

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

ORLANDO MATTHEWS,

Plaintiff,

ORDER

v.

04-C-482-C

MARTEN TRANSPORT, LTD.; RANDY
MARTEN and WILLIAM (BILL) KENNEDY,
in their official and individual capacities,

Defendants.

Plaintiff Orlando Matthews, a former over-the-road truck driver for defendant Marten Transport, Ltd., has asked for leave to amend his complaint to add as defendants four of defendant Marten Transport's employees and its insurance carrier. Plaintiff's motion will be denied.

Plaintiff is proceeding in this action on a claim that he was discriminated against on the basis of his race in violation of Title VII of the Civil Rights Act of 1964, and 42 U.S.C. §§ 1981 and 1985(2). The employees of defendant Marten Transport, Ltd. that plaintiff wishes to add are Michael Walters, the maintenance director, Michael Aswell, the road

service director, Dan Peterson, the safety director, and Robert Smith, the operations director.

Title VII prohibits *employers* from discriminating against employees or applicants on the basis of race, sex, religion or national origin. Section 1981 prohibits discrimination on the basis of race in the making and enforcing of contracts, including employment contracts. Johnson v. Railway Express Agency, Inc., 421 U.S. 454 (1975). Thus, the proper defendant for plaintiff's Title VII and § 1981 claims is his former employer, defendant Marten Transport, Ltd. 42 U.S.C. § 2000e(b).

Plaintiff is also proceeding on a claim against defendants Randy Marten and William Kennedy that these individuals conspired to endanger his safety because of his race pursuant to 42 U.S.C. § 1985(3), which creates a cause of action when two or more people conspire to deprive another of equal protection of the laws. In his amended complaint, plaintiff does not allege facts suggesting that the individuals he proposes to add took part in an alleged conspiracy to deprive him of his civil rights because of his race. He alleges only that after he called proposed defendant Michael Aswell to report a problem with the brakes on his truck, Aswell directed plaintiff to drive 1100 miles to his home terminal in Forest Park, Georgia to have the brakes checked out in order that the "company [did not lose] a customer" and fail to "mak[e] their profit quota for that week." He alleges that Robert Smith and Dan Peterson were responsible for insuring that "all department directors and

supervisors coordinate properly as it relates to responding to a driver complaint and taking pro-active safety precautions in trying to avoid accidents and harm to the driver,” to hold regular in-service training classes to keep them up to date on safety issues and preventive maintenance problems and insure that mechanics for Marten Transport have diesel and trailer mechanics certification. Finally, he alleges that proposed defendant Great West Casualty Insurance Co. should not have insured Marten Transport, given its unsafe transportation practices in interstate commerce. Throughout his proposed amended complaint, plaintiff emphasizes that these failures were driven by defendant Marten Transport’s desire to make a profit. Because 42 U.S.C. § 1985(3) does not reach conspiracies having a non-racial motivation, such as commercial interests, see United Brotherhood of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 838 (1983), plaintiff’s allegations fail to state a claim against the proposed new defendants that is properly raised under § 1985. Therefore, plaintiff’s motion to amend his complaint will be denied.

ORDER

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

Entered this 30th day of September, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge