

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.

OPINION AND 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. Plaintiff states in her complaint that she is 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. She also includes in the margins of her complaint, "Violations of Collective Bargaining Agreement, Reckless and Malicious acts, unfair representation, Violated bargaining in good faith . . . Conspiracy, Intentional Infliction of Emotion Pain, Libel, Slander, More!" Id.

Defendants have responded to plaintiff's complaint by filing motions to dismiss. Defendants United States Postal Service, Joe Kaufman and Chris Kottke filed a motion to dismiss plaintiff's claims to the extent they are based on Title VII, the Age Discrimination in

Employment Act or the Rehabilitation Act on the basis that plaintiff failed to exhaust her administrative remedies before bringing such claims. Dkt. #25. Defendants also contend that plaintiff failed to sue the proper party and failed to state a claim for any form of discrimination. Additionally, these defendants ask that plaintiff's remaining claims be dismissed for failure to comply with Fed. R. Civ. P. 8; in the alternative, defendants ask that plaintiff be required to file a more definite statement of her claims.

Defendants National Rural Letter Carriers' Association and Vicki Galgowski filed a separate motion to dismiss, contending that plaintiff's claims arising under federal labor laws are barred by the applicable statute of limitations. Additionally, they contend that any claims not barred by the statute of limitations should be dismissed for failure to state a claim upon which relief may be granted.

I am granting both motions to dismiss. With respect to the motion filed by the United States Postal Service and defendants Kaufman and Kottke, I conclude that plaintiff failed to file a timely administrative grievance with the Postal Service as required to pursue claims under Title VII and the Rehabilitation Act in federal court. With respect to the motion filed by defendants National Rural Letter Carriers' Association and Vicki Galgowski, I conclude that plaintiff's claim that these defendants violated their duty of fair representation is barred by the statute of limitations. Finally, I conclude that any other remaining claim plaintiff is attempting to assert against any defendant must be dismissed for violation of Fed. R. Civ. P. 8, including plaintiff's claim under the Age Discrimination in Employment Act. However, I will give plaintiff one opportunity to file an amended complaint to clarify the claims I have not dismissed as untimely.

In resolving the motions to dismiss, I have accepted as true all well-pleaded facts in plaintiff's complaint and drew all inferences in her favor. Additionally, I have considered the decision of the United States Equal Employment Opportunity Commission that plaintiff attached to her complaint. Plaintiff refers to the decision in her complaint and it is a matter of public record. Brownmark Films, LLC v. Comedy Partners, 682 F.3d 687, 690 (7th Cir. 2012) (in deciding Rule 12(b)(6) motion, courts may consider documents referred to in plaintiff's complaint that are central to claim); Adkins v. VIM Recycling, Inc., 644 F.3d 483, 493 (7th Cir. 2011) (courts may take judicial notice of undisputed matters within public record). Plaintiff alleges the following facts in her complaint.

ALLEGATIONS OF FACT

Plaintiff Nancy Johnson is a former employee of defendant United States Postal Service and a former member of defendant National Rural Letter Carriers' Association. Plaintiff began her employment on May 31, 2003 and worked as a rural carrier associate in Hudson, Wisconsin. Sometime in early 2009, defendant Joe Kaufman, the postmaster, held an "investigational meeting" regarding allegations that plaintiff had been telling customers to remove rubber bands from their outgoing mail in an attempt to inflate her mail count. Kaufman told plaintiff she could be fired. At the time, defendant Chris Kottke, plaintiff's supervisor, had evidence that at least some of the accusations were false. On February 28, 2009, plaintiff was placed on emergency placement suspension.

Defendant Vicki Galgowski, the local union representative of National Rural Letter Carriers' Association, was responsible for conducting an investigation and filing grievances

regarding the allegations against plaintiff. She filed grievances but failed to file evidence on plaintiff's behalf. Defendant National Rural Letter Carriers' Association offered plaintiff a settlement of \$2,000 and resignation. She rejected the offer. The United States Postal Service officially terminated plaintiff on April 10, 2009. In July 2010, plaintiff received two letters from defendant National Rural Letter Carriers' Association, informing her that it had withdrawn her grievances.

On April 29, 2011, plaintiff filed a formal Equal Employment Opportunity (EEO) complaint with defendant United States Postal Service, alleging discrimination on the basis of disability (ADHD and association with two special needs children), age (49), and reprisal for prior EEO activity. Plt.'s Cpt., Ex. 1. Plaintiff also alleged in her formal complaint that:

1. From 2007 through 2009, the Postmaster engaged in a conspiracy to remove her from the Agency;
2. In 2008 she was denied physical therapy, denied reimbursement of \$600 in expenses, OWCP made payments for charges already paid to her health insurance;
3. On March 28, 2008, she received a 14-day suspension;
4. On February 28, 2009, she was placed off work on Emergency Suspension;
5. On March 12, 2009, she was notified she would be removed effective April 10, 2009;
6. On unspecified dates, the Postmaster made unauthorized changes to her health insurance;
7. On September 24, 2010, she received a PS form 50 which incorrectly indicated that she resigned effective April 10, 2009;
8. Since her removal she has been harassed by the Postmaster in a variety of unspecified ways;
9. On December 24, 2010, she became aware that the OPF contained incorrect information and was missing documents.

Id.

Defendant United States Postal Service dismissed “the entire matter, pursuant to 29 C.F.R. § 1614.107(a)(2), due to the untimely filing of the formal complaint.” Id. at 2. In the alternative, the Postal Service “dismissed claim 2 for failure to state a claim, and claims 1-8 for untimely EEO counselor contact.” Id. Plaintiff appealed to the Equal Employment Opportunity Commission (EEOC) Office of Federal Operations. Id. at 1. The EEOC Office of Federal Operations issued a decision on November 16, 2011, affirming the dismissal of plaintiff’s EEO complaint. Id. In its decision, the commission noted that plaintiff had received the notice of right to file a formal complaint on April 13, 2011 and was informed that under 29 C.F.R. §§ 1614.106(a) she had to file a formal complaint within 15 calendar days, that is, by April 28, 2011. Plaintiff had filed her formal complaint on April 29, 2011, beyond the limitation period. The commission also concluded that plaintiff “ha[d] not offered adequate justification to warrant an extension of the time limit for filing the complaint.” Id. at 2.

OPINION

A. Motion to Dismiss by Defendants Vicki Galgowski and National Rural Letter Carriers’ Association

In her complaint, plaintiff alleges that defendants National Rural Letter Carriers’ Association and Vicki Galgowski engaged in “Unfair representation—violated bargaining in ‘good faith’”; that Galgowski “waited 2 1/2 weeks until she got any witness statements to defend [Plaintiff]”; and then “omitted all the witnesses’ statements from these grievances.” Plt.’s Cpt., dkt. #1, at 2, 5-6. Plaintiff also alleges that Galgowski “participated in an actual conspiracy to

set [plaintiff] up on Emergency Placement by framing [plaintiff] . . .” so that Postal Service management “could remove [plaintiff] from the Postal Service.” Id. at 6. Plaintiff does not state specifically in her complaint what claims or legal theories she is asserting against defendants National Rural Letter Carriers’ Association and Vicki Galgowski, but these defendants have interpreted plaintiff’s allegations as claims that they violated their duty of fair representation by improperly handling and withdrawing her grievances.

The Postal Reorganization Act, 39 U.S.C. § 1208, provides federal subject matter jurisdiction for actions against the United States Postal Service and its unions for breach of a collective bargaining agreement and violation of a duty to provide fair representation. 39 U.S.C. § 1208(a); Truhlar v. United States Postal Service, 600 F.3d 888, n.1 (7th Cir. 2010). Because § 1208 is similar to the § 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), courts apply the law developed under § 301(a) to claims brought under § 1208(b). Id. (“Technically, a hybrid suit where the employer is the Postal Service is grounded in 39 U.S.C. § 1208(b), but the law construing § 301 applies to suits against the Postal Service under § 1208(b).”).

Under § 301 of the Labor Management Relations Act, an employee may bring a “hybrid” complaint against his or her union and employer. A hybrid suit is one in which a plaintiff asserts both a claim that the employer breached the collective bargaining agreement and that the union breached its duty of fair representation in redressing the plaintiff’s grievance against the employer. DelCostello v. International Brotherhood of Teamsters, 462 U.S. 151, 164 (1983); Truhlar, 600 F.3d at 892; Cephas v. MVM, Inc., 520 F.3d 480, 485 (D.C. Cir. 2008). The limitations period on a hybrid suit is six months from the date the plaintiff knew or should have

known of the breaches. DelCostello, 462 U.S. at 169-71 (statute of limitations application to hybrid § 301 claims is six-month period borrowed from § 10(b) of National Labor Relations Act, 29 U.S.C. § 10(b)); Chapple v. National Starch & Chemical Co. & Oil, 178 F.3d 501, 505 (7th Cir. 1999). This six-month limitations period starts running “when the claimant discovers, or in the exercise of reasonable diligence should have discovered, the acts constituting the alleged [violation.]” Christiansen v. APV Crepaco, Inc., 178 F.3d 910, 914 (7th Cir. 1999) (citation omitted). See also Pulliam v. United Auto Workers, 354 F. Supp. 2d 868, 871-72 (W.D. Wis. 2005). This limitation period also applies to hybrid claims under 39 U.S.C. § 1208. Salmanis v. American Postal Workers Union, AFL-CIO, No. 00 C 1917, 2001 WL 214187, *1-2 (N.D. Ill. Mar. 2, 2001); Lettis v. United States Postal Service, 39 F. Supp. 2d 181, 192 (E.D.N.Y. 1998); Sheehan v. United States Postal Service, 6 F. Supp. 2d 141, 145 (N.D.N.Y. 1997).

Defendants contend that the statute of limitations applicable to plaintiff’s hybrid § 1208 claim began running on or about July 2, 2010, when the National Rural Letter Carriers’ Association informed her in writing that it had withdrawn her grievances challenging her emergency placement suspension and removal. Plaintiff says in her complaint that she received two letters in “July 2010” from the union notifying her that “the grievances had been withdrawn.” Plt.’s Cpt. at 6. Nonetheless, plaintiff did not file her complaint in this case until February 23, 2012, more than one year and seven months after she learned that the union had withdrawn her grievances, and she did not attempt to serve the union until June 14, 2012, nearly two years after the grievances had been withdrawn. Therefore, defendants contend, plaintiff’s claim is barred by the six-month statute of limitations.

In her brief in opposition to defendants’ motion to dismiss, plaintiff agrees that she is

attempting to assert a “hybrid” claim against defendants United States Postal Service and National Rural Letter Carriers’ Association and she does not deny that the six-month statute of limitations applies to her claim. However, she contends that the statute of limitations should not bar her claim because (1) she attempted to “exhaust the applicable grievance procedures” and (2) she was “fraudulently induced to delay filing [her] suit.” As to the latter argument, plaintiff contends that after receiving the two letters from the union in July 2010, she contacted three union stewards to inquire about the meaning of the letters. She alleges that the stewards told her “to wait and see what happens.” Plt.’s Br., dkt. #31, at 2.

Plaintiff seems to be arguing that the statute of limitations should be tolled under the doctrines of equitable tolling or equitable estoppel. The doctrine of equitable tolling “permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain vital information bearing on the existence of his claim.” Chapple, 178 F.3d at 505-06 (citation omitted). “However, if a reasonable person in the plaintiff’s position would have been aware within the limitations period of the possibility that its rights have been violated, then equity does not toll the limitations period.” Id. at 506. Under the doctrine of equitable estoppel, “a defendant who conceals vital information about the existence of a plaintiff’s claim or makes representations to the plaintiff causing it to delay bringing the claim, can be estopped from relying on the statute of limitations as a defense.” Id.

Plaintiff has not shown that the limitations period should be tolled under either doctrine. A reasonable person in plaintiff’s position should have been aware in July 2010 that no further action would be taken on her grievances. She admits both in her complaint and in her brief that she received two letters from the National Rural Letter Carriers’ Association stating that no

further action would be taken on her grievances. Even accepting as true plaintiff's allegation that she called the union stewards about the letters and they told her to "wait and see what happens," such vague statements would not have led any reasonable person to conclude that the union was continuing to process her grievances. Moreover, even if the statements were confusing and caused plaintiff to believe that her grievances may be renewed, the statements would not toll the statute of limitations for more than a year and a half. Plaintiff had an obligation to exercise "reasonable diligence" to determine the status of her grievances. Chapple, 178 F.3d at 505 ("cause of action accrues from the time a final decision on a plaintiff's grievance has been made or from the time the plaintiff discovers, or *in the exercise of reasonable diligence should have discovered*, that no further action would be taken on his grievance") (emphasis added). Instead, plaintiff waited nearly twenty months to file this lawsuit. Under the circumstances, neither equitable tolling nor equitable estoppel applies. Accordingly, plaintiff's claims that defendants National Rural Letter Carriers' Association and Vicki Galgowski failed to provide fair representation under 39 U.S.C. § 1208(b) are barred by the statute of limitations. I will grant defendants' motion to dismiss those claims.

B. Motion to Dismiss by Defendants United States Postal Service,

Joe Kaufman and Chris Kottke

In her complaint, plaintiff does not explain what particular claims she is bringing against defendants United States Postal Service, Joe Kaufman and Chris Kottke. However, she contends that these defendants engaged in discrimination and harassment related to her age, disability and other factors. Defendants interpret plaintiff's complaint as raising claims under Title VII of the

Civil Rights Act, 42 U.S.C. § 2000e-16(c), the Age Discrimination in Employment Act, 29 U.S.C. § 633a, and the Rehabilitation Act, 29 U.S.C. §§ 791 and 794, and they assert several reasons why plaintiff's claims under these statute should be dismissed. In particular, defendants contend that plaintiff (1) failed to exhaust her administrative remedies; (2) failed to state a claim under these laws; and (3) sued the wrong defendants.

1. Title VII and the Rehabilitation Act

A plaintiff's failure to exhaust administrative remedies by failing to file a timely administrative complaint is an affirmative defense. Mosely v. Board of Education of City of Chicago, 434 F.3d 527, 533 (7th Cir. 2006). Generally, affirmative defenses are not grounds for dismissal at the complaint stage and a plaintiff need not anticipate affirmative defenses in the complaint to survive a motion to dismiss. United States v. Lewis, 411 F.3d 838, 842 (7th Cir. 2005) (citing Gomez v. Toledo, 446 U.S. 635, 640 (1980) (stating that it is usually premature for district court to dismiss claim at the complaint stage on basis of affirmative defense)); see also Independent Trust Corp. v. Stewart Info. Services Corp., 665 F.3d 930, 935 (7th Cir. 2012). "The exception occurs where . . . the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense, such as when a complaint plainly reveals that an action is untimely under the governing statute of limitations." Lewis, 411 F.3d at 842 (citing Leavell v. Kieffer, 189 F.3d 492, 495 (7th Cir. 1999)).

Before bringing a lawsuit under Title VII, a plaintiff alleging discrimination in federal employment must file a complaint with the agency charged with discrimination. 42 U.S.C. § 2000e-16(c); 29 C.F.R. §§ 1614. 101-07. The first step in the process is for the federal

employee to contact an Equal Employment Opportunity Counselor at his or her employing agency within 45 calendar days after the date of the alleged discriminatory event. 29 C.F.R. § 1614.105(a). The EEO Counselor has a short period of time within which to informally resolve the matter or, if the matter is not resolved, to conduct a final interview with the employee. 29 C.F.R. § 1614.105(d). The EEO Counselor also must inform the employee in writing of his or her right to file a discrimination complaint with the agency's EEO Office. Id.

An employee must file the EEO complaint within 15 days after receiving notice of his or her right to do so. 29 C.F.R. § 1614.106(b). The failure to file a timely complaint within the 15-day period is grounds for dismissal of the case by the agency, subject to equitable defenses such as tolling. Smith v. Potter, 445 F.3d 1000, 1006 n.14 (7th Cir. 2006); Ester v. Principi, 250 F.3d 1068, 1071 (7th Cir. 2001). If the employee files a formal administrative complaint and is not satisfied with the agency's resolution of that complaint, the employee may either appeal to the EEOC or file a civil action in federal court. Smith, 445 F.3d at 1002, n.1 (7th Cir. 2006) (noting that, like other federal agencies, Postal Service is charged with initial disposition of discrimination complaints lodged against the agency by its employees, and that employees then have right to appeal that determination to EEOC or file complaint in federal court). There is a specified time period within which the employee must take these steps. 29 C.F.R. § 1614.110. Additionally, "[a]s a general rule, a Title VII plaintiff cannot bring claims in a lawsuit that were not included in her EEOC charge." Teal v. Potter, 559 F.3d 687, 691 (7th Cir. 2009) (citations omitted).

A plaintiff pursuing claims under the Rehabilitation Act is subject to the same administrative filing requirements that those govern Title VII claims. 29 U.S.C. § 794a; Teal,

559 F.3d at 691 (“Under the Rehabilitation Act, federal agencies are prohibited from discriminating on the basis on an individual's disability . . . Individuals who have suffered discrimination can seek relief pursuant to the procedures and requirements outlined in Title VII of the Civil Rights Act, which include exhausting administrative remedies prior to bringing suit.”); McGuinness v. United States Postal Service, 744 F.2d 1318, 1320 (7th Cir. 1984). See also Miller v. Runyon, 77 F.3d 189, 191 (7th Cir. 1996) (noting that suit under Rehabilitation Act is time-barred if the complainant's administrative complaint was untimely).

The allegations in plaintiff's complaint and the EEOC decision attached to it confirm that plaintiff did not comply with the required deadlines with respect to the claims she included in her EEO filings. Plaintiff was served with a notice of right to file an individual complaint on April 13, 2011. Accordingly, she had until April 28, 2011 to file a formal complaint with the United States Postal Service. 29 C.F.R. §§ 1614.106(a) and (b). Plaintiff did not mail her EEOC complaint until April 29, 2011. Therefore, the complaint was untimely.

In her opposition to defendants' motion to dismiss, plaintiff does not deny that her administrative complaint was untimely. Additionally she cites no legal authority or facts to contradict defendants' argument that her claims under Title VII and the Rehabilitation Act should be dismissed, except to state that she “attempted to exhaust the applicable grievance procedures. . . .” Plt.'s Br., dkt. #32, at 2. Finally, she does not contend that she is asserting in this case any claims that fall outside her April 29, 2011 EEOC complaint.

In light of plaintiff's failure to file a timely administrative complaint, her claims under Title VII and the Rehabilitation Act must be dismissed without prejudice. Teal, 559 F.3d at 693; McGuinness, 744 F.2d at 1321; see also Boos v. Runyon, 201 F.3d 178, 184 (2d Cir.

2000) (failure of postal worker suing under Rehabilitation Act to exhaust administrative remedies would require dismissal without prejudice). Because I am dismissing these claims, I need not consider defendants' other arguments regarding these claims.

2. Age Discrimination in Employment

Defendants Kaufman, Kottke and United States Postal Service contend that plaintiff's ADEA claim should also be dismissed for her failure to file a timely administrative complaint. However, there are differences between the administrative process under Title VII, the Rehabilitation Act and the ADEA. A federal employee has two options when asserting an age discrimination claim under the ADEA against a federal employer. The employee may choose to first file an administrative complaint against the agency alleged to have acted discriminatorily. 29 U.S.C. § 633a(b); Bohac v. West, 85 F.3d 306, 309 (7th Cir. 1996). Thereafter, the individual may file suit in federal district court if she is not satisfied with his administrative relief. 29 U.S.C. § 633a(c); 29 C.F.R. § 1614.408. Alternatively, the employee may file an action in federal district court in the first instance, provided that, within 180 days after the occurrence of the questioned matter, the EEOC is given at least 30 days' notice of the individual's intent to file such an action. 29 U.S.C. § 633a(d); Bohac, 85 F.3d at 309.

Defendants fail to acknowledge these options in discussing plaintiff's ADEA claim. Instead, they contend that because plaintiff started pursuing administrative remedies for her ADEA claim, she was required to complete the administrative process before filing suit. They cite McGinty v. United States Department of Army, 900 F.2d 1114, 1117 (7th Cir. 1990) for the proposition that "[i]f a Plaintiff initiates administrative remedies for purposes of an ADEA

claim, he or she must fully exhaust those administrative remedies before bringing suit.” Dfts.’ Br., dkt. #26, at 4. However, in later cases, the Court of Appeals for the Seventh Circuit stated that “we no longer require that administrative remedies, once begun, must be exhausted before [ADEA] suit is filed in district court.” Bohac, 85 F.3d at 311 (citing Adler v. Espy, 35 F.3d 263 (7th Cir. 1994)).

Although it is apparent from plaintiff’s complaint that she did not follow all of the steps required to complete the administrative process, she was not required to do so. Instead, she had the option of filing directly in federal court, so long as she provided the proper notice to the EEOC. it is impossible to tell from plaintiff’s allegations whether she provided proper notice. Therefore, I cannot resolve this issue at the motion to dismiss stage.

That being said, plaintiff’s ADEA claim must be dismissed for other reasons. As discussed in more detail below, Federal Rule of Civil Procedure 8 requires plaintiff to plead enough allegations of fact to make a claim for relief plausible on its face. Aschcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. The problem with plaintiff’s age discrimination claim is that plaintiff has pleaded no facts to suggest that any defendant discriminated against her on the basis of her age. For example, she does not allege that any defendant made critical comments about her age or older employees generally and she does not allege that any younger employees who were similarly situated to her were treated more favorably. There are simply no allegations at all that support a claim of age discrimination. Therefore, I will dismiss that claim for failure to comply with Rule 8.

C. Other Claims against Defendants

Plaintiff contends in her brief in opposition to defendants' motion to dismiss that she is asserting several claims in addition to her claims under Title VII, the Rehabilitation Act, the ADEA and federal labor laws. Specifically, she states that she is asserting claims against defendants for "Conspiracy to take away [her] Civil and Constitutional Rights, Fraud, Defamation of Character, Harassment, Intentional Infliction of Emotional Distress, Libel, Slander . . . and more." Dkt. #32 at 2. In their motions to dismiss, both sets of defendants request that these miscellaneous claims be dismissed for failure to satisfy the federal rules of civil procedure.

I agree with defendants that plaintiff's remaining claims fail to satisfy the requirements of Fed. R. Civ. P. 8. Under that rule, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Each allegation must be simple, concise, and direct." Rule 8(d)(1). "The primary purpose of these rules is to give defendants fair notice of the claims against them and the grounds supporting the claims." Stanard v. Nygren, 658 F.3d 792, 797 (7th Cir. 2011) (citations omitted).

Plaintiff's pleadings are not plain, simple, concise or direct and they do not give defendants fair notice of the claims against them. It is impossible to tell from plaintiff's complaint which claims she is asserting against which defendants, why she believes defendants should be liable for any injuries she suffered and what relief she is seeking. Conceding this, plaintiff tried to expand on her claims in her briefs in opposition to defendants' motions to dismiss, but the allegations in plaintiff's briefs are vague and difficult to understand. Further, it is not acceptable for plaintiff to add allegations or claims to a case by asserting them for the

first time in a brief filed in opposition to defendants motion to dismiss. Because plaintiff's remaining claims violate Rule 8, I will dismiss them.

Plaintiff requests that she be given an opportunity to file an amended complaint to clarify her claims. Defendants oppose the request, contending that it would be futile. However, at this stage, I cannot conclude that defendants are correct. Therefore, I will give plaintiff one opportunity to file an amended complaint that provides fair notice to defendants of the claims she is asserting against them. Plaintiff may attempt to reassert her age discrimination claim under the ADEA, but she should not include in her amended complaint any claims that have been dismissed as barred by the statute of limitations or as untimely because of plaintiff's failure to file a timely administrative complaint with the United States Postal Service. In other words, she is *not* to include any claims under Title VII, the Rehabilitation Act or the Postal Reorganization Act.

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.

Plaintiff may have until December 28, 2012 to submit an amended complaint. If plaintiff fails to do so by December 28, I will direct the clerk of court to enter judgment in favor of defendants and close the case.

ORDER

IT IS ORDERED that

1. The motion to dismiss filed by defendants National Rural Letter Carriers' Association and Vicki Galgowski, dkt. #20, is GRANTED. Plaintiff Nancy Johnson's claim that National Rural Letter Carriers' Association and Galgowski failed to provide fair representation is DISMISSED WITH PREJUDICE as barred by the statute of limitations. Plaintiff's remaining claims are DISMISSED WITHOUT PREJUDICE for failure to satisfy Fed. R. Civ. P. 8.

2. The motion to dismiss filed by United States Postal Service, Chris Kottke and Joe Kaufman, dkt. #25, is GRANTED. Plaintiff's claims under Title VII and the Rehabilitation Act are DISMISSED WITHOUT PREJUDICE for her failure to file timely administrative complaints. Plaintiff's remaining claims are DISMISSED WITHOUT PREJUDICE for failure to satisfy Fed. R. Civ. P. 8.

3. Plaintiff may have until December 28, 2012 to submit an amended complaint that complies with the Federal Rules of Civil Procedure. If plaintiff fails to submit an amended complaint by December 28, I will direct the clerk of court to enter judgment for defendants and

close this case.

Entered this 17th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge