

a Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Joan B. Gottschall	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	01 C 1731	DATE	9/2/2003
CASE TITLE	Hawkins, et al. vs. Groot Industries, Inc., et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____. Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 - FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] ENTER ORDER. Plaintiffs' motion for class certification [44-1] is denied.
- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input checked="" type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	COURTROOM DEPUTY'S INITIALS RT/aw	U.S. DISTRICT COURT CLERK 03 SEP -3 PM 4:12 FILED FOR DOCKETING Date/time received in central Clerk's Office	number of notices	Document Number 133
			SEP 04 2003 date docketed	
			<i>Pa</i> docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
SEP 04 2003

ANDERSON HAWKINS, LAWRENCE)
WOODFORK, ENRIQUE HERNANDEZ,)
and JAVIER GUERRERO, on behalf of)
themselves and all others similarly situated,)

Plaintiffs,)

v.)

GROOT INDUSTRIES, INC. and GROOT)
RECYCLING AND WASTE SERVICES,)
INC.,)

Defendants.)

Case No. 01 C 1731

Judge Joan B. Gottschall
Magistrate Martin C. Ashman

ORDER

Plaintiffs Anderson Hawkins, Lawrence Woodfork, Enrique Hernandez, and Javier Guerrero have moved for class certification pursuant to Fed. R. Civ. P. 23(b)(2). Specifically, they seek class certification as to Counts I and II of the First Amended Complaint ("complaint" or "FAC"),¹ in which they allege that their former employer(s), defendants Groot Industries, Inc. and Groot Recycling and Waste Services, Inc. (collectively "Groot"), violated Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, and 42 U.S.C. § 1981 by engaging in "a pattern and practice of harassment due to race and national origin" and "a pattern and practice of race discrimination in connection with promotions, work assignments, compensation, transfers, discipline and other terms and conditions of employment." (FAC ¶¶ 29,

¹Since the motion was filed, plaintiffs have filed the Second Amended Complaint. Because Counts I and II remain substantially the same, and because the briefing for the motion for class certification focuses on the First Amended Complaint, for simplicity, the court shall refer to the First Amended Complaint, but the court's ruling applies with equal force to the Second Amended Complaint.

133

57.) Plaintiffs seek certification of two classes: (1) all African-Americans that were or are employees of Groot in its Chicago area facilities from July 5, 1994 to the present; and (2) all Hispanics that were or are employees of Groot in their Chicago area facilities from July 5, 1994 to the present.² Groot opposes class certification.

Before addressing whether class certification is appropriate, it is necessary to clarify which plaintiffs and counts remain after the court's rulings on Groot's motions for summary judgment. Neither Guerrero nor Hernandez's claims survived summary judgment, so there are no pending claims on behalf of any named Hispanic plaintiff. (Order of September 2, 2003.) Hawkins and Woodfork's hostile work environment claims both survived summary judgment, as did Hawkins' discriminatory discharge claim, which was based on alleged discriminatory enforcement of discipline policies. Neither Hawkins nor Woodfork has a pending claim based on unequal conditions of employment, *i.e.*, that they were denied promotions, denied light duty, assigned inferior routes and trucks and received unequal pay. To the extent the court did not explicitly make this ruling when it originally ruled on Groot's motions for summary judgment against Hawkins and Woodfork, *Hawkins v. Groot Indus. Inc.*, No. 01 C 1731, 2003 WL 1720069 (N.D. Ill. Mar. 31, 2003), it does so now. (The court did not explicitly address these claims earlier was because neither Hawkins nor Woodfork addressed them in any substance in their opposition briefs.) Their claims that they were denied promotions fail because neither Hawkins nor Woodfork ever applied for a promotion, which is an essential element of a failure-

²In plaintiffs' reply brief, they argue for two subclasses as well: (1a) all present and former African American *drivers* employed by Groot at its Chicago facilities from July 5, 1994 to the present; and (2a) all present and former Hispanic *drivers* employed by Groot at its Chicago facilities from July 5, 1994.

to-promote claim. *Bragg v. Navistar Int'l Transp. Corp.*, 164 F.3d 373, 377 (7th Cir. 1998).

Similarly, Hawkins and Woodfork's claims that they were denied light duty lack merit because it is undisputed that neither of them ever requested light duty. As for the claims that they received unequal pay, the court already granted summary judgment in Groot's favor with respect to Hawkins' claim. For Woodfork, there is no evidence in the record that he was paid less than he was supposed to be paid under the Private Scavengers Agreement, let alone evidence that any similarly situated white drivers were paid more than he was. Likewise, Hawkins and Woodfork's claims that Groot assigned them to inferior routes and trucks also fail because neither of them offers any evidence of any similarly situated white driver who received better routes or trucks.

Because there are no pending claims on behalf of any named Hispanic plaintiff, plaintiffs' motion for class certification is denied with respect to certification of any class of Hispanic employees or former employees. *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987) ("[A] claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to the claim."). As for the black employees, the only possible class claims are that Groot engaged in a pattern and practice of subjecting black employees to a racially hostile work environment and engaged in a pattern and practice of discriminatory discipline in violation of Title VII and § 1981. Accordingly, these are the only claims the court shall consider in determining whether to certify a class.

Plaintiffs seek certification under Fed. R. Civ. P. 23(b)(2). Under Rule 23(b)(2), class certification is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2).

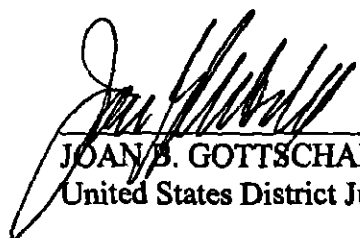
As explained by the Seventh Circuit, class claims may be certified under Rule 23(b)(2) “only if the predominant relief sought is injunctive or declaratory.” *Lemon v. Int’l Union of Operating Eng’rs*, 216 F.3d 577, 580-81 (7th Cir. 2000). Because Rule 23(b)(2) does not require giving class members notice or the opportunity to opt out of the class, certification under Rule 23(b)(2) “is impermissible unless the requested monetary damages are ‘incidental’ to requested injunctive or declaratory relief.” *Id.* at 581. “Incidental” damages “flow directly from liability to the class as a whole” and “do not ‘require additional hearings to resolve the disparate merits of each individual’s case.’” *Id.* (citation omitted). Plaintiffs here seek compensatory and punitive damages as well as injunctive relief, and despite their argument to the contrary, the monetary damages they seek are not merely incidental.

But there is a more fundamental reason why the court cannot certify a class of present and former black employees under Rule 23(b)(2): neither Hawkins nor Woodfork, the only named black plaintiffs, have standing to seek injunctive relief. “A plaintiff seeking injunctive relief must show that he is currently suffering some injury or there is some immediate danger of a direct injury. Past exposure to illegal conduct is insufficient to establish a present case or controversy regarding injunctive relief unless accompanied [by] continuing adverse effect.” *Koski v. Gainer*, No. 92 C 3293, 1993 WL 153828, at *4 (N.D. Ill. May 6, 1993) (internal citation omitted); *Gable v. City of Chicago*, No. 97 C 4872, 1998 WL 128712, at *3 (N.D. Ill. Mar. 13, 1998). Both Woodfork and Hawkins are former employees, not current employees, which means there is insufficient likelihood that either of them will be affected by Groot’s alleged discrimination in the future. *Wooden v. Bd. of Regents of the Univ. Sys. of Ga.*, 247 F.3d 1262, 1283 (11th Cir. 2001); *Reid v. Lockheed Martin Aeronautics Co.*, 205 F.R.D. 655, 665

(N.D. Ga. 2001). While they can certainly seek monetary damages, they have no standing to seek injunctive relief. Thus, there is no basis to certify a class under Rule 23(b)(2)—the only subsection under which plaintiffs sought class certification.

Plaintiffs' motion for class certification is therefore denied.

ENTERED:



JOAN B. GOTTSCHALL
United States District Judge

Dated: September 2, 2003