

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

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NAZEEH YOUNIS,

Plaintiff,

v.

PINNACLE AIRLINES, INC.,

Defendant.  
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ORDER

06-C-0763-C

This civil suit for damages arising out of allegedly discriminatory employment practices violative of Title VII, 42 U.S.C. §§ 2000e-1 - 2000e-17, is before the court on defendant Pinnacle Airlines, Inc.'s motion to dismiss for improper venue. I agree with defendant that venue is not proper in this district but I will transfer the case to the Western District of Tennessee, where venue is proper, rather than dismiss it.

In his complaint, plaintiff Nazeeh Younis alleges that he was subjected to various acts of employment discrimination while he was training to become a pilot for defendant and later, while working in that capacity. Most of these acts occurred at defendant's headquarters in Memphis, Tennessee. None are alleged to have occurred in Wisconsin. Plaintiff filed a complaint with the Equal Employment Opportunities Commission in

Memphis.

In a declaration filed in opposition to defendant's motion to dismiss, plaintiff declares that he is a resident of Wisconsin and has been so at all relevant times. In an affidavit, he avers that his wife, parents and parents-in-law reside in Wisconsin and that he keeps his copies of pertinent employment papers in Madison, Wisconsin.

In an affidavit filed by David White, Director of Flight Administration, White avers that most of the witnesses that defendant would call reside in or around Memphis, Tennessee. In another affidavit, Mary Ann Morrow avers that the relevant employment records are maintained in Memphis and that plaintiff would have worked and received training there and would have been based out of Detroit, Michigan.

## OPINION

42 U.S.C. § 2000e-5(f)(3) sets out the venue requirements for employment actions brought under Title VII. Such an action may be brought

in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice.

It is evident from the allegations of plaintiff's complaint that the unlawful employment practices about which he complains took place in Memphis, that the relevant

employment records are there and that plaintiff would have worked there and been based out of Detroit. He has not shown that venue would be proper in this district. His retention of certain employment papers in this district is not relevant; it is the official employment records of the defendant that are the focus of § 2000e. Plaintiff suggests that his family lives in this district but he does not say that any family members would be witnesses in his case. It is unlikely that they would be, except perhaps in the damages phase of the case. It is hard to imagine that any of them would have first-hand knowledge of employment actions that allegedly occurred in Memphis.

Plaintiff makes much of the fact that he resides in Wisconsin and commutes on Pinnacle flights to his base in Detroit. Recognizing that his residence is not one of the bases for venue under § 2000e-5, he tries to characterize his use of Pinnacle flights leaving from the Madison airport as proof that this is a district in which he would have worked had it not been for the discrimination. However, he has not shown that he “worked” in Madison. here. Cf. Rojas v. Trans States Airlines, Inc., 204 F.R.D. 265 (D.N.J. 2001) (holding that pilot flying out of JFK airport was not working in New Jersey, where he resided, making venue in New Jersey improper); Matthews v. Trans World Airlines, Inc., 478 F. Supp. 1244 (S.D.N.Y. 1979 (venue proper in New York because it would have been assigned base city for plaintiff, who was flight attendant, and therefore where he “would have worked”). Instead, it appears to be undisputed that he commuted from here. That he used a Pinnacle

flight for the commute does not transform it into the start of his work day. I conclude, therefore, that venue is improper in this district.

Defendant argues that dismissal is proper because plaintiff engaged in “blatant forum shopping.” Def.’s Br., dkt. #4, at 6. I am not prepared to say that wanting to litigate in the federal court closest to one’s residence is “blatant forum shopping” when the plaintiff is an individual suing for the return of his job and the defendant is an airline company. Even if the equities did not lie with plaintiff in this respect, however, I would transfer the case to the Western District of Tennessee in the interest of justice, pursuant to 28 U.S.C. § 1406(a). That district is one in which this action could have been brought; it is the site of pertinent records; and it appears to be the residence of witnesses that the parties will want to call at trial. Therefore, it meets the criteria of § 1406(a).

#### ORDER

IT IS ORDERED that defendant Pinnacle Airlines, Inc.’s motion to dismiss this case for improper venue is DENIED; pursuant to 28 U.S.C. § 1406(a), the case is transferred to

the United States District Court for the Western District of Tennessee.

Entered this 10th day of May, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge