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United States District Court, N.D. Texas, Dallas Division.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
v.
DALFORT AEROSPACE, L.P., Defendant.

No. 3:00–CV–0666–P. | Feb. 19, 2002.

Opinion

MEMORANDUM OPINION AND ORDER

SOLIS, District J.

***1** Now before the Court are Plaintiff's Motion for Summary Judgment, filed August 16, 2001, and Defendant's Response, and Defendant's Motion for Summary Judgment, filed August 16, 2001, Plaintiff's Response, and Defendant's Reply. After considering the parties' briefing and arguments, and the applicable law, the Court DENIES Plaintiff's Motion for Summary Judgment and GRANTS Defendant's Motion for Summary Judgment.

I. Background and Procedural History

Plaintiff Equal Employment Opportunity Commission ("EEOC") brought this action on behalf of Eugene Krugh, alleging that Defendant discriminated against Krugh based upon his religious beliefs. Plaintiff filed the instant action on March 27, 2000. Both Plaintiff and Defendant have moved the Court to grant summary judgment in their favor.

Krugh applied for a job with the Aviation Maintenance Technician Training Program ("Program") with DalFort on May 27, 1999. Pl.'s App., Ex. 2.[1] The Program was a 16–month training program designed to prepare candidates for certification as FAA Certificated Airframe and Powerplant Mechanics. Pl.'s App., Ex. 3, at 2. According to the Training Agreement between Defendant and the training provider, Aviation Maintenance Training, Inc. d/b/a Aeronautical Institute of Technologies ("AIT"), the costs of the Program included student tuition ($14,500.00), tools and tool box costs ($1,600.00), book costs (not to exceed $250.00), and Final Exam and Test Fees ($600.00). Pl.'s App., Ex. 3, at 2. Krugh and Defendant signed a separate Training Agreement which stipulated that Defendant would pay 1/16 of the total tuition cost and any fees due that month upon each completion of each month of training. Pl.'s App ., Ex. 4, ¶ 2.4. This Training Agreement set up the cost of training as a loan paid to Krugh on behalf of Defendant. *Id.*

[1] Plaintiff has filed two appendices concerning these motions. Plaintiff's Appendix filed with its Brief in Support of Its Motion for Summary Judgment will be referred to as "Pl.'s App.", while Plaintiff's Appendix filed with its Response to Defendant's Motion for Summary Judgment will be cited to as "Pl.'s Resp.App." Defendant has filed a single Appendix, referred to as "Def.'s App."

In addition to loaning Krugh the cost of the Training Program over the 16–month period, Krugh was also to participate in the DalFort Structured Field Training Program (SFT). This program required Krugh to have three hours of on-the-job training at DalFort five days per week. Pl.'s App., Ex. 4, ¶ 3.2. This contract stated that "[t]he schedule for SFT will be set by DalFort," and that "[f]ailure of the Trainee to comply with the SFT schedule will be grounds for dismissal from the program." Pl.'s App., Ex. 4, ¶¶ 3.5, 3.7. Trainees were paid an hourly wage for their work pursuant to the SFT. Pl.'s App., Ex. 4 ¶ 3.4. During this time, Trainees were considered part-time temporary employees. Pl.'s App., Ex. 4 ¶ 3.6.

Krugh and Defendant agreed that the Training Agreement was a loan. The ultimate purpose of the Program was stated in the contract: "DalFort is desirous of assisting students to become licensed Aviation Maintenance Technicians with the intent that those so assisted would become employees of DalFort." Pl.'s App., Ex. 4, ¶ 1.3. Upon 30 months of active full-time employment with DalFort, "the debt will be considered to be totally repaid." Pl.'s App., Ex. 4, ¶ 4.4.2. The Agreement also provided that "the debt will also be considered to be fully repaid if the Trainee completes the AIT program and the DalFort SFT program and DalFort does not offer the Trainee employment within 90 days of the completion date." Pl.'s App., Ex. 4, ¶ 4.4.4. Upon completing the Training Program and accepting full-time employment at DalFort, a Trainee's debt to Defendant would be credited at the rate of $500.00 per month. Pl.'s App., Ex. 4, ¶ 4.4.1.

***2** The Agreement between Defendant and AIT provided that all classes would be conducted from 7:00 a.m. to 1:30 p.m. Pl.'s Ex. 3, ¶ 6. The hours available for on-the-job training pursuant to the SFT program were 2:30 until 6:30 Monday through Friday. Def.'s App. at 93 (Clark Dep.). While these were the hours set at the time of Krugh's application to Defendant, the hours of the classroom training and the availability of on-the-job training through the SFT changed somewhat in June or July of 2000.

Def.'s App. at 98–99 (Clark Dep.).

Krugh applied to DalFort to join the first training class in June of 1999. Krugh was interviewed and hired as a Trainee. During his interview, Krugh explained to the interview board that he was a Seventh–Day Adventist and his religious beliefs prohibited him from working on his Sabbath, from sundown Friday until sundown Saturday. Def.'s App. at 63 (Krugh Dep.). Krugh agreed to work any shift other than a shift that conflicted with his Sabbath. Def.'s App. at 63.

Krugh received an answering machine message offering him the job as a DalFort Trainee. Def.'s App. at 64. He also received a letter, dated June 2, 1999, confirming the job offer. Pl.'s App., Ex. 6. The letter instructed him to meet with the Training Coordinator to finalize the student agreement. Pl.'s App., Ex. 6.

Before signing the Training Agreement, Krugh met with Charles Bohannon and asked again whether his religious beliefs would pose a problem. Def.'s App. at 67 (Krugh Dep.). Krugh testified that "I point-blank asked Mr. Bohannon, 'Would there be a problem with me being a Seventh Day Adventist?" ' and that Mr. Bohannon replied "no ." Def.'s App. at 67. (Krugh Dep. 25:22–25). Thereafter, on June 17, 1999, Krugh signed the Training Agreement. Pl.'s App., Ex. 4.

The next day, Krugh claims he received a phone call from a DalFort representative telling him that DalFort had decided to withdraw the contract because Krugh was a Seventh Day Adventist. Pl.'s App., Ex. 14 (Krugh Dep. 28:8–15). Charles Bohannon, Defendant's Director of Human Resources and General Counsel, testified that the reason Krugh's contract was withdrawn was because Defendant could not accommodate Krugh's religious beliefs because of the standard bidding provisions of the union collective bargaining agreement. Pl.'s App., Ex. 16 (Bohannon Dep.).

Full-time DalFort employees are covered by a collective bargaining agreement which sets out bidding provisions for shift assignment. The bidding provisions are based upon an employee's seniority under the CBA. Def.'s App. at 40–43 (Bohannon Dep.). Typically, the most senior employees are able to use the bidding process to ensure that their scheduled days off correspond with the weekends. Def.'s App. at 149–50, 165–66 (Teague Dep.). Krugh would have been covered by the CBA upon becoming a full-time employee of DalFort, although he was not covered by the CBA during the 16–month training period. Pl.'s App., Ex. 5 (Clark Dep.).

***3** Now both parties have moved this Court for summary judgment. Plaintiff argues that Defendant made no attempt to accommodate Krugh's religious beliefs. Defendant argues that no accommodation was possible, and thus it is no liable under Title VII.

II. Summary Judgment Standard

Summary judgment shall be rendered when the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). All evidence and the reasonable inferences to be drawn therefrom must be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold, Inc.,* 369 U.S. 654, 655 (1962). The moving party bears the burden of informing the district court of the basis for its belief that there is an absence of a genuine issue for trial, and of identifying those portions of the record that demonstrate such an absence. *Celotex,* 477 U.S. at 323.

Once the moving party has made an initial showing, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986). The party defending against the motion for summary judgment cannot defeat the motion unless he provides specific facts that show the case presents a genuine issue of material fact, such that a reasonable jury might return a verdict in his favor. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). Mere assertions of a factual dispute unsupported by probative evidence will not prevent summary judgment. *Id.* at 248–50; *Abbot v. Equity Group, Inc.,* 2 F.3d 613, 619 (5th Cir.1993). In other words, conclusory statements, speculation and unsubstantiated assertions will not suffice to defeat a motion for summary judgment. *Douglass v. United Servs. Auto. Ass'n,* 79 F.3d 1415, 1429 (5th Cir.1996) (en banc). If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to is case, and on which he bears the burden of proof at trial, summary judgment must be granted. *Celotex,* 477 U.S. at 322–23.

Finally, the Court has no duty to search the record for triable issues. *Ragas v. Tennessee Gas Pipeline Co.,* 136 F.3d 455, 458 (5th Cir.1998). "The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which the evidence supports his or her claim." *Id.* A party may not rely upon "unsubstantiated assertions" as competent summary judgment evidence. *Id.*

IV. Title VII Claim

Title VII prohibits religious discrimination in employment. 42 U.S.C. § 2000e–2(a).[2] An employer engages in an unfair employment practice if he discriminates against an

employee because of any aspect of his religious practices or beliefs, unless the employer shows that it cannot "reasonably accommodate" the employee's religious needs without "undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).[3]

[2] Title 42 U.S.C. §§ 2000e–2(a)(1) provides: "It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

[3] 42 U.S.C. §§ 2000e(j) provides: (j) The 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 or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

***4** A plaintiff establishes a prima facie case of religious discrimination when he demonstrates: (1) that he has a bona fide religious belief that conflicts with an employment requirement; (2) that he informed his or her employer of this belief; and (3) that he suffered an adverse employment decision because of failure to comply with the conflicting employment requirement. *See, e.g., Turpen v. MissouriKan.-Tex.R.R. Co.,* 736 F.2d 1022, 1026 (5th Cir.1984); *Brener v. Diagnostic Center Hosp.,* 671 F.2d 141, 144 (5th Cir.1982); *Glovinsky v. Cohen,* 983 F.Supp. 1, 3 (D.D.C.1997). The Fifth Circuit has held that the adverse employment decision must be an "ultimate employment decision." *Dollis v. Rubin,* 77 F.3d 777, 781–82 (5th Cir.1995). If, and when, the plaintiff establishes a prima facie case of discrimination, the burden then shifts to the defendant to demonstrate that it is unable to reasonably accommodate the plaintiff's needs without suffering undue hardship. *Turpen,* 736 F.2d at 1026; *Brener,* 671 F.2d at 144.

Title VII does not require that the accommodation process infringe on the rights of the plaintiff's fellow employees, for, as the Supreme Court explained in *Trans World Airlines, Inc. v. Hardison:*

> The repeated, unequivocal emphasis of both the language and the legislative history of Title VII is on eliminating discrimination in employment, and such discrimination is proscribed when it is directed against majorities as well as minorities.... It would be anomalous to conclude that by "reasonable accommodation" Congress meant that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far.

432 U.S. 63, 81 (1977). An accommodation that would force other employees, against their wishes, to modify their work schedules to accommodate the religious beliefs of the complaining employee would be unreasonable and an undue hardship. *See Eversley v. MBank Dallas,* 843 F.2d 172, 176 (5th Cir.1988). Nor is the employer required to bear more than a *de minimis* cost in order to accommodate an employee's religious beliefs. *Hardison,* 432 U.S. at 84. Title VII does not require the employer to choose any particular form of reasonable accommodation, or demonstrate that the plaintiff's alternative forms of accommodation would result in undue hardship. *See Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. 60, 68–69 (1986). Title VII dictates that "any reasonable accommodation by the employer is sufficient to meet its accommodation obligation." *Id.* at 68. While the statutory burden to accommodate rests with the employer, "the employee has a correlative duty to make a good faith attempt to satisfy his needs through means offered by the employer." *Brener,* 671 F.2d at 146.

The controversy in this case is whether Defendant was required to attempt *any* accommodation, or if it was permissible for Defendant to conclude that no accommodation was possible and dismiss Krugh without offering any accommodation. Defendants do not dispute that Plaintiff has set out a *prima facie* case of discrimination. Rather, the outcome of this case hinges on whether any accommodation was possible. The EEOC argues that because Defendant fired Krugh without attempting to accommodate his religious beliefs, the Court should hold that Defendant, as a matter of law, discriminated against Krugh because of his religious beliefs. Defendant maintains that because there was no possible accommodation, Defendant is not subject to liability.

***5** As noted above, the Supreme Court has emphasized that what is required by an employer is *reasonable* accommodation. *See Hardison,* 432 U.S. at 81. In some circumstances, courts have allowed defendant employees to be absolved of liability where no possible accommodation is available. The Fifth Circuit Court of Appeals has recently affirmed this proposition. In *Weber v. Roadway Express, Inc.,* the court noted that the defendant "was entitled to summary judgment even

though it failed to make an effort to accommodate" and that the employer is not required to show a good faith effort to accommodate where "the employer can show that *any* accommodation would impose an undue burden." 199 F.3d 270, 275 (5th Cir.2000) (emphasis added). *See also Toledo v. Nobel–Sysco, Inc.,* 892 F.2d 1481, 1489 (10th Cir.1989) ("[I]t is certainly conceivable that particular jobs may be completely incompatible with particular religious practices. It would be unfair to require employers faced with such irreconcilable conflicts to attempt futilely to resolve them. Employers faced with such conflicts should be able to meet their burden by showing that no accommodation is possible."); *Heller v. Ebb Auto Co.* 8 F.3d 1433, 1440 (9th Cir.1993).

Here, Defendant DalFort argues that there was no possible accommodation of Krugh's religious beliefs. There would not have been a problem accommodating Krugh during the 16–month training period because the classes were scheduled in the mornings and because the on-the-job training allowed for flexible scheduling. However, upon completing the 16–month training period, Krugh would have become a full-time employee covered by the collective bargaining agreement. Defendant maintains that to accommodate Krugh's requests for leave on his Sabbath would have violated the collective bargaining agreement. Upon completion of the training period, Krugh would need to begin to repay DalFort for the costs of his training. The religious conflict, Defendant argues, would have made it impossible for Krugh to work as a full-time employee for DalFort and would have prevented DalFort from recouping the training costs it expended on Krugh's behalf.

The Fifth Circuit and other courts have held repeatedly that where seniority bidding provisions in collective bargaining agreements conflict with the religious beliefs of an employee so that no accommodation is possible, an employer will not be liable for its failure to accommodate. The Supreme Court held that the operation of a seniority system that prevented an employee's religious beliefs from being accommodated was acceptable. The Court found that while "neither a collective-bargaining contract nor a seniority system may be employed to violate [Title VII] ... the duty to accommodate [does] not require [an employer] to take steps inconsistent with the otherwise valid agreement." *Hardison,* 432 U.S. at 79. *See also Brener,* 671 F.2d at 146.

Defendant posits that the conflict here is identical to that faced by the Supreme Court in *Hardison;* that is, Defendant cannot accommodate Krugh's religious beliefs within the context of the seniority bidding provisions of the collective bargaining agreement. To make this determination, the Court examines Plaintiffs proffered alternatives to see if any accommodation was possible in light of the union agreement and the shift-allocating measures.

***6** Plaintiff tries to show that Defendant could have accommodated Krugh in several ways. Specifically, Plaintiff points to several potential solutions to the conflict between Krugh's religious beliefs and the collective bargaining agreement. Such a showing would demonstrate that Defendant failed to reasonably accommodate Krugh's Sabbath observation. However, considering the Fifth Circuit and the Supreme Court precedent affirming existing agreements in the face of potential religious discrimination, Plaintiff's showing here fails.

Plaintiff argues that there is an issue of fact as to whether or not it was possible for Defendant to accommodate Krugh's religious beliefs. Plaintiff argues that although the collective bargaining agreement governs the shift bidding provisions, alternatives exist which would have been acceptable accommodations that did not violate the terms of the union agreement. Plaintiff argues that Krugh could have worked a variety of shifts, including longer shifts, and the EEOC points to Article 9, Section A1–2 of the CBA. Pl.'s Resp.App., Ex. B. Plaintiff argues that Krugh could have traded shifts with different employees, pursuant to Article 9, Section A4 of the CBA. *Id.* Further, Plaintiff points to a 30 minute rest period and argues that Krugh could have left early or arrived late. *Id.* (Article 9, Section B3). Plaintiffs point to the possibility of allowing Krugh to take temporary assignments or vacancies. Pl.'s Resp.App., Ex. A (Bohannon Dep.). Plaintiff points to Krugh's willingness to work any shift but the Friday evening or Saturday afternoon shift and conclude that any hardship upon Defendant would be *de minimis.*

However, Defendant refutes all of these possibilities, and argues that affording Krugh special treatment because of his Sabbath observation would have lead to repeated union grievance proceedings and conflict with the union based on real or perceived violations of the collective bargaining agreement. Plaintiff never contends with Defendant's basic argument: providing Krugh with special treatment would conflict with the seniority bidding provision of the collective bargaining agreement. Defendant provides evidence that the union would object to the possibilities raised by Plaintiff. Def .'s App. at 129–30 (Branch Dep.).

The Court finds that Defendant did not have to offer potential accommodations to Krugh. "The *mere possibility* of an adverse impact on co-workers ... is sufficient to constitute an undue hardship." *Weber,* 199 F.3d at 274. Plaintiff has not shown any accommodation that would not potentially conflict with the collective bargaining agreement, and Defendant has demonstrated that any accommodation would be likely to conflict with the seniority provisions of the agreement. Therefore, the Court finds that as a matter of law, Defendant did not have a duty to attempt to accommodate Krugh's religious

beliefs. Accordingly, the Court GRANTS Defendant's Motion for Summary Judgment and DENIES Plaintiff's Motion for Summary Judgment.

V. DalFort's Request for Attorney's Fees

***7** Finally, Defendant requests that the Court award attorney's fees to Defendant because the EEOC's claim is frivolous, unreasonable, or groundless. Although the Court grants Defendant's motion, the Court does not find that Plaintiff's position is so lacking in merit as to justify an award of attorney's fees. Therefore, Defendant's request is DENIED.

It is so ordered.