

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES M. BOYLE,)
)
Plaintiff,)
)
v.) Civil Action No. 03-905-KAJ
)
NATIONAL RAILROAD PASSENGER)
CORPORATION,)
)
Defendant.)

MEMORANDUM OPINION

James M. Boyle, 37 Cordele Road, Newark, Delaware, 19711, *Pro Se* Plaintiff.

Matthew F. Boyer, Esq., Connolly Bove Lodge & Hutz, LLP, The Nemours Building, 1007 N. Orange Street, P.O. Box 2207, Wilmington, Delaware 19899, counsel for Defendant.

Of Counsel: Bruce S. Harrison, Esq. and Laura A. Pierson Scheinberg, Esq., Shawe & Rosenthal, LLP, 20 S. Charles Street, 11th Floor, Baltimore, Maryland, 21201.

October 15, 2004
Wilmington, Delaware

JORDAN, District Judge

I. INTRODUCTION

This is an employment discrimination action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* Presently before me are three motions. The first two, filed by James M. Boyle (“Plaintiff”), are captioned “Motion to Extend Trial Schedule” and “Motion to Compel Defense Counsel to Produce Criminal Records.” (Docket Item [“D.I.”] 19.) The third, is a motion for Summary Judgment (D.I. 21) filed by defendant National Railroad Passenger, Corp. (“Amtrak”) pursuant to Federal Rule of Civil Procedure 56(c). Jurisdiction is proper under 28 U.S.C. § 1331. For the reasons set forth, Defendant’s Motion will be granted, and Plaintiff’s motions will be denied as moot.

II. BACKGROUND¹

Plaintiff began working for Amtrak in July of 1996. (D.I. 23 at A0008-11, Application for Employment, submitted by Plaintiff on July 9, 1996.) At the time of his termination, Plaintiff was a Building and Bridges Mechanic (“B&B Mechanic”). (D.I. 22 at 4.) In 1997, Plaintiff was involved in two instances of workplace violence which resulted in Plaintiff’s removal from service (*i.e.*, suspension) for violating Amtrak’s Standards of Excellence (Amtrak’s standards for appropriate workplace conduct). (D.I. 23 at A0127, Deposition of James M. Boyle, Feb. 6, 2004 [“Boyle”] at 138.) Plaintiff was suspended from August to October of 1997. (*Id.* at A0013-15, Crimes Management System Incident Report, Aug. 6, 1997; A0016, Letter from P. Ketterer to James Boyle,

¹ The background facts set forth here are drawn largely from the plaintiff’s deposition testimony.

Re: Notice [of Suspension], Aug. 8, 1997; A0019, Waiver [“last chance agreement”], Sept. 29, 1997.) As a condition of Plaintiff’s return to service, Plaintiff agreed to (1) sign a Waiver to a formal investigation, (2) admit his guilt, and (3) accept the discipline assessed by Amtrak. (*Id.* at A0019.)

On January 21, 2002, Plaintiff attended a safety meeting with Foreman Lax Adamopoulos, and B&B Mechanics Tony Gardner, Michael Gibson, Phil Fulton, Dave Archambo, and Ben Charles. (*Id.* at A0104-08, Boyle at 74-78.) Prior to the meeting, Plaintiff told Mr. Gibson that he was going to report everyone for fraudulently filling out their time cards. (D.I. 27 at 8.) Plaintiff believes that Mr. Gibson may have told the other workers that Plaintiff intended to turn everyone in for that alleged payroll fraud. (D.I. 23 at A0109, Boyle at 86.) According to Plaintiff, everyone stared at him during the meeting and someone asked him whom he was going to tell about the time card fraud. (*Id.* at A0086-88, Boyle at 26-28.) Plaintiff claimed he panicked and said he was going to get a gun. (*Id.* at A0111, Boyle at 88.) He remembers stating, “I’ll get a gun, get my respect back, or kill every mother[expletive] – if it means killing every mother[expletive] in the place.” (*Id.* at A0142, Boyle at 165.)

Mr. Fulton and Mr. Archambo immediately reported Plaintiff’s threat to the Assistant Supervisor, Ed DeValle. (*Id.* at A0112-13, Boyle at 89-90.) Mr. DeValle called Plaintiff into his office, instructed him to go home, and informed him that someone would be calling him. (*Id.* at A0126, Boyle at 136.) After leaving Mr. DeValle’s office, Plaintiff got into a physical altercation with Mr. Archambo. (*Id.* at A0135-40, Boyle at 158-63.) Plaintiff testified that he purposely “got in Mr. Archambo’s face” to try to provoke him to hit Plaintiff. (*Id.*) A fight ensued between Plaintiff and Mr. Archambo,

resulting in injuries to Mr. Archambo that required treatment. (*Id.*) The Amtrak police were called and Plaintiff was arrested and charged with third-degree assault and terroristic threatening. (*Id.* at A0140-42, Boyle at 163-65.)

Plaintiff was also charged with violating Amtrak's Standards of Excellence and Workplace Violence policies. (*Id.* at A0062-63, letter from Peter Bubnis, Charging Officer, to James Boyle, Re: Notice of Investigation, Feb. 6, 2002.) A hearing was held, at which Plaintiff was represented by a union official. (*Id.* at A0057-60, letter from Gayle Gavin, Hearing Officer, to James Boyle, titled "Decision," June 4, 2002.) Hearing Officer Gayle Gavin found Plaintiff guilty of the charged violations. (*Id.*) Based on these findings, and in accordance with the serious nature of the proven offense, Joseph Guzzi, Division Engineer of the Mid-Atlantic Division, terminated Plaintiff's employment, effective June 4, 2002. (See *id.* at A0143-44, Boyle at 166-67.)

Plaintiff's appeal of the termination decision was denied. (*Id.* at A0064-70, Findings of Special Board of Adjustment No. 986, Sept. 29, 2003.) A three-member panel ruled that it could not "find any evidence that employees who acted in a similar fashion were not terminated." (*Id.* at A0070.)

The allegations in Plaintiff's Complaint are limited to the following:

As a result of a discriminatory act by defendant, Plaintiff was preparing to blow the wistle [sic] on time card fraud by various employees of Amtrak. Amtrak employees and managers retaliated against Plaintiff to prevent plaintiff from blowing the whistle on them, resulting in Plaintiff unlawful, and unjust termination of employment with defendant.

(D.I. 1 at 2.)

III. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 56(c), a party is entitled to summary judgment if a court determines from its examination of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c) (2004). In determining whether there is a triable dispute of material fact, a court must review the evidence and construe all inferences in the light most favorable to the non-moving party. *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000).

To defeat a motion for summary judgment, Rule 56(c) requires that the non-moving party “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (internal citation omitted). The non-moving party “must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(c) (2004). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Matsushita Elec. Inds. Co., Ltd.*, 475 U.S. at 587 (internal citation omitted). Accordingly, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

IV. DISCUSSION

The United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), set forth a three-step burden shifting analysis for Title VII employment discrimination claims. First, the plaintiff has the initial burden of establishing a *prima facie* case of discrimination. See *McDonnell Douglas Corp.*, 411 U.S. at 802. This is done by showing that the plaintiff: 1) is a member of a protected class; 2) was qualified for the position; 3) suffered an adverse job action; and 4) was treated differently than employees who are not members of his protected class. Whether the plaintiff has established a *prima facie* case of employment discrimination is a question of law for the court. *Sarullo v. United States Postal Service*, 352 F.3d 789, 797 (3d Cir. 2003).

If the plaintiff establishes a *prima facie* case of discrimination, the burden shifts to the defendant-employer to articulate a legitimate, nondiscriminatory reason for the employment decision. *McDonnell Douglas Corp.*, 411 U.S. at 802. “The employer satisfies its burden of production by introducing evidence which, taken as true, would permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision.” *Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). If the employer meets its “relatively light” burden by articulating a legitimate reason for the employment decision, the burden shifts back to the plaintiff to show “by a preponderance of the evidence” that the nondiscriminatory reason offered by the employer was a mere pretext for racial discrimination. *Id.*

Amtrak has raised several arguments in its defense. (D.I. 22.) Its first argument is that Plaintiff’s Complaint, on its face, “does not state a claim for discrimination / retaliation in his termination.” (D.I. 22 at 12.) Amtrak argues that even if Plaintiff’s co-

workers and managers “retaliated against him to prevent his whistleblowing for time card fraud, it would not constitute protected conduct under Title VII.” (*Id.*)

Title VII prohibits an employer from discriminating against any individual on the basis of “race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2(a)(1). Plaintiff’s Complaint does not allege that Amtrak discriminated against him on the basis of his race, color, religion, sex, or national origin. (D.I. 1.) Instead, Plaintiff’s Complaint alleges that he was unlawfully and unjustly terminated in retaliation for his threat to blow the whistle on an alleged time card fraud by various Amtrak employees. (D.I. 1 at 2.) Thus, Amtrak is correct in asserting that Title VII provides no relief for the conduct about which the plaintiff complains.

Assuming Plaintiff had alleged something for which Title VII could conceivably provide relief and had established a *prima facie* case of discrimination,² the evidence is

² In an effort to cast his firing in terms of race, Plaintiff, a Caucasian, claims in his deposition that he made three “complaints” on behalf of his African-American co-workers to Assistant Supervisor Ed DelValle. (*Id.* at A0102-03, Boyle at 47-48.) The first, occurred two years prior to Plaintiff’s termination and concerned Mr. Burnell Glenn. (*Id.* at A0100-01, Boyle at 44-45.) Plaintiff stated that it “wasn’t right” that Burnell Glenn was “run out of the gang.” (*Id.*) Plaintiff, however, admitted that Glenn decided to “bid out” for another job on his own accord. (*Id.*) Plaintiff did not refer to Mr. Glenn’s race during the alleged complaint to Mr. DelValle. (D.I. 22 at 9.)

The second “complaint,” was allegedly made several weeks prior to Plaintiff’s termination. (D.I. 23 at A0098-99, Boyle at 41-42.) Plaintiff asserts that he told Mr. DelValle that it was unfair that Clay was terminated for making a threat. (*Id.*) Plaintiff did not agree that Clay’s threat, “I got a gun in the trunk,” was sufficient to justify Clay’s termination. (*Id.*) Again, Plaintiff did not refer to Clay’s race during the alleged complaint to Mr. DelValle. (D.I. 22 at 9.)

The third alleged “complaint,” was made on behalf of co-worker Michael Gibson. (*Id.* at A0090-93, Boyle at 30-33.) The Plaintiff complained that during work in icy conditions, the gang (meaning the other workers) tried to get Mr. Gibson to slip by harassing him about holding onto the handrail. (*Id.* at A0091, Boyle at 31.) Plaintiff contends that one member of the gang, Phillip Fulton, allegedly called Mr. Gibson a “nigger.” (*Id.* at A0092, Boyle at 32.) Plaintiff accompanied Mr. Gibson into Mr.

nevertheless overwhelming that Amtrak had legitimate business reasons for terminating Plaintiff. *Fuentes*, 32 F.3d at 763. First, Plaintiff violated his last chance agreement and Amtrak policy by threatening to shoot his co-workers and by fighting with a co-worker. Second, even without the last chance agreement, Plaintiff's threats of violence and physical violence against a co-worker are legitimate reasons for Plaintiff's termination. Plaintiff has not offered any evidence to demonstrate that the nondiscriminatory reasons offered by Amtrak were a mere pretext for racial discrimination. *See Fuentes*, 32 F.3d at 763 (citing *McDonnell Douglas Corp.*, 411 U.S. at 802). Therefore, the court will grant Amtrak's Motion for Summary Judgment.³

V. CONCLUSION

For the foregoing reasons, Amtrak's Motion for Summary Judgment will be granted. An appropriate order will follow.

DelValle's office to report that the gang had tried to make Mr. Gibson slip and fall. (*Id.* at A0089-94, Boyle at 29-34.) Plaintiff admits that he does not know if Mr. Gibson ever filed a charge of discrimination. (*Id.* at A0146, Boyle at 179.)

Whether these events would establish a *prima facie* cause of action under Title VII is, of course, not a matter on which I need to opine, given the non-pretextual basis Amtrak has demonstrated to justify the plaintiff's firing.

³ Because Amtrak's Motion for Summary Judgment will be granted, Plaintiff's Motion to Extend Trial Schedule and Motion to Compel Defense Counsel to Produce Criminal Records (D.I. 19) are moot.

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Civil Action No. 03-905-KAJ

ORDER

In accordance with the Memorandum Opinion issued today, IT IS HEREBY ORDERED that Amtrak's Motion for Summary Judgment (D.I. 21) is GRANTED. Plaintiff's motions to Extend Trial Schedule and to Compel Defense Counsel to Produce Criminal Records (D.I. 19) are DENIED as moot.

Kent A. Jordan

UNITED STATES DISTRICT JUDGE

October 15, 2004
Wilmington, Delaware