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United States District Court, D. Kansas.

Saul ZAPATA et al., Plaintiffs,
v.
IBP, Inc., Defendant.

No. Civ.A. 93–2366–EEO.
|
Sept. 22, 1997.

Attorneys and Law Firms

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MEMORANDUM AND ORDER

OCONNOR, J.

***1** This matter is before the court on defendant IBP, Inc.'s Objections to the Magistrate Judge's Report and Recommendation (Doc. # 571). By Minute Order of April 3, 1997, this court referred the Motion of Defendant to Sever and for Separate Trials (Doc. # 339) to Magistrate Judge Rushfelt for report and recommendation. On July 1,

1997, the magistrate judge submitted his report and recommendation to the district court. IBP, Inc. ("IBP") timely filed written objections to the magistrate's proposed findings and recommendation, and plaintiffs have filed a response. The matter is now ready for ruling. For the reasons set forth below, the court affirms and adopts in its entirety the report and recommendation of the magistrate judge.

I. *Standard of Review.*

De novo review is required after a party makes timely written objections to a magistrate's report. *Northington v. Marin*, 102 F.3d 1564, 1570 (10th Cir.1996). A district court judge is required to "make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). The judge may then "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." *Id.* The judge is afforded considerable discretion in determining what reliance he may place upon the magistrate judge's findings and recommendations. *See Andrews v. Deland*, 943 F.2d 1162, 1170 (10th Cir.1991). *See also United States v. Raddatz*, 447 U.S. 667, 100 S.Ct. 2406, 65 L.Ed.2d 424 (1980) ("in providing for a 'de novo determination' rather than de novo hearing, Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations.").

The district court must consider the evidence in the record and not merely review the magistrate's report and recommendations. *Northington*, 102 F.3d at 1570. Where circumstances indicate the district court did not conduct de novo review, the case must be remanded. *Id.* (citing *In re Griego*, 64 F.3d 580, 583–84 (10th Cir.1995); *Bratcher v. Bray–Doyle Independent School District*, 8 F.3d 722, 724 (10th Cir.1993)). However, the district court is presumed to know that de novo review is required. "[E]xpress references to de novo review in [the district court's] order must be taken to mean it properly considered the pertinent portions of the record, absent some clear indication otherwise." *Bratcher*, 8 F.3d at 724. Consequently, a brief order expressly stating the court conducted de novo review is sufficient. *Northington*, 102 F.3d at 1570 (citing *Griego*, 64 F.3d at 583–84; *Bratcher*, 8 F.3d at 724).

II. *Discussion.*

In this action, fourteen Mexican–American or native-born Mexicans allege that IBP "has engaged in a pattern and practice of discrimination against [them] based on their national origin, ancestry, ethnicity and race." Pretrial Order of May 16, 1997, Doc. # 535, at 3. Additionally, they allege that the intentional discrimination by IBP has created a hostile working environment in violation of 42 U.S.C. §§ 1981 and 2000e. *Id.* at 2, 3, 6. Pursuant to its motion to sever and for separate trials, IBP seeks an order to sever the claims of each of the individual plaintiffs for separate trial.

***2** The magistrate judge, in a thoughtful and well-reasoned report, recommended that this court order a separate trial for the claims of former employees of the Emporia facility, and another, separate trial for those plaintiffs who worked at the Holcomb facility. Judge Rushfelt reasoned that two separate trials would reduce the risk of prejudice; make trial more manageable to the court, parties, and counsel; reduce confusion; and reduce the risk of inconsistent awards of punitive damages. Furthermore, he determined that no party had shown any prejudice that would result from such separation.

"Ultimately the question of separate trials under Rule 42(b) should be, and is, a matter left to the discretion of the trial court on the basis of the circumstances of the litigation before it." 9 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2388 (2d ed.1995). The court has engaged in a thorough review of the magistrate's report and recommendation, IBP's objections, and plaintiffs' response. The court also has conducted an independent de novo review of all pertinent portions of the record, and the applicable law.

The court finds that separation of these claims into fourteen individual trials would not enhance judicial economy or convenience. When we read Federal Rule of Civil Procedure 21 in conjunction with Rule 42(b), we find that two trials will best serve the convenience of the parties and the court and minimize expense and delay. We believe this approach is more likely than fourteen separate trials to result in a just and expeditious final disposition of the litigation. We also find, for the reasons well-stated in Magistrate Judge Rushfelt's opinion, that as to any punitive damages award, a single aggregate amount of punitive damages for all plaintiffs at a given plant is preferable to multiple punitive damages awards, and weighs in favor of two separate trials. We therefore conclude that the claims of those plaintiffs who worked at the IBP facility at Emporia, Kansas, should be tried separately from those claims of plaintiffs who worked at the Holcomb, Kansas, facility. Additionally, we find that the parties have presented no compelling grounds to

separate the claims of plaintiff Gustavo Adolfo Vasquez and Juan Rucker for trial. Accordingly, Vasquez will be tried with the group of plaintiffs who worked at the Emporia facility; Rucker will be tried with the group of plaintiffs who worked at the Holcomb facility.

We find that Magistrate Judge Rushfelt dealt with the issues fully and accurately, and conclude that we could add little of value to his analysis.

IT IS THEREFORE ORDERED that defendant IBP's Motion to Sever and for Separate Trials (Doc. # 339) is sustained in part and overruled in part. The claims of plaintiffs Gustavo Adolfo Vasquez; Saul Zapata; Antonio Ponce; Francisco Ponce; Antonio Marinez; Graciela Garcia; and Manuel Sigala shall proceed to trial separately from the claims of plaintiffs Juan Rucker; Enrique Molina, Jr.; Marco Interial; Olga Cabral; Jose Luis Velasquez; Baltazar Beltran; and Pedro Lira. The motion is otherwise overruled.

All Citations

Not Reported in F.Supp., 1997 WL 614427