IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MILTON E. CHANDLER,	)	
Plaintiff,	)	
v.	)	C.A. No. 99-668-GMS
CITY OF NEWARK, et al.,	)	
Defendants.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On October 8, 1999, the plaintiff, Milton E. Chandler ("Chandler"), filed a complaint against the defendants, The City of Newark (the "City"), Carl F. Luft, Charles Zusag and Robert Thomas (collectively "the defendants") (D.I. 1). Chandler asserts two causes of action against the defendants – one count racial discrimination in violation of the Fourteenth Amendment and § 42 U.S.C. 1983 and one count of employment discrimination in violation of 42 U.S.C. § 1981.[1] After numerous revisions to the scheduling order, the defendants filed a motion for summary judgment on April 12, 2001 (D.I. 60). Chandler timely answered (D.I. 66) and the defendants timely replied (D.I. 67).[2] Upon reviewing the parties' briefs, the

[1]Chandler dismissed Counts II and IV of his complaint via stipulation on May 25, 2001 (D.I. 72).

[2]After the close of briefing, Chandler requested oral argument (D.I. 69). The defendants joined the request (D.I. 70). The basis of Chandler's request was that the briefing "minimal" and that the parties insufficiently addressed each other's arguments. Given the state of the record – and the approaching trial date – the court will deny the request. As the court explains below, since the record is underdeveloped, summary judgment is inappropriate regardless of whether the court allowed

record, and the legal issues raised, the court will deny the defendants' motion. The court will briefly explain the basis of its ruling.

II. STANDARD OF REVIEW

"Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) when the moving party establishes that there is no genuine issue of material fact that can be resolved at trial and that the moving party is entitled to judgment as a matter of law." *House v. New Castle County*, 824 F. Supp. 477, 481 (D. Del. 1993) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). In evaluating whether there are any genuine issues of material fact, "[m]ateriality is determined by the substantive law that governs the case." *See id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is only "genuine" if a reasonable jury could return a verdict for the nonmoving party. *See id.* When considering a motion for summary judgment, the court must view all facts and inferences in the light most favorable to the party opposing the motion. *See Stephens v. Kerrigan*, 122 F.3d 171, 176-77 (3d Cir. 1997). Moreover, "[i]f the evidentiary record supports a reasonable inference that the ultimate facts may be drawn in favor of the responding party, then the moving party cannot obtain summary judgment." *See House*, 824 F. Supp. at 481-82 (citing *In re Japanese Elec. Prod. Antitrust Litig.*, 723 F.2d 238, 258 (3d Cir. 1983), *rev'd on other grounds*, 475 U.S. 574 (1986)). Finally, at this stage of the process, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *See Lewis v. State of Delaware Dept. of Pub. Instruct.*, 948 F. Supp. 352, 357 (D. Del. 1996) (quoting *Anderson*, 477 U.S. at 249) (internal quotations omitted).

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additional legal argument. Rather, the parties will have an opportunity to answer each other's arguments more fully at trial and beyond.

III. BACKGROUND[3]

Chandler, a black male, was employed by the City in the Water Department for 30 years, the last 12 of which were spent as a foreman. On October 2, 1997, an emergency water main break forced Chandler, the foreman on duty, to "call out" to certain employees. The following morning, October 3, 2001, a white male employee, Robert Thomas, became engaged in a verbal dispute with Chandler as to why he had not been "called out." Without going into the details of the argument, Thomas made several derogatory comments to Chandler and then went to his truck. As Thomas approached his truck, Chandler pushed him from behind. It appears undisputed that Thomas provoked the confrontation with his comments. After the incident, the head of the Water Department, met with Thomas in a separate room to discuss his version of the incident. The Water Department head did not meet with Chandler. Thomas received a one day suspension. Chandler was terminated.

The record, although sparse, contains additional information. With one exception, the City is made up of white employees and there are no black department heads. In addition, there is evidence of three other incidents between other, white, employees of the City. Two of the incidents involved physical contact and the other one involved one employee throwing something at another. None of the three incidents resulted in the firing of or other serious disciplinary action against the offending employees.

IV. DISCUSSION

The court's analysis begins, and ends, with the familiar burden shifting framework employed in all employment discrimination cases. Under well traveled Supreme Court precedent, the analysis proceeds

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[3]For the purposes of the instant motion, the parties agree on the facts. *See* Def. Reply Br. Sum. J. at 7 n.2.

in three steps. First, Chandler must establish a prima facie case of race or national origin discrimination by a preponderance of the evidence. *See Texas Dep't of Comm. Affairs v. Burdine*, 450 U.S. 248, 252-54 (1981) (citations omitted); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801-05 (1973). If Chandler can establish a prima facie case, the burden shifts to the defendants "to articulate some legitimate, nondiscriminatory reason" for their actions. *See Burdine*, 450 U.S. at 252-53. Third, should the defendants be able to meet their burden, Chandler must show, by a preponderance of the evidence, that the reasons offered were merely a pretext for race or national origin discrimination. *See id.* Although the burdens shift, it is important to understand that "[t]he ultimate burden of persuading the trier of fact that the defendants intentionally discriminated against the plaintiff remains at all times with the plaintiff." *See id.*

A. § 1983 Claim

For Chandler to establish a prima facie case of employment discrimination, he must demonstrate that (1) he belonged to a racial minority, (2) he was qualified for the position for which he was hired, (3) he was terminated and (4) others outside the protected group were treated differently. *See McDonnell*, 411 U.S. at 802-05. There is no dispute that Chandler satisfies the first three elements. *See* Pl. Op. Br. Sum. J. at 4.

Although the parties spend much time discussing the fourth element of the prima facie case in their briefs, the court remains unsure whether Chandler can sufficiently demonstrate that non-minority City employees were treated differently (i.e. they were not terminated for conduct that was similar to Chandler's). Rather than delving into the underveloped record, it is sufficient for the court to note that the parties have not fully explained the other three incidents. At this stage of the proceedings, the court is unwilling to preclude Chandler from having an opportunity to present his prima facie case to a jury.

In addition to the existence of a genuine issues of material fact with regard to Chandler's prima facie case, the record is similarly underdeveloped with regard to the other burdens the parties must sustain. As discussed above, upon articulating a prima facie case, the burden shifts to the defendants to show that Chandler's termination was based on a legitimate non-discriminatory reason. The defendants argue that since Chandler was Thomas' supervisor, the physical contact between the two necessitated Chandler's termination. The City Personnel Manual states that "fighting or . . . acts of violence" *may* result in termination; Chandler did not have to be fired for his actions. Since Chandler's supervisors had some discretion in deciding whether to terminate Chandler, credibility is important in explaining the exercise of discretion. The court notes that the affidavits from Luft and Zusag proffered on this point are conclusory.[4] Nevertheless, for the purposes of this motion the court assumes that the defendants have met their burden.

Chandler has also adduced sufficient evidence, at this stage of the case, to meet his ultimate burden – that the City's reason was pretextual. As mentioned above, Chandler points to three unrelated incidents in which white City supervisory employees were not terminated for actual or threatened physical contact. The defendants attempt to rebut Chandler's reliance on these incidents by distinguishing them on an incomplete record. The court believes that it is appropriate for a jury to compare these other incidents with the one between Chandler and Thomas. Since the court is faced with gaps in the record, a need for credibility determinations, and questions regarding the exercise of the defendants' discretion, it would be improper for the court to not allow a jury to make these factual determinations. The court will, therefore,

[4]The affidavits are virtually identical and merely state that race played no role in their determination – there is absolutely no explanation of why they chose to exercise their discretion to fire Chandler.

deny the defendant's motion as to Chandler's § 1983 claim.[5]

B. § 1981 Claim

The elements of §1981 are largely governed by the facts of the case; there is no "one-size fits-all" approach. *See Jones v. Sch. Dist. of Philadelphia*, 198 F.3d 403, 411 (3d Cir. 1999) (citing cases). The prima facie elements Chandler is required to prove are similar to those needed to meet his burden for his § 1983 claim. First, that he is a member of a minority group. Second, that the defendants intended to discriminate against him on the basis of race. Third, that the defendants interfered with his ability to make an employment contract with the City. Upon establishing a prima facie case, the burdens shift back and forth between the defendants and Chandler in the exact same way as the court previously described. *See* Section IVA, As discussed above, although it undisputed that Chandler can meet the first step in his prima facie case, the court is unsure, at this stage in the proceedings whether he can demonstrate that second two steps.

Like the prima facie case, the burden shifting analysis for Chandler's § 1981 claim is almost identical to that of his § 1983 claim. Therefore, the court will not repeat the reasons why summary judgment is inappropriate on Chandler's § 1981 claim

V. CONCLUSION

The court finds that the record in this case is sufficiently underdeveloped to warrant summary

[5]The defendants appear to place much stock in a Delaware Superior Court opinion which reversed the state unemployment insurance appeal board's determination that Chandler was entitled to unemployment benefits. *See* Pl. Op. Br. Sum. J., App. at A-19-27. This reliance is misplaced. Simply put, the legal issues the Superior Court addressed – including the standard of review – were different.

judgment in favor of the defendants on any or all of Chandler's claims. On the contrary, the evidence presented to the court – both disputed and undisputed – raises issues properly decided by a jury.

Therefore, IT IS HEREBY ORDERED that:

I. The defendants' motion for summary judgment (D.I. 60) is DENIED.

Dated: July 31, 2001

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE