

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

KENNETH E. KING,

Petitioner,

v.

DAVID L. DITTER,

Respondent.

OPINION AND ORDER

06-C-257-C

In this proposed civil action for declaratory and monetary relief, petitioner Kenneth King contends that respondent David Ditter, plaintiff's prison job supervisor, lowered his pay and ultimately fired him in retaliation for statements he made and grievances he filed criticizing Ditter's managerial practices. In addition, petitioner alleges in his complaint that respondent is "racist" and suggests that respondent may have terminated petitioner in violation of his right to equal protection. Although the complaint identifies the race of several prisoners who were not fired for job violations similar to those committed by petitioner, it does not identify petitioner's race.

In an order dated May 31, 2006, I granted petitioner's request for leave to proceed in forma pauperis on his retaliation claim and stayed a decision whether to grant him leave

to proceed on his claim that respondent violated his right to equal protection by treating him differently from similarly situated inmates because of his race in order to permit petitioner to supplement his complaint by identifying his race.

In a letter to the court dated June 3, 2006, which I construe as a supplement to his complaint, petitioner alleges that he is “an African American male.” In his complaint, petitioner alleges that respondent lowered his pay and later fired him in part because he “had been having problems with his fellow employees.” He was later fired for telling other inmates that respondent was racist. Petitioner alleges that three other inmate workers, whom he identifies as “white” and “Hmong” engaged in behavior that could be characterized as equally “disruptive” but that respondent did not fire these inmates or reduce their pay. Because it can be inferred from these allegations that respondent treated petitioner more harshly than other similarly situated workers because of petitioner’s race, his allegations are sufficient to state a claim under the equal protection clause of the Fourteenth Amendment. Therefore, I will grant petitioner leave to proceed on his equal protection claim as well as his retaliation claim against respondent.

One final detail. In his supplement, petitioner contends that the May 31, 2006 order stated incorrectly that he has an outstanding balance of \$334.76 for filing this lawsuit. In an order dated May 12, 2006, I concluded that petitioner was unable to prepay the full fees and costs of starting this lawsuit and assessed him an initial partial payment of \$15.24, which he paid on May 30, 2006. In the same order, I mistakenly listed the fee for filing the

lawsuit as \$250. Because the filing fee was increased from \$250 to \$350 on April 9, 2006, and petitioner signed his complaint on May 1, 2006, the filing fee for his lawsuit is \$350. Therefore, he remains obligated “to make monthly payments of 20 percent of [his] monthly income” until the remaining \$334.76 balance has been paid in full. 28 U.S.C. § 1915(b)(2).

ORDER

IT IS ORDERED that petitioner Kenneth King’s request for leave to proceed in forma pauperis is GRANTED with respect to his claim that respondent violated his right to equal protection under the Fourteenth Amendment. The complaint, including the June 3, 2006 supplement, will be served on respondent as described in the court’s May 31, 2006 order.

Entered this 8th day of June, 2006.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge