

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ELVIRA M. JIMENEZ,

Plaintiff,

v.

MADISON AREA TECHNICAL COLLEGE,
JACKYE THOMAS, CAROL BASSETT and
WILLIAM STRYCKER,

Defendants.

OPINION AND
ORDER

00-C-0424-C

Plaintiff Elvira M. Jimenez is suing defendants Madison Area Technical College, Jackye Thomas, Carol Bassett and William Strycker for alleged violations of the United States Constitution and of 42 U.S.C. §§ 1981 and 1983 and 20 U.S.C. § 1681 (Title IX). Plaintiff contends that defendants denied her equal protection of the law by treating her differently from other employees on the basis of her race, ethnic origin and race. The case is before the court on defendants' motion to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.

I conclude that ...

Read in the light most favorable to plaintiff, the complaint fairly alleges the following facts.

ALLEGATIONS OF COMPLAINT

In September 1989, plaintiff Elvira M. Jimenez began work for defendant Madison Area Technical College, an educational institution that is the recipient of federal funds. Initially, she worked in the Paraprofessional Business Lab. From April through December 1993, she worked in Adult Basic Education under the dean of Alternative Education. In November 1994, she began working in Student Services, where she held the title of Affirmative Action Liaison and was involved with counseling services and women's initiatives. In the same month, plaintiff began working under defendant Jackye Thomas, Dr. Richard Harris and Darl Drummond, Vice President of Student Services. Plaintiff had a co-equal working relationship with Harris, who was responsible for Affirmative Action and Disabled Student Services, and who, like plaintiff, reported directly to Drummond in 1994. Beginning in 1994, defendant Thomas made statements to plaintiff such as, "You look so pretty" and "Where is your green card?" and "You have a problem with the English language. During an interview, Thomas said to plaintiff, "I don't expect you to be here long."

Plaintiff's duties in Student Services included typing confidential memoranda, typing

discrimination reports, interviewing alleged victims, conducting investigation procedures, making recommendations to Harris and arranging speakers and seminars. Some time in 1995, plaintiff sought a reclassification that was denied. In connection with her effort to be reclassified, defendant Thomas made statements to plaintiff similar to the ones he or she had made in 1994. (Plaintiff does not say whether defendant Thomas is male or female.)

On various occasions from 1994 until 1997, plaintiff was demeaned and put down by Dee Pozzi, Jani Berneau, Pat Olson and defendant Thomas. In 1995, after Drummond had left MATC, plaintiff was demoted from Level 15 to Level 14 and her payroll title was changed to Administrative Assistant.

Plaintiff complained to Harris that she was being mistreated because of her ethnic origin and her race. No investigation was ever made of her complaints, although Harris brought them to the attention of defendants Thomas and Strycker.

After Drummond's departure, plaintiff was singled out by various individuals because of her strong support of Drummond. In 1996, defendant Bassett told plaintiff that she was a "money hungry spic." On March 22, 1996, at a meeting with defendants Strycker, Bassett and Thomas, plaintiff complained about race discrimination by defendant Thomas. Thereafter, defendant Strycker told plaintiff that she was to have no more interaction with defendant Thomas and she was not to participate in the meetings of the People of Color Committee. No

investigation was undertaken regarding plaintiff's complaints.

In March 1997, Harris told defendant Strycker that he should have investigated plaintiff's complaints. Sometime in April 1997, defendant Strycker told plaintiff, "At least you Mexicans are good for something."

Plaintiff has endured humiliation, anxiety and stress because of defendants' failure to investigate her complaint and she has been subjected to a racially and sexually hostile environment. Plaintiff has been denied benefits, privileges and conditions of employment because of her race and sex.

OPINION

In deciding a motion to dismiss, a court is to consider all of the plaintiffs' allegations in the light most favorable to the plaintiff. See Hishon v. King & Spalding, 467 U.S. 69, 72 (1984); Yeksigian v. Nappi, 900 F.2d 101, 102 (7th Cir. 1990). The court may have to exercise its imagination to supply the allegations of fact that would support the complaint; the standard for dismissal is that the court must be satisfied "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir. 1985) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). This does not mean, however, that the court must rewrite the complaint or imagine claims the

plaintiff might have alleged but did not. It remains plaintiff's job to set forth enough information to allow the court (and opposing counsel) to make out the contours of a claim. See Orthmann v. Apple River Campground, Inc., 757 F.2d 909, 915 (7th Cir. 1985) ("The function of the complaint under the federal rules is to notify the defendant of the plaintiff's claim rather than to detail the evidence which if true would show that the plaintiff ought to win his case.")

In plaintiff's first cause of action, she alleges that she was denied liberty and equal protection because of her race and gender when she was not able to perform her duties under terms and conditions similar to those enjoyed by similarly situated white workers in the workplace because of her race and sex. Plaintiff has not identified the statute under which she is suing or which defendants she believes are liable to her, but I presume that she is proceeding pursuant to 42 U.S.C. § 1983 against defendants Thomas, Bassett and Strycker. (She has alleged nothing that would suggest that defendant MATC knew or should have known of any alleged harassment.)

In order to state a claim of race discrimination under either statute, plaintiff must allege that these defendants discriminated against her intentionally with respect to the conditions of her employment. Plaintiff alleges that each of the defendants made at least one discriminatory remark to her over the course of three years. A few derogatory comments over a three year period fall far short of making out a claim of racial harassment in the workplace. Cf. Hunter v.

Allis-Chalmers Corp., Engine Div. 797 F.2d 1417 (7th Cir. 1986) (episodes of continuous racial harassment included racial graffiti on bathroom walls, threatening notes of company bulletin board, racially derogatory notes and a hangman's noose attached to black employee's testing equipment). Moreover, plaintiff has not alleged that she is not white. However, at this early stage, I will assume that plaintiff is not white and that she can flesh out her claim of racial harassment. It is a different story with respect to any claim of sexual harassment. None of the cited comments have any sexual connotation (with the innocuous exception of the "Your look pretty today" comment) and none is demeaning of women.

It appears from the allegations of the complaint that plaintiff may believe that she was subjected to intentional discrimination based on sex or race or national origin when she was denied reclassification of her job and when she was demoted to Administrative Assistant, although she does not refer to these employment actions in her "First Cause of Action." If plaintiff had intended to make such a claim, she has failed because she has not linked either of these adverse employment actions to any one of the defendants. She does not allege that any of the individual defendants was in a position to make the employment decisions she challenges and she does not allege anything from which I could infer that defendant MATC took the actions it did for any discriminatory reason.

Defendants argues that plaintiff's § 1983 claims should be dismissed because plaintiff is

suing an educational institution that receives federal funds and therefore, can proceed on her claim of race discrimination only under Title IX, 20 U.S.C. § 1681. See Waid v. Merrill Area Public Schools, 91 F.3d 857, 862 (7th Cir. 1996) (“By enacting Title IX, Congress created a strong incentive for schools to adopt policies that protect federal civil rights;” Congress intended to place burden of compliance with law on educational institutions). Title IX applies to employees of educational institutions such as plaintiff, see North Haven Board of Education v. Bell, 456 U.S. 512 (1982), but it does not apply to claims of racial discrimination. Its prohibitions are limited to sex discrimination. Therefore, Title IX does not preempt plaintiff's claim of racial discrimination.

Defendants ask that the claims against the individual defendants in their official capacities be dismissed because the claims are redundant of the claim against the college. The request will be granted. Defendants' § 1983 claim of race and ethnic discrimination will go forward against the individual defendants in their individual capacities only.

Plaintiff's second cause of action is that she had an employment contract and relationship with defendant MATC and that she was subject to discrimination in violation of 42 U.S.C. § 1981(a) and (b) because of her race and ethnic origin. Defendant has moved to dismiss this claim on the grounds that plaintiff has not identified her race or her “ethnic origin” and that § 1981 does not allow claims based on national origin. In St. Francis College v. Al-khazraji, 481

U.S. 604 (1987), the Court held that although a claim could not be brought under § 1981 based on national origin, a person who “can prove that he was subjected to intentional discrimination based on the fact that he was born an Arab, rather than solely on the place or nation of his origin, or his religion, he will have made out a case under § 1981.” Id. at 613.

Although defendants have not shown that St. Francis College provides a basis for dismissing plaintiff's complaint, they are correct in arguing that there is no basis for concluding that defendant MATC, plaintiff's employer, took any adverse employment actions against her because of either her race or her ethnicity. As I noted earlier, plaintiff has not shown that MATC knew about the remarks made to her by the individual defendants or that it took any other adverse action against her. Therefore, I will grant defendants' motion to dismiss this cause of action.

For plaintiff's third cause of action, she alleges that “she was a victim of a racially and sexually hostile environment because of her race and ethnic origin in that she was subjected to abusive and hostile working conditions by the acts and conduct of the individual named defendants.” Cpt., dkt. #4, at 8. I cannot see any distinction between this cause of action and the first one and therefore, will not address it.

In plaintiff's fourth cause of action, she alleges that she was retaliated against in the terms and conditions of her employment because of her complaints of discrimination, in violation of

§ 1981(a) and (b) and § 1983. The only adverse action she alleges is her removal from the People of Color Committee. Plaintiff does not say who made the decision to remove her and specifically, whether it was anyone who would have known that she had made complaints of discrimination.

Although I have doubts that removal from one committee constitutes an adverse employment action and I have no assurance that plaintiff can tie her removal to any of the named defendants and show that whoever removed her did so intending to discriminate against her because of her filing of complaints, I will allow plaintiff to go forward on this cause of action.

In summary, plaintiff can proceed on the following claims: (1) defendants Thomas, Bassett and Strycker subjected her to a harassing work environment with the intention of discriminating against on the basis of her race (first cause of action); (2) she was retaliated against in the terms and conditions of her employment because she complained of racial discrimination (fourth cause of action). Plaintiff's claims of sex discrimination will be dismissed, as will any claims under 20 U.S.C. § 1681 (which is unmentioned in any of her causes of action). I assume that defendants will want to serve contention interrogatories on plaintiff to find out more about her theories of the case and the facts upon which she intends to rely.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendants Madison Area Technical College, Jackye Thomas, Carol Bassett and William Strycker is DENIED with respect to plaintiff Elvira Jimenez's claims that the individual defendants subjected her to intentional race discrimination in the form of a hostile workplace and that these defendants and defendant MATC retaliated against her for the filing of complaints of race discrimination.

Entered this 13th day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge