

Commission on Human Rights and : Commission on Human Rights
Opportunities ex rel. : and Opportunities
John Ellis :
v. : CHRO No. 0620472
: EEOC No. 16aa601183
ACE International : September 13, 2010

Ruling re: the respondent's motion to dismiss claims

On May 12, 2006, John Ellis (the complainant) filed an affidavit of illegal discriminatory practice with the commission on human rights and opportunities (the commission). In his affidavit, Mr. Ellis alleged his former employer, Ace International, violated Title VII, the Age Discrimination in Employment Act (ADEA) and General Statutes §§ 46a-58 (a) and 46a-60 (a) (1) and (4) when it discriminated against him in the terms and conditions of his employment and subsequently terminated his employment because of his age and his previous opposition to the respondent's alleged discriminatory employment practices. On May 25, 2010, the respondent filed its post-certification answer, denying the allegations of discrimination.

On June 10, 2010, the respondent filed a motion to dismiss claims asserted under the ADEA, Title VII and General Statutes §§ 46a-58 (a) and 46a-60 (a) (4). The commission and the complainant filed their responses on September 9, 2010. For the reasons set forth herein, the motion is granted in part and denied in part. The complainant's claims under § 46a-58 (a), Title VII and the ADEA are dismissed. The motion is denied with respect to the complainant's § 46a-60 (a) (4) claim of retaliation.

I

The complainant alleged that the respondent violated the ADEA when it discriminated against him on the basis of his age and that it violated Title VII when it retaliated against him for his previous opposition to an alleged discriminatory employment practice. Although the commission can enforce certain federal laws through General Statutes § 46a-58 (a), it cannot prosecute an ADEA claim based on age discrimination; *Poeta-Tisi v. Griffin Hospital*, judicial district of Ansonia-Milford at Milford, Docket No. AAN-CV-o5-4003197s (May 17, 2006) (2006 WL 1494078, 8); or a Title VII claim based on retaliation. Section 46a-58 (a) states: “It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, sexual orientation, blindness or physical disability.” Because age and retaliation are not enumerated as protected bases under § 46a-58 (a), the commission does not have jurisdiction to adjudicate the complainant’s ADEA age-based claim or the complainant’s Title VII retaliation-based claim.¹ Therefore, the respondent’s motion to dismiss is granted as to these claims.

¹ General Statutes § 1-2z states: “The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Also, as recently as its

II

The respondent further moves that the complainant's § 46a-60 (a) (4) claim of retaliation should be dismissed as untimely and/or as not being adverse employment actions. The respondent's motion is denied as to this claim.

First, the § 46a-60 (a) (4) claim is not time-barred. A complainant must file an affidavit within one hundred eighty days after the alleged act of discrimination. General Statutes § 46a-82 (f). In this case, the complainant alleged that one of the retaliation acts was his termination. Complaint, ¶ 9. His termination occurred on November 15, 2005 and he filed his affidavit on May 12, 2006. As the complainant filed his affidavit within one hundred eighty days of an allegedly retaliatory act, the claim is not untimely.

Second, it is useful to review the U. S. Supreme Court's discussion of Title VII's anti-retaliation provisions in to determine both (1) the scope of § 46a-60 (a) (4)'s anti-retaliatory provision and (2) the degree of harm a complainant must incur for a retaliatory act to fall within the scope of § 46a-60 (a) (4).

In *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006), the Court noted that although words such as “‘hire,’ ‘discharge,’ ‘compensation, terms, conditions, or privileges of employment,’ ‘employment opportunities,’ and ‘status as an employee’ – explicitly limit the scope of [Title VII's substantive anti-discrimination] provision to actions that affect employment or alter the conditions of the workplace[, n]o

2007 session, the General Assembly amended § 46a-58 (a) to add a protected basis (sexual orientation) without expanding coverage to include age or retaliation. See Public Acts of 2007, No. 07-62.

such limiting words appear in the antiretaliation provision.” Id., 62. Similarly, there are no such limiting words in § 46a-60 (a) (4) that would restrict its application only to adverse employment decisions affecting employment or altering conditions of the workplace. As the Court noted, a “provision limited to employment-related actions would not deter the many forms that effective retaliation can take. Hence, such a limited construction would fail to fully achieve the antiretaliation provision’s primary purpose, namely, [m]aintaining unfettered access to statutory remedial mechanisms.” (Internal quotation marks omitted.) Id., 64. “Interpreting the antiretaliation provision to provide broad protection from retaliation helps ensure the cooperation upon which accomplishments of the Act’s primary objective depends.” Id., 67.

The anti-retaliatory provision protects a complainant from actions which “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” (Internal quotation marks omitted.) Id., 68. “We refer to reactions of a reasonable employee because we believe that the provision’s standard for judging harm must be objective. An objective standard is judicially administrable. It avoids the uncertainties and unfair discrepancies that can plague a judicial effort to determinate a plaintiff’s unusual subjective feelings.” Id., 68-69. “We phrase the standard in general terms because the significance of any given act of retaliation will often depend upon the particular circumstances. Context matters.” Id., 69. Clearly, terminating an individual’s employment would dissuade a reasonable worker from making or supporting a charge

of discrimination. As to whether the respondent is liable for the other alleged actions; Complaint, ¶ 11; or whether these actions either individually or collectively, would also dissuade a reasonable worker is an evidentiary matter, not a jurisdictional defect.

Hon. Jon P. FitzGerald
Presiding Human Rights Referee

c:
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