

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

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AARON L. ESPENSCHIED,  
GARY IDLER and MICHAEL CLAY,

ORDER

09-cv-625-bbc

Plaintiffs,

v.

DIRECTSAT USA, LLC and  
UNITEK USA, LLC,

Defendants.

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This wage and hour action was filed originally as a class and collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201-219, and the wage and overtime compensation laws of Wisconsin, Minnesota and Pennsylvania. However, the class and collective action claims have been dismissed and only the individual claims of plaintiffs Aaron Espenscheid, Gary Idler and Michael Clay remain. Trial is scheduled for March 12, 2012.

Now before the court is defendants' motion under Fed. R. Civ. P. 42 to sever the case into three separate jury trials. Dkt. #674. Defendants contend that trying the claims of all

three plaintiffs in a single proceeding raises a significant risk of confusion to the jury and prejudice to defendants. They contend that it will be difficult for the jury to distinguish among the work experiences and claims of the three plaintiffs, who worked at different locations and during different time periods. Additionally, defendants intend to challenge the credibility and veracity of each plaintiff's testimony, but the jury may impute the credibility of one plaintiff to another whose testimony, standing alone, would have lacked credibility. Finally, defendants contend that the case will be unnecessarily complicated because each individual plaintiff asserts claims under different state laws.

I will deny the motion. Under Rule 42(b), a court may order separate trials “[f]or convenience, to avoid prejudice, or to expedite and economize.” I conclude that trying plaintiffs’ claims in a single trial will be the most convenient and economical way to resolve this case and will not prejudice defendants. Although each plaintiff must prove that he is entitled to relief on his claims, there are common issues that connect their claims and make them well suited for resolution in a single proceeding. Plaintiffs intend to use common exhibits, including job descriptions, employee handbooks, payroll and overtime policies, corporate emails and the company vehicle policy. In addition, plaintiffs intend to rely on the testimony of corporate witnesses. It will be more efficient and economical for one jury, rather than three separate juries, to review this common evidence and consider the common issues raised by plaintiffs’ claims.

Additionally, I am not persuaded by defendants' argument that a jury will be incapable of distinguishing among evidence relevant only to one plaintiff's claim and evidence relevant to all plaintiffs' claims; nor am I concerned that a jury would be unable to judge the credibility of one plaintiff without imputing to him the testimony of another. There are only three plaintiffs left in this case and all three intend to appear, testify and be cross-examined. Three is not an unmanageable number. Juries are often asked to distinguish between claims and parties when answering verdict questions. Jury instructions explaining that each plaintiffs' claim is independent can eliminate potential confusion. Finally, the state laws at issue do not differ significantly from each other; they are modeled on the FLSA. Where there are differences, the jury will be provided clear jury instructions and verdict forms. Accordingly, I will deny defendants' motion to sever this case into three separate trials.

Defendants also filed a motion for leave to file a reply brief in support of their motion, in which they raise new arguments as to why the trial should be severed. Dkt. #677. I will deny this motion. The court did not request a reply brief. Moreover, the reply contained no persuasive arguments.

ORDER

IT IS ORDERED that

1. The motion to sever this case, dkt. #674, filed by defendants DirectSat USA, LLC and Unitek USA, LLC is DENIED.

2. Defendants' motion for leave to file a reply brief, dkt. #677, is DENIED.

Entered this 4th day of November, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge