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

Alexandria Division

SYLVESTER HALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO. 81-0873-A
	)	
TEAMSTERS LOCAL UNION #246, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Plaintiff Sylvester Hall is a black male. He is a former employee of the Valley of Virginia Cooperative Milk Producers Association, a Virginia cooperative association trading as Shenandoah's Pride Dairy. In addition, he is a card-carrying member of Local 246 of the International Brotherhood of Teamsters. Hall has filed a suit against the local union and the dairy alleging racial discrimination in connection with the dairy's termination of his employment. He asserts that the two defendants have violated his rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (1976), the Civil Rights Act of 1866, id. § 1981, and the fourteenth amendment. The dairy moves to dismiss the Title VII claims against it for lack of subject-matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). The dairy also moves to dismiss the fourteenth amendment count for failure to state a cognizable claim. See id. 12(b)(6).

I. FACTUAL BACKGROUND

In early 1979, Hall was convicted of a criminal offense in the General District Court of Alexandria, Virginia. He received a sentence of 12 months in jail. The plaintiff was an employee of the dairy at this time. He continued his employment through a work-release program that allowed him to work the night shift at the dairy.

On December 3, 1979, the dairy terminated Hall's employment. The dairy alleges that it fired the plaintiff solely because he violated the terms of his work-release order. In particular, it contends that Hall left the dairy's plant during working hours without permission. The plaintiff, however, asserts that his termination resulted from racial discrimination.

After the dairy discharged Hall, he contacted Ernie Jumalon, an officer in his union. The plaintiff informed Jumalon of his belief that the dairy's decision to terminate him had been racially motivated. Jumalon then referred him to another union official, Ben Hylton. Hall requested that Hylton arrange a grievance hearing with the dairy. The dairy, however, refused to participate in such a hearing on the ground that the plaintiff had not filed his grievance within the five-day period required by the applicable collective bargaining agreement. The union apparently accepted this refusal, because it took no further action on the grievance.

On June 23, 1980, Hall filed charges against the union with the Equal Employment Opportunity Commission (EEOC) and the Fairfax County Human Rights Commission (FCHRC). In his complaint, he alleged that the union's failure to conduct an investigation or a hearing on his grievance was itself a result of racial discrimination. On April 17, 1981, the FCHRC completed its investigation of the union's handling of Hall's grievance. The commission's determination letter concluded that there was insufficient evidence to sustain a charge of racial discrimination against the union:

> The investigation by the Commission staff concurs with your allegation that Local #246 did not conduct an investigation or hearing regarding your complaint against Shenandoah Pride Dairy. However, the reason Local #246 took no action was that Shenandoah Pride Dairy refused to participate in a hearing because there was no record of a request for a hearing from you within five (5) days of your discharge. The Union contract requires that Shenandoah Pride be notified of your request for a hearing within five (5)

> days of your dismissal. There is no evidence to substantiate your position that anyone contacted the Union on your behalf within the designated time period of five (5) days.
>
> In reviewing the records of Local #246, the investigator found that no Union member who requested a hearing was denied a hearing if the request was made within five (5) days of the employee member's discharge. In addition, the investigation showed Local #246 has held 17 grievance hearings for Shenandoah Pride Dairy employees during the time period October 1, 1978 to July 1, 1980. Of the 17 grievance hearings held during this time period, eight were held on behalf of black employees.

Letter from FCHRC to Sylvester Hall (April 17, 1981)(exhibit # 1 to original complaint). There was no indication in the letter that the FCHRC had investigated or contacted the dairy regarding Hall's termination.

On June 5, 1981, the EEOC issued a right-to-sue letter to Hall. This notice indicated that the EEOC concurred with the FCHRC's finding of no discrimination. It is unclear when the plaintiff actually received the letter.

On September 4, 1981, Hall filed suit in this court against the union. In his complaint, he alleged that the union's failure to process his grievance was a violation of his rights under Title VII, section 1981, and the fourteenth amendment. In addition, the plaintiff requested the following forms of relief: (1) an injunction reinstating him as an employee of the dairy; (2) injunctions prohibiting the union and the dairy from discriminating on the basis of race in the future; (3) an award of $29,748 for lost wages; (4) $500,000 in damages for defamation of character and emotional damages; and (5) attorney's fees and costs.

On October 7, 1981, the union made a motion under Rule 19(a)(2) to join the dairy as an indispensable party. See Fed. R. Civ. P. 19(a)(2). On November 20, 1981, Hall requested the court to join the dairy as a defendant. The court granted these motions on the ground that it could not shape effective relief without the presence of the dairy as

a party. On November 24, 1981, Hall filed an amended complaint that named both the dairy and the union as defendants. This pleading alleged that both organizations had discriminated against Hall on the basis of his race. The plaintiff once again asserted Title VII, section 1981, and the fourteenth amendment as statutory bases for his claims. Hall served the amended complaint on the dairy on November 27, 1981.

II. THE TITLE VII CLAIM AGAINST THE DAIRY

The dairy moves to dismiss the Title VII claims against it on the ground that the court lacks subject-matter jurisdiction. In particular, the dairy contends that Hall has failed to meet the jurisdictional prerequisite of filing his Title VII claim within ninety days of receiving the EEOC's right-to-sue letter. See 42 U.S.C. § 2000e-5(f)(1) (1976). The court, however, need not reach the limitations issue at this time. It, instead, will consider the more fundamental question of whether Hall has fulfilled the jurisdictional prerequisite of exhausting his administrative remedies on the claim against the dairy.

A plaintiff seeking to file a Title VII suit may satisfy "the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973); accord Alexander v. Gardner-Denver Co., 415 U.S. 36, 47 (1974). See also EEOC v. Appalachian Power Co., 568 F.2d 354, 355 (4th Cir. 1978); King v. Seaboard Coast Line Railroad Co., 538 F.2d 581, 583 (4th Cir. 1976); Stebbins v. Nationwide Mutual Insurance Co., 469 F.2d 268, 269 (4th Cir. 1972), cert. denied, 410 U.S. 939 (1973); Wilson v. Allied Chemical Corp., 456 F. Supp. 249, 252 (E.D. Va. 1978); Hubbard v. Rubbermaid, Inc., 436 F. Supp. 1184, 1187 (D. Md. 1977). These pre-

requisites are mandated by sections 2000e-5(e) and 2000e-5(f)(1). See 42 U.S.C. §§ 2000e-5(e), -5(f)(1) (1976). The rationale for requiring exhaustion of EEOC remedies is to encourage informal settlement of discrimination charges:

> A major purpose of Title VII is to promote voluntary compliance with the law by encouraging the amicable settlement of civil rights disputes. Toward this end, the Act requires that an aggrieved party file charges with the EEOC prior to bringing suit in federal court, to the end that the Commission might attempt to mediate between the parties.

Wilson v. Allied Chemical Corp., 456 F. Supp. at 253. When a plaintiff has neglected to bring his Title VII claim before the EEOC, the court must dismiss his suit until he complies with the jurisdictional prerequisites. See King v. Seaboard Coast Line Railroad Co., 538 F.2d at 583; Greene v. Brown, 451 F. Supp. 1266, 1269-70 (E.D. Va. 1978).

Hall has filed only one right-to-sue letter with the court. This letter notifies him of his right to sue the union for failing to process his grievance. If the plaintiff has received a second right-to-sue letter dealing specifically with his Title VII claim against the dairy, he should file this letter with the court within ten days of the date of this memorandum. The court will assume that Hall has not received a second letter, unless he submits one within ten days. The court notes that, if the plaintiff has not yet filed a charge against the dairy with the EEOC, the 180-day limitation of section 2000e-5(e) bars the commission from considering the claim at this late date. See King v. Seaboard Coast Line Railroad Co., 538 F.2d at 583; Smith v. Office of Economic Opportunity for Arkansas, 538 F.2d 226, 228 (8th Cir. 1976): Franklin v. Herbert Lehman College, 508 F. Supp. 945, 951 (S.D.N.Y. 1981); Wilson v. Allied Chemical Corp., 456 F. Supp. at 252.

If Hall has not received a right-to-sue letter dealing specifically with his claim against the dairy, he has only one remaining avenue for establishing satisfaction of the jurisdictional prerequisites. He may attempt to show

that the notice of his right to sue the union provides the jurisdictional basis for a civil action against the dairy.

A charge filed with the EEOC will support "a civil suit under the [Title VII] 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 at 583; Mobley v. Acme Markets, Inc., 473 F. Supp. 851, 853 (D. Md. 1979); Wilson v. Allied Chemical Corp., 456 F. Supp. at 254; Greene v. Brown, 451 F. Supp. at 1270-71; Macon v. Bailar, 451 F. Supp. 140, 141 (E.D. Va. 1978); Hubbard v. Rubbermaid, Inc., 436 F. Supp. at 1188. See also Danner v. Phillips Petroleum Co., 447 F.2d 159, 162 (5th Cir. 1971); Sanchez v. Standard Brands, Inc., 431 F.2d 455, 466 (5th Cir. 1970); King v. Georgia Power Co., 295 F. Supp. 943, 947 (N.D. Ga. 1968). Hall has provided the court with a copy of the complaint against the union that he submitted to the EEOC and the FCHRC. This charge mentions the possibility that the dairy may have discriminated against the plaintiff, but only as background for his problem with the union. See FCHRC Complaint of Sylvester Hall (June 23, 1980)(exhibit to original complaint). The charge makes an explicit discrimination claim only against the union. See id. The court, therefore, must relegate Hall to establishing the scope of a reasonable investigation by the EEOC and FCHRC.

In determining whether discrimination by the dairy was developed in the course of a reasonable investigation, the court will consider the objectives of this jurisdictional limitation:

> When faced with the question of the proper scope of a Title VII complaint, a court must balance two competing statutory policies. The first is that Title VII is a broad remedial statute designed to protect those who are least able to protect themselves. An individual who files a discrimination charge seldom has the assistance of counsel

> and is not expected to articulate the entire range of allegedly discriminatory practices of which he feels he is a victim. Courts, therefore, have given a liberal interpretation to allegations in discrimination charges in order to effectuate the underlying purposes of Title VII. The second policy is that Title VII plaintiffs should not have an unrestrained ability to litigate allegations of discrimination which are neither contained in the EEOC charge nor investigated by the EEOC, thereby frustrating the statutory scheme of informal persuasion and voluntary compliance. Without limitations, the importance of the EEOC counciliatory procedures would be diminished and employers would be denied the opportunity to resolve disputes by EEOC settlement rather than litigation.

Hubbard v. Rubbermaid, Inc., 436 F. Supp. at 1188-89 (citations and footnotes omitted). Hall, therefore, must show that either the EEOC or the FCHRC actually investigated his termination by the dairy. See id. at 1189-90. In the absence of negligence on the part of the investigating agency, the court will limit the scope of a Title VII action to the actual scope of the administrative investigation. See id. at 1190-91.

If Hall has not received a right-to-sue letter dealing specifically with the dairy, he should submit proof that either the EEOC or the FCHRC has investigated his discrimination claim against the dairy. The plaintiff should submit this proof in the form of affidavits. He should file any materials that he wishes to present on this issue within twenty days of the date of this order.

III. THE FOURTEENTH AMENDMENT ISSUE

The dairy next moves to dismiss Hall's fourteenth amendment claim under Rule 12(b)(6). In particular, the dairy argues that the plaintiff has not alleged any state action. Hall responds that the presence of the work-release order provides all of the state action necessary to sustain a fourteenth amendment count.

The fourteenth amendment applies only to action attributable to a state government. See Shelley v. Kraemer,

334 U.S. 1, 13 (1948). The Supreme Court has held "that the impetus for the forbidden discrimination need not originate with the State if it is state action that enforces privately originated discrimination." Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 172 (1972); accord Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 164 (1978); Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350-51 (1974); Burton v. Wilmington Parking Authority, 365 U.S. 715, 722 (1961). Where, however, the impetus is private, "the State must have 'significantly involved itself with invidious discrimination' in order for the discriminatory action to fall within the ambit of the constitutional prohibition." Moose Lodge No. 107 v. Irvis, 407 U.S. at 173 (citation omitted); accord Flagg Brothers, Inc. v. Brooks, 436 U.S. at 164; Jackson v. Metropolitan Edison Co., 419 U.S. at 351; Burton v. Wilmington Parking Authority, 365 U.S. at 722.

Hall contends that the fact that he was employed under a work-release order at the time of his termination creates a sufficient nexus between the state and the dairy to constitute state action. The plaintiff, however, does not allege that the work-release order authorized or encouraged racial discrimination by the dairy. He, instead, asserts that the dairy based his termination on a factor unrelated to the terms of the order. Thus, there was no significant state involvement with the alleged discrimination. The court, therefore, must dismiss the fourteenth amendment claim against the dairy for failure to allege state action.

United States District Judge

Date: _____