

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-10569-RGS

JUAN ESPINAL

v.

NATIONAL GRID NE HOLDINGS 2 LLC
And
KEYSPAN NEW ENGLAND, LLC

MEMORANDUM AND ORDER ON
DEFENDANTS' MOTION FOR JOINDER

October 30, 2009

STEARNS, D.J.

On April 14, 2009, Juan Espinal brought this action for unlawful discrimination, harassment, and retaliation against his employer, National Grid NE Holdings 2 LLC.¹ On June 30, 2009, defendants filed a motion to join Espinal's union, Local No. 318, Brotherhood of Utility Workers, AFL-CIO, as an indispensable party. Espinal opposes the motion.

BACKGROUND

The motion for joinder is brought pursuant to Fed. R. Civ. P. 19(a)(1)(A), which provides that

[a] person who is subject to service of process and whose joinder will not deprive the court of subject matter jurisdiction must be joined as a party if: (A) in that person's absence, the court cannot afford complete relief among existing parties

¹Espinal also names as a defendant KeySpan New England, LLC, Espinal's original employer, which has since been acquired by National Grid.

“The application of Rule 19, of course, turns on the facts of each case.” Le Beau v. Libbey-Owens-Ford Co., 484 F.2d 798, 800 (7th Cir. 1973).

The facts as alleged in the Amended Complaint are as follows. In December of 2001, Espinal began work for KeySpan as a senior technician in its Beverly yard. His job duties included responding to reports of gas leaks and making minor repairs where possible. Espinal claims to have been subjected to discrimination based on his ethnicity beginning in 2003, when a white co-worker was given a higher rate of pay after being moved into an equivalent job. In June of 2005, Espinal was disciplined for failing to respond to a reported leak within the required one hour. The following month, Espinal learned that a white co-worker had similarly failed to meet the one hour requirement, but was never disciplined. Espinal complained to his supervisors, Lou Laghetto and Scott Crooker, neither of whom responded in any meaningful way. On July 19, 2005, Espinal complained to his union representative, who forwarded the complaint to management.

Espinal did not receive a response until January of 2006, when he was interviewed by the company’s Industrial Relations representative, Mark Egan.² As of September 27, 2006, defendants had taken no action on Espinal’s complaint. On that date, Espinal filed a charge with the Massachusetts Commission Against Discrimination (MCAD). The following month, the co-worker about whom Espinal had complained received a five-day suspension without pay, the same discipline that had been meted out to Espinal.³

²According to Espinal, the delayed response violated the terms of defendants’ internal complaint procedure.

³In February of 2007, Espinal was suspended for a week without pay for failing to check for leaks within 200 feet of a reported leak, and for missing a leak. Espinal alleges

Espinal claims that his white co-workers thereafter subjected him to retaliatory harassment, calling him a “rat” on a nearly daily basis, and berating him for betraying a union “brother.” At a union meeting in November of 2006, Espinal’s white co-workers screamed at him, calling him a “Spic” and a “rat.”

Espinal reported the harassment to defendants in a meeting on November 21, 2006. In December of 2006, union members defaced Espinal’s work truck by writing “rat” on the driver’s door. When Espinal reported the truck incident to Laghetto, defendants failed to investigate (a failure Espinal characterizes as retaliation for his filing the MCAD charge). On January 8, 2008, a white co-worker taunted Espinal by saying, “When are you going to grow up and be a man?” On January 26, 2008, another white co-worker voted during a union meeting not to submit a grievance lodged by Espinal to arbitration because of his discrimination complaints. Later that day, when that same co-worker heard Espinal and a supervisor speaking Spanish, he told them to “take it outside.”

On January 23, 2008, Espinal filed a second charge with the MCAD, claiming retaliation. On April 25, 2008, Espinal worked a double shift during which his supervisor, Kevin Curry, closely surveilled him.⁴ When Espinal asked Curry why he was following him, Curry refused to respond and swore at Espinal, telling him to continue working. Curry later accused Espinal of exaggerating the time he had spent working at a customer’s home.

that a white co-worker committed the same infraction and was not disciplined.

⁴According to Espinal, Curry has a history of harassing non-white workers in the Beverly yard.

According to Espinal, after he filed the first MCAD charge, Curry proactively searched for ways to discipline him.

In January of 2009, there was a gas explosion at 70 Eastern Avenue in Gloucester. On April 9, 2009, Curry began interviewing employees (including Espinal) who had responded to reports of leaks along Eastern Avenue within the prior thirty days. According to the company's internal records, Espinal was one of the workers who had been directed to investigate the leaks. Espinal claims that the dispatcher had erroneously sent him to 275 Eastern Ave instead of 70 Eastern Avenue. Despite the excuse, Curry accused Espinal of failing to follow company procedure.⁵ Espinal was banned from taking calls alone, and Curry assigned a co-worker to monitor Espinal's work. On April 15, 2009, Curry suspended Espinal for thirty days without pay. Espinal claims that white co-workers who were interviewed in connection with the explosion but who had not filed discrimination claims were not disciplined. According to Espinal, the investigation and resulting suspension were based on his ethnicity and in retaliation for his filing MCAD charges.

Espinal claims that other hispanic and non-white employees in the Beverly yard have historically been subjected to racial and ethnic harassment and discrimination, to which defendants have failed to react. Espinal's three-count Complaint alleges violations of Mass. Gen. Laws ch. 151B, §§ 4(1) and 4(4) (Counts I and II), and violations of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (Count III). In addition to money damages, Espinal seeks an injunction barring "[d]efendants, their

⁵Proper procedure when an employee is provided an address that appears to be incorrect is to check for a leak within a 200 foot radius and report the findings. Espinal claims that he did so.

officers, successors, assigns, *and all persons in active concert or participation with them*, from racial and ethnic or retaliatory harassment or any other employment practice that [discriminates or retaliates].” (Emphasis added).

DISCUSSION

Rule 19 “furthers several related policies, including . . . the interest of the present parties in obtaining complete and effective relief in a single action” Acton Co., Inc. v. Bachman Foods, Inc., 668 F. 2d 76, 78 (1st Cir. 1982). Defendants argue that the union is a necessary party because without its participation, the court is prevented from being able to completely adjudicate the dispute. According to defendants, this is particularly so in light of the injunctive relief sought by Espinal, which will impact not only defendants, but also “all persons in active concert of participation with them.”

Defendants’ argument that Espinal alleges discrimination, harassment, and retaliation “by his Union” is not supported by a careful reading of the Complaint. To be sure, Espinal makes numerous references to acts of hostile treatment by co-workers who he identifies as union members. However, Espinal does not complain that the union itself (as an entity) has mistreated him or failed to respond to his grievances.

“[W]hen applying Rule 19(a), a court essentially will decide whether considerations of efficiency and fairness, growing out of the particular circumstances of the case, require that a particular person be joined as a party.” Pujol v. Shearson Am. Express, Inc., 877 F.2d 132, 134 (1st Cir. 1989). Defendants principally rely on Townsend v. Exxon Co., USA, 420 F. Supp. 189 (D. Mass 1976). However, in that case, plaintiff’s union was held to be an indispensable party because the plaintiff sought reinstatement with retroactive

seniority. Id. at 190 n.1. Here, defendants have not shown that the union’s collective bargaining interests (or those of its individual members) will be similarly implicated. There is nothing to suggest that the relief sought by Espinal will trigger defendants’ duty to bargain with the union, or cause union members to lose any rights that they currently have under the collective bargaining agreement. Nor do they point to any provision of the agreement that would be altered or violated if the court ordered defendants to bring an end to discriminatory behavior in the workplace.⁶ Defendants’ reliance on Baranek v. Kelly, 630 F. Supp. 1107 (D. Mass. 1986), is no more persuasive. In Baranek, it was the plaintiff who sought to add an allegedly indispensable third-party pursuant to Rule 19(a). The court agreed that the party was indispensable because it had provided the majority of the funding for the defendant and had also required the adoption of the affirmative action program that was at issue in the case. See id. at 1113.⁷ Any factual comparison to the facts alleged in this Complaint is wholly inapt.

Espinal has adequately stated claims against his employer for permitting a hostile work environment to fester and for failing to respond to his complaints about acts of

⁶Article XIV of the CBA prohibits defendants from discriminating. It provides that “[n]either the Company nor the Union will discriminate against any individual on the basis of . . . race, . . . national origin . . . citizenship status or any other reason prohibited by law.” CBA at 10.

⁷While the court recognizes that defendants do not rely on Rule 19(b), it nonetheless notes that even joint tort feors and co-conspirators are generally not held to be indispensable parties under that provision of the Rule. See Casas Office Machs., Inc. v. Mita Copystar Am., Inc., 42 F.3d 668, 677 (1st Cir. 1994). Rather, the “centrality” of a party’s role in the dispute is a key consideration. B. Fernández & HNOS, Inc. v. Kellogg USA, Inc., 516 F.3d 18, 27 (1st Cir. 2008) (applying the four-factor test of Rule 19(b)).

discrimination by his co-workers, some of whom are incidentally union members. Defendants' argument – that the court will be unable to issue an injunction against defendants that would provide relief sufficient to fully rectify the alleged hostile environment – is off the mark. The court does not anticipate any difficulty in fashioning an appropriate remedy (if warranted) that is specifically tailored to the claims advanced by Espinal. See Le Beau, 484 F.2d at 801 (“Complete relief can be accorded [plaintiff] by money damages and such injunctive relief as is necessary to prevent future discrimination”).

CONCLUSION

For the foregoing reasons, defendants' motion for joinder will be DENIED. The parties shall, within fourteen (14) days of this Order, submit a joint proposed discovery schedule.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE