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

KENNETH E. KING,

Plaintiff,

v.

DAVID L. DITTER,

Defendant.

ORDER

06-C-257-C

In this prisoner lawsuit, plaintiff complains that he was fired from his job in the institution print shop as retaliation for his complaining about management's racism and other malfeasance. Defendant denies retaliation, claiming that plaintiff quit after his pay was reduced for botching his work. Before the court is plaintiff's second motion to compel more complete answers to his second set of interrogatories *See* dkt. 31.[1] Defendant stands by his answers to plaintiff's discovery requests. *See* dkt. 32. Having considered both sides' submissions, I am granting in part and denying in part plaintiff's motion:

Int. 11: Plaintiff asks defendant to explain in detail the purposes of the memory store on the Konica copying machines as it relates to the computer's hard drive for the storing of jobs after sign-offs by Staff for correctness.

Defendant objects that this interrogatory is vague, requires speculation, and is irrelevant.

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[1] In the future, it would be helpful if plaintiff left a 1" to 1½" margin at the top of each page of his documents so that they are easier to read after the court files them in its top-center binder file.

Plaintiff contends that this is relevant information because it will impeach defendant's version of how plaintiff could have messed up the print job even though it was correct in the book at sign off.

If such information ever actually existed, and if it still exists, then it is discoverable as possible impeachment evidence. Therefore, to the extent that the copy machine that plaintiff is accused of using incorrectly is capable of documenting and storing any job changes plaintiff allegedly made to the botched print job(s)–or conversely, to show that no such changes were made–then plaintiff is entitled to know whether the machine has these capabilities, whether information still is retrievable that would establish whether anybody changed the settings after sign off, and if it is not retrievable, whether the failure to record or to maintain this information is a result of ordinary practice in the print shop. That is, the court will not presume intentional spoliation if the information existed at one time but was deleted or overwritten in the ordinary course of the shop's business before this lawsuit was filed.

Int. 12: Plaintiff asked defendant to name and provide documentation of the "one or two jobs" that plaintiff alleged botched, but which others caught and corrected.

Defendant objects that this is incorrectly formatted (presumably defendant would prefer a request for production of documents), and it is vague and requires speculation.

I'm surprised that this information wasn't included in the first round of discovery. If plaintiff really doesn't have the details underlying his alleged job deficiencies, then he is entitled to obtain them. If plaintiff is seeking only the documentation supporting defendant's claim of

botched print jobs, then this should have been a request for production of documents. Regardless how one characterizes this discovery request, the information sought should be fairly discernible and it is relevant to plaintiff's claim. If the print shop has any documentation (including electronically stored information) from any source of the print jobs allegedly botched by plaintiff that it has not already provided to him, then it must do so.

Int. 13: Plaintiff starts with an assertion: in September 2006, defendant responded to an interrogatory by identifying Print Job #259863. Plaintiff now asks how this book could have been sent back to the print shop as an "early January" screw-up by plaintiff when it was initially issued to plaintiff on January 30, 2006.

Defendant objects to form, and claims that this interrogatory is too vague to answer.

Perhaps the parties actually agree on this one, perhaps not: if, in fact, defendant was incorrectly claimed that plaintiff screwed up this particular job before January 30, 2006, then the facts are what they are, and defendant need not provide any additional information to plaintiff because whatever impeachment value this contradiction has is apparent on its face. But to the extent that defendant persists in claiming that plaintiff botched this particular job in early January and defendant has some additional support for this claim, then he must divulge it to plaintiff.

Int. 14: Plaintiff asks if inmates Del Real and Canedy both ran Job # 927-024887 on February 9 & 13, 2006 on four Konica copying machines ending February 16, 2006 when due. "(Explain)"

Defendant objects because this interrogatory is vague, requires speculation, and is irrelevant.

Plaintiff argues that this is a clear interrogatory and that it is highly relevant because in response to his Int. 10, defendant stated:

> With regard to the discrepancies King points out in his First Request for Judicial Notice . . . on the job summary for work order 927-024887 (the rerun of print job 295863), I do not know why King is listed as having done work on sequence 10, why [Canedy] is listed as having done work on sequence 20, or why [Del Real] is listed as having done work on sequence 30. It is possible that the inmates punched in incorrectly or that the sequences were coded incorrectly by the inmate clerk. On the job sequence outline for work order 927-024887, I do not know why [Canedy] signed off twice, once on February 13, 2006 and once on February 22, 2006.

See dkt. 22.

Plaintiff contends that Int. 14 is aimed at proving defendant's "malice" and "perjury," since defendant claimed that he checked job records to determine that plaintiff was slowing down the work and costing the shop money. Apparently, plaintiff wishes to impeach this claim by showing that the job records were incorrect; it is not clear if plaintiff also is contending that defendant knew that the job records were incorrect but used them anyway. Plaintiff's rhetoric is overheated, but the information he seeks is discoverable. The interrogatory calls for a "yes" or "no" answer; I surmise that plaintiff added "(explain)" in order to have defendant explain what actually happened with this job if the answer to Int. 14 is "no" in full or in part.

Int. 15: Plaintiff asks "when inmates 'Whipp and Davis' engaged in 'disruptive behaviors' in the shop at B.S.I., why weren't they fired or reduced in Pay?"

Defendant responds that this is vague and requires speculation, and is irrelevant, especially because this court has dismissed plaintiff's equal protection claim. I don't see any vagueness in the request, and it cannot require speculation for defendant to explain his *own* thought process, but I agree that this interrogatory seeks irrelevant information.

Plaintiff claims that this information is relevant to prove his retaliation claim because it contradicts defendant's claim that his real reason to reduce plaintiff's pay was his bad work. This compares apples to oranges. Defendant explained his version of how plaintiff left the print shop in his responses to plaintiff's first set of interrogatories, Nos. 3, 6, 9 and 13 and 15. This alleged sequence of events over time is not comparable to "disruptive behavior."

ORDER

For the reasons and in the manner stated above, it is ORDERED that plaintiff's motion to compel discovery is GRANTED IN PART and DENIED IN PART.

Entered this 5th day of January, 2007.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge