

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

NANCY C. JOHNSON,

Plaintiff,

v.

UNITED STATES POSTAL SERVICE,
NATIONAL RURAL LETTER CARRIER'S
ASSOCIATION, VICKI GALGOWSKI,
JOE KAUFMAN and CHRIS KOTTKE,

Defendants.

ORDER

12-cv-127-bbc

This is a civil action for monetary relief in which plaintiff Nancy Johnson, who is proceeding pro se, is suing defendants United States Postal Service, National Rural Letter Carriers' Association, Vicki Galgowski, Chris Kottke and Joe Kaufman for injuries related to her termination from her employment as a rural postal carrier. In an order entered December 17, 2012, I granted defendants' motions to dismiss plaintiff's complaint. Dkt. #37. I concluded that plaintiff had failed to file a timely administrative grievance with respect to her Title VII and Rehabilitation Act claims against defendants United States Postal Service, Kaufman and Kottke, and that her claims against defendants National Rural Letter Carriers' Association and Galgowski for breach of their duty of fair representation were barred by the statute of limitations. I concluded that any other claim plaintiff was attempting to assert violated Fed. R. Civ. P. 8, and I gave plaintiff an opportunity to file an amended complaint to clarify the claims I did not dismiss as untimely.

Plaintiff has filed a motion for clarification, dkt. #38, and motion for an extension of time to file an amended complaint. Dkt. #39. In her motion for clarification, plaintiff asks (1) whether she can include her claims under Title VII and the Rehabilitation Act in her amended complaint; (2) which other claims she can include in her amended complaint; (3) who she should name as defendants; and (4) to whom she should send her amended complaint.

I can provide clarification to plaintiff on some of these questions. With respect to plaintiff's claims under Title VII and the Rehabilitation Act that were dismissed previously, plaintiff cannot include those claims in her amended complaint. I dismissed those claims because the allegations in plaintiff's complaint and her attachments showed that she had failed to file a timely administrative complaint with the United States Postal Service as required by 29 C.F.R. §§ 1614.106(a) and (b). In her motion for clarification, plaintiff contends that she did not file timely administrative complaints because union stewards suggested to her in 2004, 2008 and 2009 that if she filed a discrimination claim against defendant Kaufman, the postmaster, Kaufman might "play games" with her and she might lose her job. Plaintiff contends that she should be permitted to include the Title VII and Rehabilitation Act claims in her amended complaint because she has a defense to her failure to exhaust her administrative remedies.

Plaintiff's explanation that she did not file a timely administrative complaint because of comments made to her in 2004, 2008 and 2009 does not make sense. As I explained in the previous order, plaintiff received notice from an Equal Opportunity Counselor of her right to file an individual complaint on April 13, 2011. Plaintiff was required to file an EEO complaint within 15 days after receiving the notice, 29 C.F.R. § 1614.106(b), but plaintiff's complaint was one day late. Plaintiff's failure to file a timely administrative complaint was grounds for

dismissal of the case by the agency. Smith v. Potter, 445 F.3d 1000, 1006 n.14 (7th Cir. 2006); Ester v. Principi, 250 F.3d 1068, 1071 (7th Cir. 2001). In her opposition to defendants' motion to dismiss, plaintiff did not deny that her administrative complaint was untimely and offered no excuses for why it was late. When she was before the EEOC, plaintiff had argued that her complaint was untimely because she had wanted to send it by certified mail and had to wait an extra day to do so. Dkt. #1-1. Plaintiff did not argue that she delayed filing her administrative complaint because of comments made to her years earlier by the union steward, and she did not make that argument in response to defendants' motion to dismiss in this case. Even if plaintiff had made that argument, I would have dismissed the claims. Plaintiff was terminated from the Postal Service in April 2009. It makes no sense for her to say that she delayed filing an administrative complaint for one day in April 2011 because she was worried about defendant Kaufman's reaction to it. Accordingly, plaintiff cannot include her claims under Title VII and the Rehabilitation Act in her amended complaint.

With respect to plaintiff's questions about which claims she should include in her amended complaint and who she should name as defendants, I cannot answer those questions. As I noted in the previous order, plaintiff stated in her original complaint that she was suing defendants for "multiple violations of Labor Laws, Civil Rights, Harassment, [and] Discrimination (Age, Disability, ADHD and 2 special needs kids). Plt.'s Cpt., dkt. #1, at 1. In the margins of her complaint, plaintiff wrote, "Violations of Collective Bargaining Agreement, Reckless and Malicious acts, unfair representation, Violated bargaining in good faith . . . Conspiracy, Intentional Infliction of Emotional Pain, Libel, Slander, More!" Id. I dismissed these claims for failure to satisfy the requirements of Fed. R. Civ. P. 8 because it was impossible

to tell from plaintiff's complaint which claims she was asserting against which defendants, why she believed defendants should be liable for any injuries she suffered and what relief she was seeking. Because plaintiff's complaint was generally incomprehensible, I cannot clarify for plaintiff what claims she may assert against what defendants. Even if it were permissible for me to give her such advice, I do not know what happened to her, what injuries she suffered or who was responsible for the injuries. In any event, I cannot provide legal advice to plaintiff about which of her claims may be viable. I can provide only the instructions that I gave her in the previous order:

Plaintiff should draft the amended complaint as if she were telling a story to people who know nothing about her situation. This means that someone reading the complaint should be able to answer the following questions:

- What are the facts that form the basis for plaintiff's claims? For example, where was she working, what were her duties, what happened that she thinks is wrong?
- What actions did defendant take that violated plaintiff's rights?
- What rights does plaintiff believe were violated?
- What relief does plaintiff want the court to provide?

Plaintiff should identify clearly the facts that form the basis for her claims against defendant and should set forth her allegations in separate, numbered paragraphs using short and plain statements. Plaintiff should identify clearly what rights she believes were violated and should address each right separately.

Dkt. #37 at 16. After considering these instructions, plaintiff should include in her amended complaint any claim for which she can explain clearly why she believes her rights were violated and why she believes a particular defendant should be held liable.

With respect to plaintiff's final question, plaintiff must file a copy of her amended complaint with the court and must serve her amended complaint on any person or entity she

names as a defendant, as the magistrate judge explained to her in his March 21, 2012 order. Dkt. #5. I am enclosing a copy of that order for plaintiff's reference.

ORDER

IT IS ORDERED that plaintiff Nancy Johnson's motion for an extension of time to submit an amended complaint, dkt. #39, is GRANTED. Plaintiff may have until March 1, 2013 to submit an amended complaint that complies with the Federal Rules of Civil Procedure. If plaintiff fails to submit an amended complaint by March 1, I will direct the clerk of court to enter judgment for defendants and close this case.

Entered this 20th day of February, 2013.

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