

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

OCT 27 1998

JAMES W. McLELLAN, CLERK
By: *J. Bell*
DEP. CLERK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

PLAINTIFF

VS.

H-C-98-008

THE CAJUN COMPANY, INC.

DEFENDANT

ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL

Plaintiff asks the Court to order Defendant to produce documents for inspection and copying which indicate the full name, job title, race, Social Security number, last known home address, and last known home telephone number of all persons who have been employed by Defendant and who were assigned to the same work-site as Wayne Bordelon, a supervisory employee of Defendant, at any time during the period from May 9, 1992 to the time when Mr. Bordelon's employment with the Defendant ended. Further, Plaintiff requests documents showing the address of the relevant work-site where the person was assigned, the period of time in which the person and Mr. Bordelon were assigned to the relevant work-site, and the name, address, home telephone number, and work telephone number of any persons identified by the employee for notification in case of emergency. Defendant objects to Plaintiff's requests. Defendant contends that the requests are irrelevant, unreasonable, burdensome, and speculative.

Federal Rule of Civil Procedure 26(b)(1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, . . . including . . . the identity and location of persons having any knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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Fed. R.Civ. P. 26(b)(1).

After reviewing the law and the briefs of the parties, the Court finds that Plaintiff should be provided the information requested in its motion to compel. Plaintiff has stated in its Complaint and its Amended Reasonable Cause Determination that the Charging Party, Mr. Rickey Lee, and other Black employees were racially harassed, subjected to different terms and conditions of employment, and discharged or constructively discharged because of their race by the Defendant. Testimony regarding Mr. Bordelon's treatment of Black employees and his comparable treatment of white employees by other persons who worked with, or under Mr. Bordelon's supervision, at Defendant's work-sites is relevant to a determination of the facts in this case. Without the information which Defendant possesses as to whom these persons are, and where they may be contacted, Plaintiff is precluded from uncovering this relevant evidence.

Defendant argues that Plaintiff's requests for information should be limited to the Helena work-site in which Mr. Lee worked with Mr. Bordelon. The Court believes that Plaintiff should be allowed to discover evidence outside the Helena work-site. There is no evidence that management at the Helena site made independent policy decisions. Therefore, the Court believes that evidence gathered from other work-sites regarding Mr. Bordelon's conduct and Defendant's reaction to, or knowledge of, Mr. Bordelon's conduct may be relevant. Further, the Court notes that the Helena project lasted only 2 months. Limiting Plaintiff's discovery requests to the Helena work-site would also unduly restrict Plaintiff's discovery time period.

Next, Defendant argues that it should only be obligated to produce information on persons employed by Defendant within 180 days before Mr. Lee's Charge was filed. However, "[i]ncidents which occurred outside the filing period also may be admissible as relevant

background to later discriminatory acts." *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568, 573 (8th Cir. 1997)(citing *United Air Lines, Inc. v. Evans*, 431 U.S. 553, 558, 97 S.Ct. 1885, 1889, 52 L.Ed.2d 571 (1977)). Therefore, Defendant must supply the requested information for the period from May 9, 1992 to the time when Wayne Bordelon's employment with the Defendant ended.

Finally, the Court does not believe the production of the requested information would be unreasonably burdensome to Defendant. It is noted that Ms. Julia E. Davis, Office Manager/Executive Assistant to the President of Defendant, has already reviewed the personnel records for the years 1993 and 1994 to prepare her affidavit for Defendant's Motion to Transfer Venue. However, "[w]hat is of importance is that the records are relevant and material, so that mere inconvenience to an employer should not justify withholding the documents from the Commission." *EEOC v. Quick Shop Markets, Inc.*, 396 F. Supp. 133, 137 (E.D. Mo. 1975).

Accordingly, Plaintiff's motion to compel discovery (Docket # 15) is granted. If the parties cannot agree on a date certain for the production herein ordered, a conference call should be scheduled, through Ms. Mary Johnson (501-324-6800), on or before November 5, 1998.

IT IS SO ORDERED this 27th day of October, 1998.

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 10/27/98 BY J Bell


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Post Office & Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

October 27, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 2:98-cv-00008.

True and correct copies of the attached were mailed by the clerk to the following:

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James W. McCormack, Clerk

Date: 10-27-98

BY: J Bell