

1996 WL 274053

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United States District Court, S.D. New York.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION Plaintiff,

v.

JOINT APPRENTICESHIP COMMITTEE, Joint
Industry Board of the Electrical Industry,
Defendant.

No. 84 Civ. 3373 (WK).

May 22, 1996.

Attorneys and Law Firms

Louis Graziano, Equal Employment Opportunity
Commission, New York City, for Plaintiff.

Norman Rothfeld, New York City, for defendant.

MEMORANDUM AND ORDER

WHITMAN KNAPP, SENIOR District Judge.

*1 We agree with the EEOC, for the reasons stated in its Memorandum on the Proper Standard of Review, that Magistrate Judge Buchwald's Report and Recommendation ("the Report") is subject to a *de novo* review. As the EEOC recognizes in that same memorandum, the requirement of *de novo* review "does not necessarily mean a *de novo* hearing," Pl.'s Mem. at 7, quoting *Aluminum Co. of America v. United States E.P.A.* (4th Cir. 1981) 663 F.2d 499, 502, but means instead that we are "free to follow [the Report] wholly, to ignore it, or ... [we] may conduct the review in whole or in part anew." Pl.'s Mem. at 7, quoting *Mathews v. Weber* (1976) 423 U.S. 261, 271.

With respect to all the claimants except Mundle, we have examined the parties' papers and authorities therein cited, and have concluded that Judge Buchwald, for the reasons stated in her Report, has arrived at the correct conclusions. With respect to Mundle, we conclude that

the doctrine enunciated in *Ford Motor Co. v. Equal Employment Opportunity Comm'n* (1982) 458 U.S. 219, 231 (observing that duty to mitigate does not require a claimant to "go into another line of work, accept a demotion, or take a demeaning position") and various circuit court decisions, *Sellers v. Delgado Community College* (5th Cir. 1988) 839 F.2d 1132, 1138-39 (finding that the duty to mitigate does not require a claimant to remain in a noncomparable position accepted during the pendency of her claim and with which she is dissatisfied while continuing to seek suitable employment); *EEOC v. Guardian Pools, Inc.* (11th Cir. 1987) 828 F.2d 1507, 1511 ("Title VII requires reasonable diligence in locating employment and mitigating damages; it does not require that a person remain employed despite dissatisfaction."); *Wheeler v. Snyder Buick, Inc.* (7th Cir. 1986) 794 F.2d 1228, 1234-35 ("[T]he duty to mitigate damages does not preclude a plaintiff from quitting a position in a different business that pays substantially less money."); *NLRB v. Madison Courier, Inc.* (D.C. Cir. 1972) 472 F.2d 1307, 1320-21 (finding that claimant need not "seek employment which is not consonant with his particular skills, background, and experience" or "which involves conditions that are substantially more onerous than his previous position"), persuade us that Judge Buchwald erred in terminating Mundle's back pay period as of the date she left her maintenance position with the Port Authority for the personal reason that "the type of maintenance work ... was a dead end and did not go anywhere" and that it was "not what [[she] wanted to do." Tr. at 203.

Although the Port Authority position was consonant with Mundle's particular skills, background, and experience at the time she was rejected by JAC, it seems beyond peradventure that a maintenance position is not consonant with the skills and experience Mundle would have had had she been trained as an electrician. A career as a maintenance worker is not comparable to that of an electrician precisely because the attraction of the latter occupation was that it was not a "dead end." Because there is no evidence that any other employment was available that could have given her the training of which she had been unjustly deprived, and because she remained an active member of the labor force after leaving that position, we find that Mundle's leaving her position with the Port Authority does not, of itself, justify a finding that she had not satisfied her duty to mitigate damages. Accordingly, we remand Mundle's claim for back pay to Judge Buchwald for reconsideration. We express no view as to the conclusion at which Judge Buchwald should arrive. We will be required to subject to *de novo* review any conclusions to which a party might object.

*2 Except as above indicated, Judge Buchwald's Report and Recommendation is adopted substantially for the reasons therein stated.

SO ORDERED.

All Citations

Not Reported in F.Supp., 1996 WL 274053