

to relief." This strict standard of review under rule 12(b)(6) has been summarized as follows: "The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief."

(Citations omitted.)

In the complaint, plaintiff, Equal Employment Opportunity Commission (EEOC) alleges the defendant engaged in discriminatory hiring practices by instructing Ian Reynolds and other comparably aggrieved individuals to disqualify and/or not consider certain groups of people, particularly African-Americans and "dark-skinned" Hispanics for the positions of wait staff. The complaint states that Ian Reynolds and other comparably aggrieved individuals were compelled to resign because of the intolerable work environment created by defendant's requirement to comply with discriminatory employment practices. The effect of these practices has been to deprive Mr. Reynolds and comparably aggrieved individuals, as well as a class of African-American and Hispanic applicants, equal employment opportunities and to otherwise adversely affect their status as employees because of race, color and national origin.

Rule 12(b)(6) Motion

In the motion to dismiss, the defendant seeks to have this Court dismiss the portion of plaintiff's lawsuit seeking relief on behalf of "Ian Reynolds and other comparably aggrieved individuals." Defendant argues the plaintiff has failed to set forth essential elements to state a claim upon which relief can be granted because the essential elements of a prima facie case for discrimination include the following:

1. Plaintiff is a member of a protected class.
2. Plaintiff performed his or her job satisfactorily.

3. Plaintiff suffered an adverse employment action, and

4. The circumstances give rise to an inference of discrimination.

Defendant maintains plaintiff has failed to allege and cannot prove that Mr. Reynolds and the other comparably aggrieved individuals are members of a protected class, and therefore both his discrimination and hostile environment claims must be dismissed.

In response to the motion, plaintiff provides further background into the cause of action filed on behalf of Mr. Reynolds. Mr. Reynolds, who is white, was the general manager of the Gauchos Restaurant and was ordered by the owner to discriminate against applicants for employment based on their race, color, and national origin. Mr. Reynolds refused to engage in such unlawful actions and resigned his employment because of the discriminatory and unlawful actions of his employer. During its investigation of Mr. Reynolds' claims, plaintiff discovered another former general manager quit for the same reason as Mr. Reynolds, and as a result, plaintiff filed its suit on behalf of these two former managers and the group of applicants who were subject to the unlawful discrimination. Both managers have the similar claims of hostile work environment and constructive discharge, the class of darker-skinned Hispanics have claims of failure to hire based on unlawful discrimination, and the class of Black short-term employees also assert claims of constructive discharge and hostile work environment. However, as plaintiff points out, the basis for all of the claims is the EEOC charge filed by Mr. Reynolds which under Title VII can be expanded to include comparably aggrieved individuals and other persons subjected to unlawful discrimination. Plaintiff argues Title VII protects all employees from a hostile work environment and allows employees who are not the focus of the discrimination to file a charge.

Discussion

The protection afforded by Title VII covers "all employees of and applicants for employment...against discrimination based on race, color, religion, sex, or national origin." General Tel. Co. of the Northwest, Inc. v. E.E.O.C., 446 U.S. 318, 323 (1980). To ensure this protection, the EEOC is empowered under section 706(a) to "prevent any person from engaging in any unlawful...practice as set forth in the Title." Id. at 323-24. In 1972, amendments were made to section 706 which expanded the enforcement power of the EEOC to "bring a civil action in federal district court against private employers reasonably suspected of violating Title VII." Id. at 325. By expanding the power of the EEOC, "Congress sought to implement the public interest as well as to bring about more effective enforcement of private rights." Id. at 326. Therefore, when the EEOC acts, "albeit at the behest of and for the benefit of specific individuals, it acts also to vindicate the public interest in preventing employment discrimination. Id. Although defendant challenges the EEOC's action for the benefit of Mr. Reynolds, the Court finds that at this juncture, case law supports a denial of the motion to dismiss because Mr. Reynolds has standing to pursue such a cause.

In a case factually similar to the one here, a district court in Arkansas denied the defendants' rule 12(b)(6) motion. In that case, the plaintiff, who was white, alleged she was "the victim of a discriminatory employment practice at the hands of defendants." Chandler v. Fast Lane, Inc., 868 F. Supp. 1138, 1143 (E.D. Ark. 1994). Chandler was a former manager of defendants' restaurant, as was Mr. Reynolds, who claims that "defendant thwarted her efforts to employ and promote African American employees, and that as a result the conditions of her employment became so intolerable that she was forced to resign." Id. In arguing that Ms.

Chandler had no standing to assert a Title VII claim because the discrimination targeted only African Americans, defendants relied to 42 U.S.C. § 2000e-2(a)(1) which provided that it is unlawful for an employer to fail or refuse to hire any individual with respect to compensation, terms, conditions or privileges of employment because of the individual's race, color, religion, sex, or national origin.

In response to this argument and in denying the motion to dismiss, the court offered the following explanation:

It is true that the only "individuals" whom defendants are claimed to have failed or refused to hire or promote were African-Americans. However, by focusing on the "fail or refuse to hire" provision of § 2000e-2(a)(1), defendants' argument misperceives the unlawful employment practice alleged by Chandler. Chandler does not claim that she was a target of defendants' allegedly anti-African-American employment practices. Rather, Chandler argues that defendants' insistence that she enforce these practices violated her fundamental right to associate with African-Americans, and as a consequence defendants committed a separate violation of § 2000e-2(a)(1) by engaging in an unlawful employment practice that "otherwise discriminate[d] against an[] individual," namely Chandler.

Although the Court recognizes that Chandler's Title VII claim is somewhat novel, it is of the opinion that such a claim, if proven, would state a cause of action under Title VII. A white person's right to associate with African-Americans is protected by § 1981. Therefore, the Court concludes that an employer's implementation of an employment practice that impinges upon this right is actionable under Title VII. While the Court recognizes that the Eighth Circuit has not yet been required to address this issue directly, it is nevertheless convinced that the Eighth Circuit would choose, in a case such as this, to follow the lead of those courts which have dealt with the issue. See Clayton v. White Hall Sch. Dist., 875 F.2d 676, 679-80 (8th Cir. 1989) (holding that a white person has standing to assert a Title VII claim based upon a work environment alleged to be hostile to African-Americans).

Id. at 1143-44 (citations omitted). The Court continued by finding that the plaintiff's allegations were also sufficient to state a claim under a separate provision of Title VII, namely § 2000e-3(a). That provision prohibits discrimination against any employee who opposes any practice made

unlawful by Title VII. The court noted that to state a prima facie case under the so-called "opposition" clause, the following elements must be proven:

(1) that she was engaged in an opposition activity protected under Title VII; (2) that she was a victim of adverse employment action; and (3) that a causal nexus exists between these two events. The Court has no doubt that an employee who exercises her authority to promote and employ African-Americans engages in protected "opposition" to her employer's unlawful employment practice which seeks to deprive African-Americans of such benefits. Thus, Chandler's allegations are clearly sufficient to meet the first requirement of a § 2000e-3(a) claim.

Id. at 1144. As for the adverse employment action elements, the court concluded:

that defendants' insistence that Chandler enforce such an employment practice, if proven, would certainly cause an "adverse employment action" to be visited upon her. Title VII forbids an employer from requiring its employees "to work in a discriminatorily hostile or abusive environment," and included within this prohibition is the right of white employees to a work environment free from discrimination against African-Americans, or any other class of persons. Indeed, subjecting an employee to such a hostile working environment may result in an actionable constructive discharge, a result that is especially likely under facts similar to those presently alleged. Under Title VII, a constructive discharge occurs whenever it is reasonably foreseeable that an employee will resign as a result of her employer's unlawful employment practice, and it is plainly foreseeable that an employee might choose to resign rather than to acquiesce in or enforce her employer's discriminatory and illegal employment practice.

The Court is therefore satisfied that defendants' efforts to hinder Chandler from hiring and promoting African-Americans, and their insistence that she discriminate against such persons, if proven, would result in an actionable Title VII claim. Indeed, "[u]nder the terms of [§ 2000e-3(a)], requiring an employee to discriminate is itself an unlawful employment practice."

Id. at 1144-45 (citations omitted).

Other courts have also found standing by persons outside of the "protected class" to be "aggrieved persons" under Title VII and have allowed their claims to proceed as well. See Clayton v. White Hall Sch. Dist., 875 F.2d 676, 679 (8th Cir. 1989) (white employee's claim of racially discriminatory work environment alleged injury in fact within the zone of interest

protected by Title VII and employee had standing to bring suit; standing for purposes of Title VII not limited to minority groups but depends upon whether plaintiff is person claiming to be aggrieved by such discrimination); Stewart v. Hannon, 675 F.2d 846, 848-50 (7th Cir. 1982) (EEOC has interpreted standing provisions of Title VII to permit a white person aggrieved by discrimination against black persons at their place of work to file charges with EEOC and to sue in court; since exclusion of minority persons from a work environment may lead to loss of important benefits from interracial association, complaint sufficiently apprised parties and court of claimed injury); E.E.O.C. v. Mississippi College, 626 F.2d 477, 483 (5th Cir. 1980) (court concluded section 706 of Title VII permitted a white female to file a charge asserting her employer discriminated against blacks on the basis of race in recruitment and hiring), cert. denied, 453 U.S. 912 (1981); E.E.O.C. v. The Bailey Co., Inc., 563 F.2d 439, 452 (6th Cir. 1977) (Supreme Court decision in Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972), requires courts to hold that definition of "a person claiming to be aggrieved" under Title VII includes a white person who may have suffered from the loss of benefits from the lack of association with racial minorities at work), cert. denied, 435 U.S. 915 (1978); Waters v. Heublein, Inc., 547 F.2d 466, 469-70 (9th Cir. 1976) (Waters, a white female, had standing to bring suit redressing racial and ethnic discrimination although she did not belong to group being discriminated against because she was found to a "person claiming to be aggrieved" by such discrimination), cert. denied, 433 U.S. 915 (1977); Golleher v. Aerospace Dist. Lodge 837, 122 F. Supp. 2d 1053, 1062-63 (E.D. Mo. 2000) (white employee had standing to assert hostile work environment based on race even though she was not discriminated against on the basis of her race; Title VII protects employees from discriminatory conduct so severe and pervasive which alters conditions of employment and creates

hostile environment; employee considered member of protected group because Title VII not limited to minority groups and is subject to liberal construction; employee found to be individual whom Title VII intended to protect); Faulk v. Home Oil Co., Inc., 173 F.R.D. 311, 312-13 (M.D. Ala. 1997) (relying on Fifth Circuit decision in E.E.O.C. v. Mississippi College, 626, F.2d 477 (5th Cir. 1980), found white plaintiffs could maintain an action based on defendants' alleged actions discriminating against persons of a different race by refusing to hire and/or promote African American employees and subjecting them to hostile work environment--because of this discrimination, white employees were denied a work environment free of racial discrimination and were denied benefits of interracial association; motion to dismiss denied). Therefore, based on the foregoing and the arguments presented by plaintiff, the Court finds Mr. Reynolds appears to be an "aggrieved person" for purposes of asserting a Title VII cause of action and the motion to dismiss for failure to state a claim should be dismissed.

Conclusion

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss Claims on Behalf of Ian Reynolds for Failure to State a Claim (docket #8) is DENIED.

It is so ORDERED.

SIGNED this 13 day of November, 2001.


FRED BIERY
UNITED STATES DISTRICT JUDGE