UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

Case No. 01-CV-71912-DT

v.

FORD MOTOR CREDIT COMPANY,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pending before the court is Defendant Ford Motor Credit Company's "Motion for Summary Judgment," filed on December 28, 2001. A hearing was conducted on March 20, 2002. For the reasons stated below, and more thoroughly at the March 20 hearing, the court will deny Defendant's motion.

I. BACKGROUND

Charging party Vera Bakewell has been a Seventh Day Adventist all of her life. Seventh Day Adventists observe the Sabbath from Friday sunset to Saturday sunset.[1] Bakewell's religious observance of the Sabbath requires that she not work during this period.

This action arises out of Bakewell's termination from Defendant Ford Motor Credit Company ("FMCC"). Bakewell claims that FMCC failed to provide a reasonable accommodation for her

[1]It is undisputed that Bakewell's religious belief is sincerely held.

religious practices and terminated her for her religious beliefs, in violation of 42 U.S.C. § 2000e ("Title VII").

FMCC hired Vera Bakewell as a programmer/analyst on its Account Servicing Mainframe team ("the team") within the Customer Branch Dealer Systems Department. Programmers/analysts on the team write, develop, test, and implement computer programs to meet the needs of FMCC's customer service system, which tracks customer payments and services. They generally work Monday through Friday, but are also responsible for providing "on-call" technical support to the Technical Services Office ("TSO") on a rotating schedule, twenty-four hours a day, seven days a week.

In February/March 2000, the team provided on-call support for approximately 300 computer program "jobs," or "critical batch applications," (hereinafter "jobs"), which run every evening. When a technical production problem, called an "abend," occurs in any one of the jobs, the on-call programmer/analyst is paged by TSO and must immediately respond to fix the problem.

Generally, team members enter the on-call rotation on Monday morning and serve for a week as the "secondary duty analyst" ("secondary"), followed by a week as the "primary duty analyst" ("primary"). When on-call, the team member is provided with a pager, a laptop computer, and a cell phone. The telephone number for the pagers of the primary and secondary are listed in the computer system next to each of the 300 jobs. If an abend

occurs, the pager numbers will be displayed on a screen at TSO for the specific job that abends. Then, the TSO operator first pages the telephone number assigned to the primary pager. If the primary cannot be reached or does not respond within fifteen minutes, the secondary is paged. If the secondary does not respond within fifteen minutes, the team leader is contacted.

Douglass Wood, the team leader in February/March 2000, delegated the duty of creating the on-call schedule to his team members. An initial draft was created and circulated among the team members until there was a schedule that was unobjectionable and worked. Voluntary switching on-call responsibilities is frequently done, provided that the team member can find someone willing to switch. While Wood needed to be informed of the switches, his permission was not necessary. After Bakewell was hired, the first draft of the schedule was prepared by Mark Stavenga. Stavenga struggled to work out a schedule that would accommodate Bakewell's needs, but eventually had to ask Wood for assistance.

Wood asked the team members to voluntarily assume Bakewell's weekend on-call shifts. The team also discussed having a team member take the pager from Bakewell on Friday, and then meet sometime Saturday night to switch the pagers back. In return, Bakewell agreed to cover her team members' shifts on one of the remaining days of the week. Initially, two team members--Janet

Broadbent and Mark Stavenga--were willing to cover Bakewell's weekends, but they changed their minds when Eugene Berezovsky and Mark Bernstein were unwilling to also volunteer.

Bakewell suggested further accommodations, but all were rejected by Wood. Because a solution could not be found, Bakewell was terminated on March 20, 2000, for being unable to work Friday night to Saturday night.

II. STANDARD

Federal Rule of Civil Procedure 56, which governs summary judgment motions, provides, in part, that:

> [t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating that there is no genuine issue as to any material fact, and a summary judgment is to be entered if the evidence is such that a reasonable jury could find only for the moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson*, 477 U.S. at 250. In assessing a summary judgment motion, the court must examine any pleadings, depositions, answers to interrogatories, admissions, and affidavits in a light that is most favorable to the non-

moving party. Fed. R. Civ. P. 56(c); *see United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

It is not the role of the court to weigh the facts. *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435-36 (6th Cir. 1987). Rather, it is the duty of the court to determine "whether . . . there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." *Anderson*, 477 U.S. at 250.

III. DISCUSSION

Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . religion . . . ." 42 U.S.C. § 2000e-2(a)(2). Further, "[t]he term religion includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's . . . religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

In order to establish a *prima facie* case of religious discrimination, the employee must establish that "(1) he holds a since religious belief that conflicts with an employment requirement; (2) he has informed the employer about the conflicts; and (3) he was discharged or disciplined for failing

to comply with the conflicting employment requirement." *Smith v. Pyro Mining Co.*, 827 F.2d 1081 (6th Cir. 1987). Once the employee has established a *prima facie* case, the burden shifts to the employer to prove that it cannot reasonably accommodate the employee without incurring undue hardship. *Id.*

Defendant FMCC has conceded, for the purposes of this motion, that Bakewell has established a *prima facie* case.[2] Thus, the only question before the court is whether a fact issue exists regarding Defendant's duty to reasonably accommodate Bakewell. Defendant contends that (1) it reasonably accommodated Bakewell by asking her co-workers to voluntarily assume her Saturday shift and (2) it could not otherwise reasonably accommodate Bakewell without incurring undue hardship.

"The reasonableness of an employer's attempt at accommodation cannot be determined in a vacuum. Instead, it must be determined on a case-by-case basis; what may be a reasonable accommodation for one employee may not be reasonable for another." *Smith*, 827 F.2d at 1085. An employer is not required to implement an accommodation that requires the employer to bear more than *de minimus* costs. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 84 (1977).

[2]Defendant disputes that Bakewell ever gave notice of her religious beliefs involving Saturday work. Instead, Defendant maintains that it thought Bakewell's weekend conflict involved child care issues. Nonetheless, to avoid an issue of fact, Defendant assumes, for summary judgment purposes only, that Bakewell has established a *prima facie* case.

Defendant first argues that it reasonably accommodated Bakewell when Wood asked the other members of the team if they would be willing to trade Bakewell's weekend shifts. An employer satisfies its obligations under Title VII "when it demonstrates that it has offered a reasonable accommodation to the employee." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 69 (1986). It is "undoubtedly" true that "one means of accommodating an employee who is unable to work a particular day due to religious convictions is to allow the employee to trade work shifts with another qualified employee." *Smith*, 827 F.2d at 1088. Indeed, both parties conceded at the March 20 hearing that Defendant had in place a reasonable accommodation, in that it regularly allowed employees to trade shifts with one another. Further, both parties conceded that this accommodation would not unduly burden Defendant. While at first glance this would seem to resolve the summary judgment motion, Bakewell has alleged a narrow set of facts which, if proven, would entitle her to recover.

Bakewell maintains that Wood inhibited her ability to make use of what otherwise would have been a reasonable accommodation.[3] Specifically, Bakewell seeks to establish that

[3]Defendant suggests that this case is controlled by *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977). In *Hardison*, the Supreme Court held that Title VII does not require an employer "to discriminate against some employees in order to enable others to observe their religion." *Id.* at 85. The Court found that Title VII did not require an employer to carve out an exception to a seniority system established by a collective bargaining agreement in order to force unwilling co-workers to work the plaintiff's shift. *Id.* at 84-85. Thus, Defendant and Plaintiff dedicate much of their briefs to whether Bakewell's co-workers were willing to trade shifts with Bakewell. While the co-workers' willingness is to

Wood knew of her religious need for an accommodation for the Saturday Sabbath only, yet failed to inform the other team members that the need was not for child care purposes and not for the entire weekend. Solely on this theory, Plaintiff has established the existence of a genuine issue of material fact. *See McGuire v. General Motors Corp.*, 956 F.2d 607 (6th Cir. 1992) (holding a question of fact existed as to whether actions of employer inhibited volunteers from swapping shifts).[4]

While Defendant's motion for summary judgment will be denied, the March 20 hearing has effectively narrowed the issues

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some degree related to whether Wood inhibited shift-swapping, the appropriate focus should be on the actions of Wood, and the message he communicated, intentionally or otherwise, to the team members. Ultimately, this case does not revolve around the willingness of the team members, but around the actions of Wood.

[4]In *McGuire*, the Sixth Circuit reversed the district court's grant of summary judgment. *McGuire*, 956 F.2d at 610. The defendant employer had surveyed the plaintiff's co-workers to find out whether they would agree to trade shifts with plaintiff. *Id.* at 609. The Sixth Circuit found that shift-swapping had been at least moderately successful *before* the surveys were taken. *Id.* at 610. Thus, the court found that summary judgment was not appropriate, because the plaintiff contended that "the surveys created a new situation, or significantly altered the previous arrangement, with the result that it became 'virtually impossible' for him to find volunteers with whom to swap." *Id.* The court further found that the plaintiff's theory gave rise to four questions:

> (1) Were the surveys invidiously intended to inhibit volunteers from swapping shifts;
> (2) Although not so intended, did the fact of the surveys being made, or the language of the questions, have the effect of frustrating or inhibiting shift-swapping;
> (3) . . . [I]f the surveys were neutral but in fact frustrated or impeded the swapping process, was this neutral employer action such a change as to make the previously reasonable accommodation unreasonable and a violation of § 2000e; [and]
> . . .
> [(4) W]hether the lack of volunteers after [the surveys] was in fact caused by McGuire's failure to seek volunteers rather than by the performance of the surveys.

Id. at 610.

for trial. Because both parties have conceded that allowing employees to trade shifts is a reasonable accommodation which would not unduly burden Defendant, there is no need to explore the reasonableness of the other proposed accommodations. If Defendant can establish that it did not inhibit Bakewell's ability to trade shifts--in other words, that it reasonably accommodated Bakewell--then Plaintiff's action must fail. *See Ansonia*, 479 U.S. at 68 ("[W]here the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end."). On the other hand, if Defendant thwarted Bakewell's ability to trade, the Plaintiff's action must succeed, because Defendant has conceded that allowing co-workers to trade shifts would have been a reasonable accommodation which would not be unduly burdensome.[5]

IV. CONCLUSION

For the reasons stated above,

IT IS ORDERED that Defendant's "Motion for Summary Judgment" is DENIED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: March 27, 2002

[5] This is, of course, assuming that Plaintiff can establish a *prima facie* case, which was only conceded for summary judgment purposes.

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