

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

ROGER R. PHILBRICK,

Plaintiff,

v.

MARRIOTT MADISON WEST,

Defendant.

ORDER

03-C-0744-C

In this civil action for monetary relief, plaintiff Roger Philbrick alleges that on December 31, 2001, he was wrongfully discharged from his employment with defendant Marriott Madison West. He contends that the discharge was based on his age, race, color and national origin as an American Indian. Although plaintiff did not allege a jurisdictional basis for his claims, I construed the complaint to be alleging a claim under Title VII of the Civil Rights Act of 1964, as amended, which prohibits employers from discharging employees because of their race, color, religion, sex, or national origin. See 42 U.S.C. § 2000e-2(a)(1).

In an order entered on January 5, 2004, I told plaintiff that in order to pursue his Title VII claim, he would have to provide proof that he had obtained a right to sue letter from the Equal Employment Opportunity Commission. Now plaintiff has responded to that

order. In his response, plaintiff appears to concede that he does not have a right-to-sue letter. However, he contends correctly that this court has jurisdiction to hear his claims.

In requesting that plaintiff produce a right-to-sue letter as a jurisdictional prerequisite to this suit, I inadvertently overlooked Gibson v. West, 201 F.3d 990 (7th Cir. 2000), in which the Court of Appeals for the Seventh Circuit held that the failure to exhaust administrative remedies is a *precondition* to bringing a Title VII claim, rather than a jurisdictional requirement and, as such, is subject to waiver, estoppel and equitable tolling. This means that if defendant does not challenge plaintiff's failure to exhaust his administrative remedies on a motion to dismiss, his suit may proceed in this court. For this reason, it is not necessary to decide at this time whether there are other possible bases for jurisdiction over plaintiff's claims. There exists a valid jurisdictional basis for hearing his claim.

Accordingly, IT IS ORDERED that plaintiff arrange promptly to serve his complaint on the defendant. Enclosed with this order to plaintiff is a copy of this court's Procedure for

Serving a Complaint on a Corporation in a Federal Lawsuit, together with a set of all of the service forms referred to in the procedure.

Entered this 2nd day of February, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge