

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

ORLANDO MATTHEWS,

Plaintiff,

ORDER

v.

04-C-482-C

MARTEN TRANSPORT, LTD. and RANDY
MARTEN, in his official and individual capacities,

Defendants.

Plaintiff, who is proceeding pro se, has moved for the third time to amend his complaint. Plaintiff is already proceeding on his claims that defendants subjected him to race discrimination in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. §§ 1981 and 1985, by conspiring to maintain unwritten policies and practices for performing inadequate vehicle maintenance checks on company vehicles driven by defendants' black employees. In addition, plaintiff is proceeding on his claims that defendant Randy Marten conspired to "shame, ridicule, embarrass and unjustly terminate him" from his job because of his race, using as a pretext to discharge him his alleged failure to exercise due diligence in connection with a vehicle accident, and that defendants terminate African-American

employees at a “much higher rate” than Caucasian employees and engage in a pattern and practice of evaluating, compensating and promoting African-American employees less generously than Caucasian employees.

In his third proposed amended complaint, plaintiff seeks for the second time to add as defendants employees of defendant Marten Transport, Ltd.: Michael Walters, the maintenance director, Michael Aswell, the road service director, Dan Peterson, the safety director, and Robert Smith, the operations director. In addition, plaintiff appears to want to add two companies that insure Marten Transport, Ltd., Great West Casualty Company and Discover Reinsurance. For a third time, I am denying the motion to amend.

Plaintiff’s proposed amended complaint does not comply with Fed. R. Civ. P. 8(a)(2) and (e), which require that allegations be “short and plain” or “simple, concise and direct.” Instead, plaintiff’s allegations are confused and rambling as they relate to the proposed new defendants. For example, plaintiff alleges at ¶ 16 of his complaint,

“Defendants Randy Marten, C.E.O., Michael Walters, maintenance director, Michael Aswell, road service supv: Dan Peterson, safety director, Robert Smith, Chief Operations Officer and former defendant William Kennedy, Fleet Manager/ conspired to neglect their fiduciary responsibility to plaintiff who was assigned and dispatched a truck with a defect in the braking system by Michael Walters, maintenance director and William Kennedy, Fleet Manager/Dispatcher, Orlando Matthews notified the road service dept. on October 31, 2002 after recording the defective brake system in his log book Michael Aswell, road service supervisor had the fiduciary responsibility to take the truck out of service and have the braking system examined by a qualified mechanic or brake examiner at the nearest tractor mechanic shop, instead I

was forced dispatched to Lubbock, TX to pick up a load by William Kennedy/Fleet Manager/dispatch department who fiduciary responsibility was to make sure that the truck braking system was repaired before dispatching plaintiff under a load. Instead, I was told to get my brakes checked out some 1100 miles away in Forest Park, Georgia at my home terminal enroute to my load destination in South Carolina. Michael Walters, maintenance director, and William Kennedy, Fleet manager, dispatcher does not assign trucks or dispatch trucks under a load with a defective braking system to white drivers. Dan Peterson, Safety director and Robert Smith, chief operations officer were negligent in their fiduciary responsibilities to plaintiff because the chief operations officer is responsible for making sure the safety director communicate properly with the maintenance director, Michael Walters, the fleet manager/dispatcher, William Kennedy and the road service supervisor, Michael Aswell about performing the required maintenance and inspections on all vehicles under Marten Transport LTD control and to not allow a driver to be dispatched under a load, especially when the company has been notified thru the road service department that a truck has a defect. The chief operation officer and the safety director has a fiduciary duty to a driver to never allow a truck to be assigned to a driver until Michael Walters, maint. department has inspected the truck according to statutes 393-393.55, 393.17, 396.21, 396.25, of the FMCSA and take a truck out of service when a defect has been reported. Michael Aswell's road service department refused to take plaintiff truck out of service after being notified of the brake defect. Trucks are taken out of service and repaired when asked by white driverdrivers. [sic]

Paragraphs 17, 18, and 19, the only other paragraphs of the proposed amended complaint that attempt to describe the alleged conspiratorial acts of the proposed new defendants, are similarly wandering and difficult to understand. Paragraph ¶ 19 is almost three pages long. It includes the legally frivolous assertion that

defendants Discover Reinsurance and Great West Casualty Co. Marten Transport Insurance provider has conspired with Marten Transport LTD and it C.E.O. Randy Marten, Safety Director Dan Peterson and Robert Smith, Chief Operations Officer to provide insurance coverage to give the appearance

that Marten Transport LTD operate a safe and unbiased work environment toward it [sic] African American drivers and other ethnic minority drivers.

In pleading a conspiracy, it is enough to indicate the parties, the conspiracy's general purpose and its approximate date, so that the defendant has notice of what he is charged with. Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). However, if it is impossible to determine what role a defendant might have played or agreed to play in relation to the act that is alleged to have been taken in furtherance of the conspiracy and what the nature of the defendant's agreement was with the other co-conspirators, a court is not required to permit the plaintiff to proceed on the claim. Walker, 288 F.3d at 1007-08, citing Ryan v. Mary Immaculate Queen Center, 188 F.3d 857 (7th Cir. 1999) (conspiracy allegation insufficient when "not enough to enable [defendant] to prepare his defense or for district court to determine whether the claim is within the ballpark of possibly valid conspiracy claims").

Because plaintiff's allegations are too garbled and disorganized to allow the proposed new defendants to understand with any certainty what actions or inactions they are accused of taking and for what purpose, I will deny his third motion to amend the complaint.

I note that a preliminary pretrial conference was held in this case on November 3, 2004, and that the deadline for filing dispositive motions is March 11, 2005. Plaintiff is advised to concentrate his energies on preparing his case for resolution on a motion for

summary judgment or at trial, and not engage in further efforts to include additional parties in his case. With the dispositive motions deadline looming, I am not inclined to grant plaintiff leave to amend his complaint to add parties at this late date, even if he were to submit a proposed amendment that satisfied the pleading requirements of Rule 8.

ORDER

IT IS ORDERED that plaintiff's third motion to amend his complaint is DENIED.

Entered this 4th day of March, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge