UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff

VERSUS

K & B LOUISIANA CORPORATION d/b/a RITE AID,
Defendant

CIVIL ACTION NO. 00-2238

JUDGE ROBERT G. JAMES

MAG. JUDGE JAMES D. KIRK

RULING

This is a lawsuit brought by Plaintiff U.S. Equal Employment Opportunity Commission ("EEOC") against Defendant K & B Louisiana Corporation d/b/a Rite Aid ("Rite Aid") for alleged sex discrimination in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, *et seq.* Specifically, the EEOC alleges that Rite Aid had a discriminatory practice of hiring only males as liquor cashiers and that it denied Ms. Johnny L. Williams ("Williams") a job based on this practice.

On June 28, 2001, Rite Aid filed a Motion for Summary Judgment [Doc. #42] asserting that it was entitled to judgment as a matter of law. Rite Aid contended that Williams signed statements under penalty of perjury in which she claimed to be disabled and unable to work at the time Rite Aid allegedly discriminated against her. Therefore, she did not suffer any injury from Rite Aid's refusal to employ her as a liquor cashier. Rite Aid further contended that the EEOC did not have standing to proceed with this lawsuit because it did not allege a pattern or practice of discrimination, but only brought this lawsuit on behalf of Williams.

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On August 20, 2001, this Court ruled that the EEOC could not recover damages for Williams, but it could proceed with its lawsuit for injunctive and other equitable relief designed to prevent Rite Aid from allegedly continuing to engage in a practice of refusing to hire females as liquor cashiers.

On September 26, 2001, Rite Aid filed its Second Motion For Summary Judgment and Other Relief [Doc. #55] moving the Court for summary judgment dismissing the EEOC's claims or alternatively, for partial summary judgment as the Court deems appropriate. Rite Aid contends that the EEOC's allegations, even if true, are insufficient to make out a claim for injunctive or equitable relief.

On October 11, 2001, the EEOC filed an Opposition [Doc. #58]. The EEOC alleges that William Longoria ("Longoria"), manager of one of Rite Aid's stores, refused to hire Williams and another woman based on a sexual stereotype. The EEOC further alleges that Longoria's actions, if left unchecked, will affect more applicants in the future. These allegations, according to the EEOC, are sufficient to defeat Rite Aid's second motion for summary judgment.

For the following reasons, the Court DENIES Defendant Rite Aid's Second Motion For Summary Judgment and Other Relief [Doc. #55].

I. Law and Analysis

A. Motions for Summary Judgment

Summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed.R.Civ. P. 56(c). The moving party bears the initial burden of informing the

court of the basis for its motion by identifying portions of the record which highlight the absence of genuine issues of material fact. *Topalian v. Ehrmann*, 954 F.2d 1125, 1132 (5th Cir. 1992). A fact is "material" if proof of its existence or nonexistence would affect the outcome of the lawsuit under applicable law in the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is "genuine" if the evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. Id. The moving party cannot satisfy its initial burden simply by setting forth conclusory statements that the nonmoving party has no evidence to prove its case. *Ashe v. Corley*, 992 F.2d 540, 543 (5th Cir. 1993).

If the moving party can meet the initial burden, the burden then shifts to the nonmoving party to establish the existence of a genuine issue of material fact for trial. *Norman v. Apache Corp.*, 19 F.3d 1017, 1023 (5th Cir. 1994). The nonmoving party must show more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). In evaluating the evidence tendered by the parties, the court must accept the evidence of the nonmovant as credible and draw all justifiable inferences in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

B. Title VII

Title VII prohibits employers from "fail[ing] or refus[ing] to hire . . . any individual . . . because of such individual's sex." 42 U.S.C. § 2000e-2(a)(1).

In its Ruling on Rite Aid's first Motion For Summary Judgment, this Court recognized that the EEOC brought this suit under Section 706 of Title VII. Under that provision, "[i]f the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice . . ., the court may enjoin the respondent from engaging in such

unlawful employment practice, and order such affirmative action as may be appropriate . . . ." 42 U.S.C. Section 2000e-5(g)(1).

In this case, the EEOC has produced direct evidence of sex discrimination by Rite Aid in the form of Longoria's alleged statements to Williams. Longoria allegedly refused to allow Williams to fill in for an employee, telling her that he preferred to have a male work in the liquor department because of the heavy unloading and bending required. Longoria allegedly stated that these duties were "too difficult for the ladies to do."

Rite Aid contends that the EEOC's claims for injunctive and equitable relief should be denied for two reasons. First, Rite Aid contends that the allegations concerning Williams, even if true, are insufficient as a matter of law to support or make out a *prima facie* claim for injunctive or equitable relief. Second, Rite Aid contends that the EEOC's claims for injunctive and equitable relief must be dismissed because the EEOC has failed to demonstrate continuing harm or a real and immediate threat of repeated injury in the future. The Court addresses each of these arguments in turn.

1. Pattern or Practice

Rite Aid contends that the EEOC's allegations concerning Williams are insufficient to support its claims. Instead, Rite Aid contends that the EEOC must prove that it engaged in a pattern or practice of discrimination. The Court disagrees.

The EEOC need not show a pattern or practice to be awarded injunctive relief. *EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569 (7th Cir. 1996). In *Ilona of Hungary*, the EEOC alleged that the defendant violated Title VII when it terminated two Jewish employees for refusing to work on Yom Kippur. The district court found that the defendant's termination of the employees

violated Title VII. The district court awarded, among other things, permanent injunctive relief. On appeal, the defendant argued that the district court's grant of permanent injunctive relief was inappropriate because there had been no showing that the defendant engaged in a pattern or practice of discrimination.

In upholding the district court's grant of injunctive relief, the Seventh Circuit concluded that "[o]nce employment discrimination has been shown . . ., district judges have broad discretion to issue injunctions . . . ." *Id.* at 1578. The Seventh Circuit reasoned that Section 706 of Title VII did not itself require that a pattern or practice of unlawful conduct be shown; injunctive relief was proper upon a showing that the employer engaged in an unlawful employment practice. *Id. See also EEOC v. Frank's Nursery & Crafts, Inc.*, 177 F.3d 448, 467-68 (6th Cir. 1999) ("[t]he EEOC may obtain such general injunctive relief . . . even where the EEOC only identifies one or a mere handful of aggrieved parties."); *EEOC v. Northwest Airlines, Inc.*, 188 F.3d 695, 702 (6th Cir. 1999) ("The EEOC need not demonstrate or allege a pattern or policy of discrimination in order to obtain a permanent injunction."); *EEOC v. Massey Yardley Chrysler Plymouth*, 117 F.3d 1244, 1253 (11th Cir. 1997) ("[T]he EEOC is normally entitled to injunctive relief where it proves discrimination against one employee and the employer fails to prove that the violation is not likely to recur.").

Therefore, in this case, the EEOC need not prove that Rite Aid engaged in a pattern or practice of discrimination to be awarded injunctive or equitable relief.

2. Basis For Injunctive Relief

"Ordinarily, a court may not enjoin conduct that is neither threatened nor imminent." *Walls v. Mississippi State Dept. of Public Welfare*, 730 F.2d 306, 325 (5th Cir. 1984) (citing

Congress of Racial Equality v. Douglas, 318 F.2d 95, 100 (5th Cir. 1963)). "While the court's power to grant injunctive relief may survive discontinuance of the illegal conduct in order to prevent future wrongdoing, the necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility." *Walls*, 730 F.2d at 325 (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953)).

Rite Aid contends that the EEOC's claims for injunctive and equitable relief must be dismissed because the EEOC has failed to demonstrate continuing harm or a real and immediate threat of repeated injury in the future.

The EEOC argues that Rite Aid, through its manager Longoria, has a practice of not considering or hiring females to work in the liquor department. Although the EEOC has focused its case on Williams, it argues that Rite Aid would have denied other female applicants employment opportunities and, if left unchecked, will do the same in the future.

Drawing evidentiary inferences in its favor, the Court finds that the EEOC has made a sufficient showing to defeat summary judgment on the issue of whether a cognizable danger exists that Rite Aid's alleged discriminatory conduct will occur again.

Accordingly, the Court DENIES Defendant Rite Aid's Second Motion For Summary Judgment and Other Relief [Doc. #55].

II. Conclusion

For the forgoing reasons, Defendant Rite Aid's Second Motion For Summary Judgment and Other Relief [Doc. #55] is DENIED.

MONROE, LOUISIANA this 14 day of November, 2001

COPY SENT:
DATE: 11-15-01
BY: DD
TO: Butler
Hagan
Carter
DDJ
DDE
RC

ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE