

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ANIL MEHRA,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 82-0139-A
)
 T. J. OFFUTT, et al.,)
)
 Defendants.)

MEMORANDUM OPINION

The plaintiff Anil Mehra is a native of India and a member of the Hindu religion. He has filed an action in this court alleging discrimination by his former employers. This discrimination allegedly took three forms. First, he contends that his working conditions were worse than those of his co-workers. Second, he asserts that he was not paid any overtime, despite the fact that he often worked more than forty hours per week. Finally, he alleges that his employers had a discriminatory motive for discharging him. The defendants move for partial judgment on the pleadings. See Fed. R. Civ. P. 12(c). They move, in the alternative, for partial summary judgment. See id. 56(d).

Mehra's complaint has four counts. The first count is based on Title VII. See 42 U.S.C. §§ 2000e to 2000e-16 (1976). The second count is founded on section 1981. See id. § 1981 (1976). The third count is a state-law contractual claim. Mehra contends that state law incorporates Title VII and section 1981 into all employment contracts. Thus, he alleges that any violation of these two federal statutes is also a contractual breach. The fourth count is a claim for overtime pay under the Fair Labor Standards Act (FLSA). See 29 U.S.C. § 207 (1976).

Mehra's Title VII count alleges that his former employer discriminated against him on the basis of race, national

origin, and religion. The plaintiff filed his discrimination charge with the Equal Employment Opportunity Commission (EEOC) on April 29, 1980. The defendants first contend that the court should limit Mehra's Title VII claims to acts of discrimination occurring within 180 days of his filing with the EEOC. See 42 U.S.C. § 2000e-5(e) (1976). The court denies this part of the motion, because the plaintiff may be able to prove the existence of a continuing pattern or practice of discrimination. See Jenkins v. Home Insurance Co., 635 F.2d 310, 312 (4th Cir. 1980); Williams v. Norfolk & Western Railway Co., 530 F.2d 539 (4th Cir. 1975). See generally Havens Realty Corp. v. Coleman, 50 U.S.L.W. 4232 (Feb. 24, 1982).

The defendants next argue that the court should limit the plaintiff's Title VII claims to those based on national origin, because the plaintiff alleged only national origin discrimination in the charges that he filed with the EEOC. A charge submitted to the EEOC will support a civil action for any discrimination "stated in the charge itself or developed in the course of a reasonable investigation of that charge." EEOC v. General Electric Co., 532 F.2d 359, 366 (4th Cir. 1976); accord Nance v. Union Carbide Corp., 540 F.2d 718, 727 (4th Cir. 1976), vacated on other grounds, 431 U.S. 952 (1977); King v. Seaboard Coast Line Railroad Co., 538 F.2d 581, 583 (4th Cir. 1976). Mehra's allegations of racial, national origin, and religious discrimination are all closely related. The court, therefore holds that an EEOC charge asserting national origin discrimination will support the plaintiff's Title VII claims based on the two other types of discrimination.

The defendants also challenge Mehra's section 1981 count. They first contend that the plaintiff may not recover under section 1981 for discriminatory acts occurring more than two years before the filing of this suit. See Patterson v. American Tobacco Co., 535 F.2d 257, 275 (4th Cir.), cert. denied, 429 U.S. 920 (1976); McCrary v. Runyon, 515 F.2d 1082,

1097 (4th Cir. 1975), aff'd, 427 U.S. 160 (1976). The court denies this part of the motion, because the plaintiff may be able to prove a continuing pattern or practice of discrimination. See Kim v. Coppin State College, 662 F.2d 1055, 1061 (4th Cir. 1981); Jenkins v. Home Insurance Co., 635 F.2d at 311-12; Patterson v. American Tobacco Co., 586 F.2d 300, 304-05 (4th Cir. 1978).

Second, the defendants argue that Mehra has not stated a valid section 1981 claim. Section 1981 applies only to racial discrimination. See McDonald v. Santa Fe Trailer Transportation Co., 427 U.S. 273, 285-96 (1976); Patterson v. American Tobacco Co., 535 F.2d at 270. The defendants assert that a native of India is a member of the white race. They, therefore, contend that Mehra's allegation of receiving poorer treatment than his white co-workers cannot state a claim of racial discrimination. The court, however, must give the plaintiff an opportunity to introduce evidence proving that the alleged discrimination was racial in character. See Khawaja v. Wyatt, 494 F. Supp. 302, 305 (W.D.N.Y. 1980). Thus, the court also denies this part of the motion.

The defendants next move to dismiss Mehra's contractual claim on the ground that it is redundant. The plaintiff bases his contractual claim on the Virginia common-law doctrine that a contract implicitly incorporates all relevant statutes. The court, however, holds that Title VII and section 1981 preempt state-law claims based purely on the incorporation doctrine. The court, therefore, will restrict the plaintiff to the remedies provided by Title VII and section 1981.

The fourth count of the complaint alleges that the defendants failed to pay Mehra overtime as required by the FLSA. See 29 U.S.C. § 207 (1976). The defendants first argue that any claims for overtime on wages paid more than three years before the filing of this suit are barred by the relevant statute of limitations. See id. § 255(a). The court grants this part of the motion. The defendants also contend

that the FLSA does not apply in this case, because the plaintiff was employed in a bona fide executive capacity. See id. § 213(a)(1). The court, however, cannot grant summary judgment on this matter, because issues of material fact remain unresolved.

Finally, the defendants move to quash the plaintiff's demand for a jury trial. The court denies this part of the motion, because the plaintiff has a right to a jury for the section 1981 and FLSA counts. See Bibbs v. Jim Lynch Cadillac, Inc., 653 F.2d 316, 318-19 (8th Cir. 1981); Pons v. Lorillard, 549 F.2d 950, 953-54 (4th Cir. 1977), aff'd, 434 U.S. 575 (1978).

UNITED STATES DISTRICT JUDGE

Date: _____