZELAYA, :
Plaintiff, :
V. : CASE NO. 3:07-CV-21 (RNC)
ONESOURCE FACILITY :
SERVICES, INC., :
Defendant. :
:

RULING AND ORDER

Plaintiff, a former employee of defendant, brings this action pursuant to Title VII claiming constructive discharge and retaliation. He also pleads claims under state law. Defendant has moved for summary judgment. The motion is granted as to all claims except the Title VII retaliation claim.

Title VII Claims

Under Title VII, a constructive discharge occurs when the employer, rather than acting directly, deliberately makes the employee's working conditions so intolerable that a reasonable person would feel compelled to resign. Morris v. Schroder Cap. Mgmt. Int'l, 481 F.3d 86, 88-89 (2d Cir. 2007).

Plaintiff's constructive discharge claim is based on events that occurred between the date he settled a previous discrimination suit against the defendant and the date he submitted his resignation. The evidence before the Court, viewed most favorably to the plaintiff, would permit a jury to find that during this period: (1) he was given work assignments that were difficult and

potentially dangerous because nobody was assigned to help him; (2) other work assignments he received were not part of his job description; (3) he was assigned to remove copper pipe from old heating pumps so the copper could be sold, which he refused to do because it is illegal; (4) a project manager, referring to plaintiff's previous lawsuit, asked him "how the race case went"; (5) plaintiff overheard his supervisor tell a secretary that the "chili pepper case is over" (plaintiff's previous lawsuit included an allegation that co-workers had referred to him as "chili pepper"); and (6) when plaintiff went to his supervisor's office to complain that he had gotten "soaked" by a sprinkler system while working, the supervisor laughed and called him a "wetback," provoking laughter on the part of two others who were present in the office at the time.¹ Defendant contends that these events, viewed collectively, fall short of the level of objectively intolerable working conditions required to support a claim of constructive discharge. I agree.

Though summary judgment is appropriate on the constructive discharge claim, defendant has not shown that it is entitled to judgment on the retaliation claim. The adverse actions plaintiff complains about are sufficient to support a retaliation claim if

¹ Plaintiff claims that the supervisor to whom he complained deliberately turned on the sprinkler system in order to spray him while he worked but he has not shown that the evidence in the record would permit a jury to make such a finding.

they were harmful to the point that they would "dissuade[] a reasonable worker from making or supporting a charge of discrimination." Burlington Northern & Santa Fe Railway Co. v. White, 126 S. Ct. 2405, 2409 (2006). Crediting plaintiff's testimony, and giving him the benefit of all reasonable inferences, a jury could find that the work assignments he was given would have been materially adverse to a reasonable employee. Accordingly, the motion for summary judgment on this claim is denied.

State Law Claims

Plaintiff's seeks recovery under state law for intentional infliction of emotional distress and violations of the Connecticut Unfair Employment Practices Act ("CFEPA").² The claim for intentional infliction of emotional distress requires plaintiff to prove, among other things, that defendant's conduct was "extreme and outrageous." See Appleton v. Board of Education, 254 Conn. 205, 211 (2000). Under this demanding standard, conduct is not actionable unless it exceeds all bounds of decency and is utterly intolerable in a civilized society. The conduct plaintiff complains about, although offensive, is not "extreme and outrageous" in this sense. Plaintiff concedes that his CFEPA claims are time-barred except for the claim alleging constructive

² The amended complaint also includes a claim for negligent infliction of emotional distress but plaintiff's memorandum in opposition to summary judgment states that he does not oppose dismissal of this claim.

discharge. The latter is legally insufficient as discussed above.³ Accordingly, defendant is entitled to summary judgment on the state law claims.

Conclusion

The motion for summary judgment [doc. #34] is hereby granted on all the claims in the amended complaint except the Title VII retaliation claim.

So ordered this 14th day of April 2008.

/s/ Robert N. Chatigny
Robert N. Chatigny
United States District Judge

³ The protection provided by CFEPA is coextensive with the protection provided by Title VII. See Vollemans v. Town of Wallingford, 103 Conn. App. 188, 199 (2007); Jackson v. Water Poll. Control Auth., 278 Conn. 692, 705 n.11 (2006).