

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

TREVON HOLLINS,

Plaintiff,

v.

FOREST RIVER, INC.,

Defendant.

Case No. 3:19-CV-1185 JD

FINAL PRETRIAL ORDER

Pursuant to the order of the Court, the attorneys for the parties to this action appeared before the Court on June 9, 2022, for a conference under Rule 16 of the Federal Rules of Civil procedure.

Plaintiff was represented by Edward Chester and Patrick F. O’Leary and Defendant was represented by Patrick O’Rear and R. John Kuehn.

At the conference, the following proceedings were had and the following engagements and undertakings arrived at:

A. Jurisdiction

This Court has personal jurisdiction over the Plaintiff and the Defendant. The Court has federal question subject matter jurisdiction over the dispute because this action concerns a retaliation claim brought under Title VII of the Civil Rights Act of 1964.

B. Joint Statement of the Case

The Plaintiff, Trevon Hollins, was employed by the Defendant, Forest River, Inc., in the shipping and receiving department for about 18 months. Mr. Hollins and others in his department

built wooden crates for shipping parts, gathered the parts to be shipped, labeled the shipments, and helped load the crates onto freight trucks.

Mr. Hollins worked for Forest River until May 17, 2019, when Forest River terminated his employment. The parties dispute the reason for Mr. Hollins' termination. Mr. Hollins claims that Forest River terminated his employment because his mother, Tobi Conroy, complained to Forest River on his behalf on April 19, 2019, that Mr. Hollins had been treated unfavorably because of his race. Forest River claims that the company terminated Mr. Hollins' employment because he was sitting around, using his phone, and reading books when he should have been working.

In this case, the question presented is whether Mr. Hollins was terminated in retaliation for the complaint that his mother made on his behalf or because of his performance and conduct at work.

C. Claims and Damages Sought

At issue is Plaintiff's retaliation claim under Title VII of the Civil Rights Act of 1964. Plaintiff is seeking damages recoverable under Title VII to include compensatory damages, punitive damages, back pay, and reasonable attorney's fees.

D. Defenses

Forest River denies liability on Mr. Hollins' claim of retaliatory discharge under Title VII. First, Mr. Hollins did not have a reasonable, good-faith belief that he was subject to discrimination based on his race. *See Leitgen v. Franciscan Skemp Healthcare, Inc.*, 630 F.3d 668, 674 (7th Cir. 2011). **Forest River indicated at the Final Pretrial Conference that it will not raise this good-faith defense if its motion in limine asking the Court to exclude the**

alleged discriminatory comment by Mr. Sellers is granted. As indicated below, the Court will consider the motions in limine in a separate order.

Second, Forest River’s decisionmakers were not motivated in any way by any complaint of alleged discrimination by Mr. Hollins (or by his mother on his behalf), so that complaint was not the but-for cause of Mr. Hollins’ termination. *See Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013) (“[T]he Court now concludes as follows: Title VII retaliation claims must be proved according to traditional principles of but-for causation. . . .”).

Forest River also disputes Mr. Hollins’ claim of damages and will present evidence supporting its affirmative defenses if the Court considers the issues of back pay and front pay in the event of a jury verdict in his favor. First, Forest River maintains that the company would have terminated Mr. Hollins’ employment based on after-acquired evidence, namely his falsification of information on his job application which Forest River uncovered in discovery. *See Sheehan v. Donlen Corp.*, 173 F.3d 1039, 1047 (7th Cir. 1999) (“An employer may be found liable for employment discrimination, but if the employer later—typically in discovery—turns up evidence of employee wrongdoing which would have led to the employee’s discharge, then the employee’s right to back pay is limited to the period before the discovery of this after-acquired evidence.”).

Second, Forest River maintains that Mr. Hollins did not mitigate his damages. Although he secured a new job within several weeks after his termination, he did not make any effort to find a job with compensation at least as high as he earned at Forest River. *See Hutchison v. Amateur Elec. Supply, Inc.*, 42 F.3d 1037, 1044 (7th Cir. 1994) (“To establish the affirmative defense of failure to mitigate damages, an employer must show that: ‘(1) the plaintiff failed to

exercise reasonable diligence to mitigate her damages, and (2) there was a reasonable likelihood that the plaintiff might have found comparable work by exercising reasonable diligence.””).

E. Pending Motions

The Court will address pretrial motions by separate order.

F. Plaintiff’s Contentions

African-American Trevon Hollins brings this lawsuit against his former employer Forest River under a federal employment discrimination law that prohibits an employer from retaliating against an employee for opposing what the employee reasonably believes is racial discrimination in the workplace. Hollins claims he expressed his concerns to Forest River about what he believed to be racial discrimination after his immediate supervisor Kenny Sellers called him the “N” word and after general manager, Curtis Gunter, did nothing about it. After Hollins expressed his concerns about Sellers and Gunter to Forest River’s ethics hotline, Forest River retaliated against him for engaging in this protected activity by firing him on May 17, 2019. GM Gunter signed the paperwork terminating Hollins.

Forest River acted with malice and or reckless indifference to Hollins’ federally protected rights warranting an award of punitive damages. He has sustained damages as a direct and proximate result of Forest River’s unlawful retaliation. His economic damages include wage loss. His non-economic damages include mental and emotional pain and suffering, humiliation, and worry. He is seeking an award of attorney’s fees as well.

G. Defendant’s Contentions

This is a Title VII retaliation case. Trevon Hollins has not filed and is not pursuing a claim of discrimination based on race or any other characteristic protected by law, and the Court has held that Mr. Hollins has waived any such claims. (DE 32 at 2 n.3; DE 36 at 7.)

Mr. Hollins' sole claim is that Forest River terminated his employment on May 17, 2019, because his mother, Tobi Conroy, complained that Mr. Hollins had experienced race discrimination. Ms. Conroy made this complaint through Forest River's Ethicspoint hotline and alleged that Mr. Hollins' supervisor, Kenny Sellers, singled Mr. Hollins out, screamed at him, and, on one occasion, called him a "n-----" quietly so that no one else could hear.

Kenny Sellers did not say the "N" word to Mr. Hollins, call Mr. Hollins by that name, or otherwise use that term or any other racial slur in the workplace at Forest River. Mr. Sellers also did not single out Mr. Hollins, scream at him, or take any other action based on Mr. Hollins' race.

Forest River's Chief Ethics and Compliance Officer, Dave Youmans, investigated Ms. Conroy's complaint and concluded that there was no evidence to support the complaint. And Mr. Youmans closed the investigation after Mr. Hollins refused to share any information with him on April 22, 2019.

On May 17, 2019, about four weeks after Ms. Conroy's complaint, Forest River terminated Mr. Hollins' employment. Mr. Hollins' managers had received multiple complaints from his coworkers that he was not pulling his weight. Instead of working while his coworkers were working, he was sitting around, playing on his phone, or reading a book.

Mr. Hollins' conduct at work—repeatedly loafing during work time—was the reason for Mr. Hollins' termination. Ms. Conroy's complaint had nothing to do with it.

Forest River did not retaliate against Mr. Hollins when deciding to terminate his employment.

Mr. Hollins is not entitled to damages of any kind, an award of attorneys' fees or costs, or any other relief from Forest River in this case.

At all relevant times, including as of May 17, 2019, Forest River has made a good-faith attempt to comply with the law, including by maintaining and uniformly enforcing policies regarding workplace harassment, discrimination, and retaliation. Therefore, Mr. Hollins cannot recover punitive damages against Forest River on his claims in this case.

Mr. Hollins failed to mitigate his damages.

Mr. Hollins' claim for back pay is limited by the doctrine of after-acquired evidence.

H. Established Facts/Stipulations

The following facts are established by stipulation of the parties or admissions in the pleadings:

1. Forest River is a corporation doing business in Elkhart, Indiana.
2. Forest River employs at least five hundred people.
3. After Angie Garza left employment at Forest River, she did not leave the company a set of handwritten notes that she alleges she took regarding Mr. Hollins (Plaintiff's Exhibit 18).

I. Exhibits

The Parties have stipulated to certain exhibits, as shown in the charts displayed in their Proposed Final Pretrial Order. (DE 47 at 8–13.) Plaintiff's Exhibit List is shown on pages 8–10 of the Proposed Final Pretrial Order. (*Id.* at 8–10.) Defendant's Exhibit List is shown on pages

10–13 of the Proposed Final Pretrial Order. (*Id.* at 10–13.) Arguments concerning objections to the exhibits will be addressed in a separate order.

J. Witnesses

Plaintiff may call the following persons in his case in chief:

1. Trevon Hollins (Plaintiff)
2. Curtis Gunter
3. Angela Garza
4. Lisa Goodwin
5. Kenny Sellers
6. David Besinger
7. Dale Huyvaert
8. Any witness listed by Defendant, whether or not he calls them to testify.
9. Any witness called for rebuttal or impeachment.
10. Any witness called to testify about the authenticity and/or admissibility of a document.

Defendant may call the following persons:

1. Juan Ramirez
2. Lyndon (Lyn) Miller
3. John David Youmans, Jr.
4. Mark Vance
5. Frank Russell
6. Robert (Bob) Huber
7. Tobi Conroy
8. Any witness listed by Plaintiff, whether or not he calls them to testify.
9. Any witness called for rebuttal or impeachment.
10. Any witness called to testify about the authenticity and/or admissibility of a document.

If either party anticipates calling other witnesses at trial, the party will report the witnesses' name and address and the general subject of their testimony to counsel for the opposing party, with a copy to the Court, at least ten (10) days before trial. Such witnesses may be called at trial only upon leave of Court. This restriction does not apply to rebuttal or impeachment witnesses, whose testimony cannot reasonably be anticipated before trial.

K. Jury Instructions

Proposed jury instructions have been filed in accordance with the Court's Order Governing Trial. (DE 39; DE 41.)

L. Amendments

The parties do not contemplate any amendments to the pleadings.

M. Trial Briefs

Trial briefs have been filed in accordance with the Court's Order Governing Trial. (DE 46; DE 50.)

N. Protective Order

The parties do not anticipate any need to close the courtroom or otherwise restrict the presentation of evidence under the Protective Order in this case.

O. Deposition excerpts

Neither party intends to introduce excerpts from deposition testimony as affirmative evidence in this case.

P. Pre-Trial Order

This Pre-Trial Order has been formulated after a conference at which counsel for the respective parties have appeared. The Court has afforded a reasonable opportunity to counsel for corrections before entering the Order. Going forward, this Order will control the course of the trial and may not be amended except by consent of the parties and the Court,

or by order of the Court to prevent manifest injustice. The pleadings will be deemed merged into this Order and may also be produced as exhibits at trial.

Q. Settlement

The parties have not reached any settlement agreement. The parties will advise the Court immediately if or when any settlement is reached.

R. Trial

The probable length of trial is three (3) days. The case is set for a jury trial in South Bend, Indiana, from September 6 through September 8, 2022, beginning at 9:30 a.m.

SO ORDERED.

ENTERED: August 10, 2022

/s/ JON E. DEGUILIO
Chief Judge
United States District Court