

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

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AHMAD SHAMSID-DEEN,

Plaintiff,

v.

MEMORANDUM and ORDER

ALLIANT ENERGY CORPORATION,

06-C-469-S

Defendant.

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Plaintiff Ahmad Shamsid-Deen commenced this civil action under Title VII and 42 U.S.C. § 1981 claiming that the defendant Alliant Energy Corporation discriminated against him because of his race and religion and retaliated against him. In his complaint he alleges that the defendant treated him differently than similarly situated employees when it suspended him.

On December 22, 2006 defendant Wisconsin Power and Light Company (incorrectly identified in the complaint as Alliant Energy Corporation) moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of fact, conclusions of law, affidavits and a brief in support thereof. Plaintiff failed to respond and defendant's motion for summary judgment was granted on January 19, 2007. On January 22, 2007 judgment was entered in favor of defendant against plaintiff dismissing his complaint and all claims contained therein with prejudice and costs.

On February 5, 2007 plaintiff moved to amend/vacate judgment and for enlargement of time to respond to defendant's motion for summary judgment. On February 14, 2007 plaintiff's motion was granted. Plaintiff filed his brief in opposition to defendants's motion for summary judgment on March 2, 2007. Defendant filed its reply on March 12, 2007.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

## FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds that there is no genuine dispute as to any of the following material facts.

Plaintiff Ahmad Shamsid-Deen is an African American adult resident of the State of Wisconsin who practices the Muslim religion. Defendant Wisconsin Power & Light Company (WP&L) is a Wisconsin corporation with its principal place of business in Madison, Wisconsin. Plaintiff commenced his employment with WP&L in 1987 at the Rock County power plants and remains employed as a Plant Equipment Operator.

In 2003 plaintiff filed a complaint in the United States District Court for the Western District of Wisconsin (Case No. 03-C-69-S) alleging that defendant discriminated against him on the basis of his race, religion or unlawful retaliation. A jury concluded in the fall of 2003 that the defendant was liable for discrimination. A settlement was reached on damages.

On December 3, 2003 defendant suspended plaintiff for two days for being absent November 25, 2003 without notification. Failing to notify the defendant employer of an absence is a violation for which an employee may be disciplined. Defendant similarly disciplines other employees who miss work without notification.

In December 2003 plaintiff was on the Sick Leave-Medical Documentation Plan and was required upon returning to work after an illness to submit a doctor's excuse. On November 14 and 17, 2003 plaintiff notified the defendant that he could not work because he was ill. Plaintiff did not provide a doctor's excuse for these absences until December 5, 2003. Plaintiff's failure to provide the doctor's excuse upon his return to work violated the Sick Leave-Medical Documentation plan. On December 9, 2003 plaintiff was suspended for two days for this violation.

On February 9, 2004 defendant disciplined plaintiff with a three day suspension for insubordination toward Master Unit Operator Baer. Plaintiff swore at Baer when he directed him to operate two boilers at the same time.

On February 9, 2004 plaintiff met with Greg Jenkins who notified him of his three day suspension. At the end of the meeting, plaintiff told Jenkins, "Have a continued good day, and may God reward you all you have coming." Jenkins said , "Am I supposed to take that as a threat?" Plaintiff replied, "You can take it the way it was said."

Pat Hartley, the Plant Manager for the Rock River and Blackhawk plants investigated the incident between plaintiff and Jenkins. He concluded that plaintiff's comments violated defendant's expectations concerning appropriate communications with

a supervisor. Hartley suspended plaintiff for five days for the inappropriate comment.

#### MEMORANDUM

Plaintiff claims he was discriminated on the basis of his race and religion and in retaliation for participation in protected activity in violation of Title VII and 42 U.S.C. §1981. Plaintiff concedes in his opposition brief that the only suspensions he is claiming were discriminatory and retaliatory were the February 2004 suspensions.

To establish a prima facie case of discrimination or retaliation, plaintiff must establish (1) that he belongs to a protected class; (2) that his performance met his employer's legitimate expectations; (3) that he suffered an adverse employment action and (4) similarly situated employees not in his protected class received more favorable treatment. Brummett v. Sinclair Broadcast Group, Inc., 414 F.3d 686, 692 (7<sup>th</sup> Cir. 1005).

Where plaintiff demonstrates a prima facie case of discrimination, the burden shifts to the employer to articulate legitimate reasons for its actions. Dunning v. Simmons Airlines, Inc., 62 F.3d 863, 868 (7<sup>th</sup> Cir. 1995). Although plaintiff argues in his brief that he could establish a prima facie case, he concedes that defendant has articulated legitimate, non-discriminatory and retaliatory reasons for its actions.

Defendant has presented evidence that plaintiff was disciplined for his conduct in violating workplace policies and rules. It is undisputed that the events for which plaintiff was disciplined occurred.

The burden then shifts to plaintiff to show that the reasons were pretextual for discrimination or retaliation. Pretext means more than an unusual act; it means something worse than a business error; pretext means deceit to cover one's tracks. Kulumani v. Blue Cross Blue Shields Assoc., 244 F.3d 681, 685 (7<sup>th</sup> Cir. 2000).

Plaintiffs' co-workers Harrill White and Anthony Davis testified in their depositions that following the 2003 trial plaintiff started getting called into the office regularly, the management's treatment of plaintiff seemed strange and Ted Zierath ignored him and demeaned him. White believed that other employee conflicts that did not involve plaintiff might not always be brought to management's attention. White did not consider it a big deal when plaintiff told him that God would reward him with what he deserved. In late 2006 a Caucasian employee was not suspended for missing work and plaintiff had been suspended in 2003 for the same offense by Mr. Jenkins. Mr. Jenkins was not employed by the defendant in 2006.

Although plaintiff's co-workers believed that he was treated differently than Caucasian employees, no evidence has been presented to show that the decision makers in this case, Greg

Jenkins and Pat Hartley, disciplined employees not in the protected class differently than plaintiff for similar conduct. See Adams v. Wal-Mart Stores, Inc., 324 F.3d 935, 940 (7<sup>th</sup> Cir, 2003). The opinions of White and Davis do not demonstrate that the defendant's legitimate business reasons were pretextual for discrimination or retaliation.

No reasonable fact finder could infer pretext from the evidence presented by plaintiff. Accordingly, defendant is entitled to judgment as a matter of law on plaintiff's discrimination and retaliation claims and its motion for summary judgment will be granted.

ORDER

IT IS ORDERED that defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED That judgment be entered in favor of defendant against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 14<sup>th</sup> day of March, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ  
District Judge