IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

AHMAD SHAMSID-DEEN,

Plaintiff,

v. MEMORANDUM and ORDER

ALLIANT ENERGY CORPORATION, 06-C-469-S

Defendant.

Plaintiff Ahmad Shamsid-Deen commenced this civil action under Title VII and 42 U.S.C. § 1981 claiming that the defendant Alliant Energy Corporation discriminated against him because of his race and religion and retaliated against him. In his complaint he alleges that the defendant treated him differently than similarly situated employees when it suspended him.

On July 15, 2003 defendant Wisconsin Power and Light Company (incorrectly identified in the complaint as Alliant Energy Corporation) moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. According to this Court's October 17, 2006 Preliminary Pretrial Conference Order plaintiff's brief in opposition to defendant's motion for summary judgment was to be filed not later than January 11, 2007 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Ahmad Shamsid-Deen is an African American adult resident of the State of Wisconsin who practices the Muslim religion. Defendant Wisconsin Power & Light Company (WP&L) is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. Plaintiff commenced his employment with WP&L in 1987 at the Rock County power plants and remains employed as a Plant Equipment Operator.

In 2003 plaintiff filed a complaint in the United States District Court for the Western District of Wisconsin (Case No. 03-C-69-S) alleging that defendant discriminated against him on the basis of his race, religion or unlawful retaliation. A jury concluded in the fall of 2003 that the defendant was liable for discrimination. A settlement was reached on damages.

On December 3, 2003 defendant suspended plaintiff for two days for being absent November 25, 2003 without notification. Failing to notify the defendant employer of an absence is a violation for which an employee may be disciplined. Defendant similarly disciplines other employees who miss work without notification.

In December 2003 plaintiff was on the Sick Leave-Medical Documentation Plan and was required upon returning to work after an illness to submit a doctor's excuse. On November 14 and 17, 2003 plaintiff notified the defendant that he could not work because he was ill. Plaintiff did not provide a doctor's excuse for these absences until December 5, 2003. Plaintiff's failure to provide

the doctor's excuse upon his return to work violated the Sick Leave-Medical Documentation plan. On December 9, 2003 plaintiff was suspended for two days for this violation. Other employees on the Sick Leave-Medical Documentation Plan would be disciplined the same way for a violation of the plan.

On February 9, 2004 defendant disciplined plaintiff with a three day suspension for insubordination toward Master Unit Operator Baer. Plaintiff swore at Baer when he directed him to operate two boilers at the same time. Other employees who have similar insubordinate confrontations with their supervisors receive the same discipline.

On February 9, 2004 plaintiff met with Greg Jenkins who notified him of his three day suspension. At the end of the meeting, plaintiff told Jenkins, "Have a continued good day, and may God reward you all you have coming." Jenkins said , "Am I supposed to take that as a threat?" Plaintiff replied, "You can take it the way it was said."

Pat Hartley, the Plant Manager for the Rock River and Blackhawk plants investigated the incident between plaintiff and Jenkins. He concluded that plaintiff's comments violated defendant's expectations concerning appropriate communications with a supervisor. Hartley suspended plaintiff for five days for the inappropriate comment. Other employees who engaged in similar conduct would receive similar discipline.

MEMORANDUM

Plaintiff claims he was discriminated on the basis of his race and religion and in retaliation for participation in protected activity in violation of Title VII and 42 U.S.C. §1981. In opposing defendant's motion for summary judgment plaintiff cannot rest on the mere allegations of his pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has failed to submit any affidavit or other evidence which contradicts the affidavit submitted by the defendant. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Plaintiff claims that he was discriminated against when he received four suspensions. To establish a prima facie case of discrimination or retaliation, plaintiff must establish (1) that he belongs to a protected class; (2) that his performance met his employer's legitimate expectations; (3) that he suffered an adverse employment action and (4) similarly situated employees not in his protected class received more favorable treatment. Brummett v. Sinclair Broadcast Group, Inc.,414 F.3d 686, 692 (7th Cir. 1005).

Plaintiff cannot meet his burden to establish a prima facie case of discrimination where he has not submitted any evidence that similarly situated employees not in his protected class were treated differently than he was treated. See Keri v. Board of Trustees of Purdue Univ., 458 F.3d 620, 644 (7th Cir. 2006).

Had plaintiff demonstrated a prima facie case of discrimination, the burden shifts to the employer to articulate legitimate reasons for its actions. Dunning v. Simmons Airlines, Inc., 62 F.3d 863, 868 (7th Cir. 1995). Defendant has presented evidence that plaintiff was disciplined for his conduct in violating workplace policies and rules. Plaintiff has submitted no evidence to show that the reasons given by defendant were pretextual for discrimination or retaliation. Id.

Defendant is entitled to judgment as a matter of law on plaintiff's discrimination and retaliation claims. Accordingly, defendant's motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED That judgment be entered in favor of defendant against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 19th day of January, 2007.

BY THE COURT:

_____s/_____
JOHN C. SHABAZ
District Judge