

1994 WL 760811  
United States District Court, M.D. Tennessee,  
Columbia Division.

Janet LINTEMUTH, Robert Millage, Carole  
Simpson, Pamela Cameron, Melinda Bradberry,  
Margery Palmer, Darla Farmiole, on behalf of  
themselves and all others similarly situated

v.  
SATURN CORPORATION.

1:93-0211.  
|  
Aug. 29, 1994.

#### REPORT AND RECOMMENDATION

SANDIDGE, United States Magistrate Judge.

**\*1** By an Order entered June 10, 1994, the Court referred plaintiffs' motion for class certification of the complaint (filed December 9, 1993; Docket Entry No. 1) to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). The motion was referred for consideration, submission of proposed findings of fact, and recommendation for disposition. Oral argument on the motion was held on July 12, 1994. After consideration of plaintiffs' motion and the entire record in this action, I recommend that plaintiffs' motion for class certification be denied.

#### BACKGROUND

Named plaintiffs, Janet Lintemuth, Robert Millage, Carole Simpson, Pamela Cameron, Melinda Bradberry, Margery Palmer, and Darla Farmiole, filed an employment discrimination complaint against their employer, Saturn Corporation ("Saturn"), pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12101 *et seq.* Each plaintiff claims that he or she

is a "qualified individual with a disability" as that term is defined by the ADA.

Defendant Saturn is a foreign corporation authorized by the State of Tennessee to conduct business from its principal office and manufacturing facility located in Spring Hill, Maury County, Tennessee.

The plaintiffs allege that Saturn has failed to reasonably accommodate their known medical restrictions as required by the ADA. Each plaintiff claims to suffer from some disability which required them to miss an extended period of work at Saturn.

Named plaintiff Janet Lintemuth has been diagnosed with degenerative disc disease and lumbosacral spondylosis with resulting permanent spinal impairment. Named plaintiff Robert Millage has been diagnosed with degenerative disc disease, spondylosis, and a ruptured cervical disc with resulting permanent spinal impairment. Named plaintiff Carole Simpson has been diagnosed with bilateral carpal tunnel syndrome, tendinitis, myofascitis and temporomandibular joint dyscrasia. Named plaintiff Pamela Cameron has been diagnosed with degenerative disc disease, a herniated disc and spinal fusion surgery, with resulting permanent spinal impairment. Named plaintiff Melinda Bradberry has been diagnosed with bilateral carpal tunnel syndrome, ulnar neuropathy and left upper trunk brachioplexopathy. Named plaintiff Margery Palmer has been diagnosed with bilateral carpal tunnel syndrome. Named plaintiff Darla Farmiole has been diagnosed with meralgia paraesthesia. Most, but not all, of the members of the proposed class are alleged to suffer from conditions similar to those of the named plaintiffs.

After an appropriate recovery period, each plaintiff was cleared to return to work subject to certain medical restrictions placed on them by their treating physician and Saturn's company physician. As part of Saturn policy, the plaintiffs claim that upon their return to work they were assigned duties in a common segregated class, known as "module common," while they awaited placement in a permanent work unit, or "team," compatible with their medical restrictions.

**\*2** Saturn's automobile manufacturing operation is divided into three separate "business systems:" (1) Powertrain; (2) Body Systems; and (3) Vehicle Systems. Each business system is composed of several teams which are responsible for different stages of the manufacturing process. As part of this "team concept," team members are required to periodically rotate tasks, enabling them to learn each aspect of the individual unit's manufacturing

responsibilities. *See generally*, Affidavit of R. Timothy Epps.

In conformance with Saturn's team concept, the plaintiffs contend that medically restricted employees are only placed in those permanent positions where the individual is capable of fully performing each task on the team's rotation circuit. However, the plaintiffs allege that they are capable of performing the essential tasks of several production teams throughout Saturn and that such an inflexible requirement fails to reasonably accommodate their known disabilities.

As a direct result of segregation in the module common, the plaintiffs contend that they are not given the same opportunities to earn overtime compensation as employees without medical restrictions. Furthermore, the plaintiffs assert that this denial of overtime opportunity adversely affects other privileges of employment which are directly related to the amount of overtime wages earned.

#### THE CLASS ACTION

Although this Court is prohibited from considering the merits of the plaintiffs' underlying claim when deciding whether to certify the class, *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974), the complex nature of the plaintiffs' allegations and Saturn's defenses presents a situation where it is "necessary for the court to probe behind the pleadings before coming to rest on the certification question." *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147, 160 (1982).

The plaintiffs are suing Saturn under Title I of the ADA, which requires equal employment opportunities for qualified individuals with disabilities. The statute expressly states that:

[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training and other terms, conditions, and

privileges of employment. 42 U.S.C. § 12112(a).

The protections of Title I, however, literally apply only to "qualified individuals with disabilities." As defined by the ADA, a qualified individual is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that person holds. 42 U.S.C. § 12111(8). With respect to a particular individual, the term "disability" refers to: (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (3) being regarded as having such an impairment. 42 U.S.C. § 12102(2).

**\*3** In order to recover under the ADA, a determination must be made that the plaintiff suffers from a disability, as that term is defined by the ADA. If a plaintiff claims that he is capable of performing the essential tasks of a position aided by some type of accommodation, the court must further determine which tasks are essential and whether the accommodation requested by the plaintiff is reasonable, focusing on the potential hardship to employer if the particular accommodation were provided.

The interpretive guidelines prepared by the Equal Employment Opportunity Commission ("EEOC") indicate that Title I of the ADA mandates such a flexible, case-by-case approach in order to allow disabled individuals of varying abilities to receive equal employment opportunities. 29 C.F.R. Pt. 1630, App. at 401. "No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the needs of the job's essential functions." 29 C.F.R. Pt. 1630, App. at 400-01.

The plaintiffs in this action have alleged that they are qualified individuals with disabilities and that Saturn has discriminated against them by utilizing placement procedures which do not reasonably accommodate their known medical restrictions. The named plaintiffs are seeking to certify their claim as a class action, purporting to represent a class of 176 similarly situated, medically restricted employees at Saturn who have been placed in module common while awaiting permanent placement.

Rule 23(a) of the Federal Rules of Civil Procedure lists four prerequisites to maintaining a suit as a class action:

One or more members of a class

may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.R.Civ.P. 23(a).

A proposed class action is eligible for certification only upon the trial court's determination, following a rigorous analysis, that the action satisfies the prerequisites of Rule 23(a). *Falcon*, 457 U.S. at 161. As the party seeking class certification, the burden is on the representative plaintiffs to show that each required element has been met. *Senter v. General Motors Corp.*, 532 F.2d 511, 522 (6th Cir.1976), *cert. denied*, 429 U.S. 870 (1976). After conducting a rigorous analysis of the plaintiffs' motion for class certification, this Court finds that the plaintiffs have failed to establish their claims as typical of the claims of the class at large. The issue of whether the plaintiffs have satisfied the remaining three prerequisites of Rule 23(a) is moot, as the plaintiffs' failure to satisfy the typicality requirement alone warrants denial of their motion.

#### THE TYPICALITY REQUIREMENT OF RULE 23(a)(3)

\*4 The typicality requirement, while somewhat interwoven with the requirement of commonality, focuses primarily on the extent to which the proposed class representatives encompass the claims of the other class members. Generally, a representative plaintiff's claim is typical if it has the same essential characteristics as the claims of the class as a whole. *See, De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225 (7th Cir.1983). The claims of the representative and the claims of the class should be similar to such a degree that the bulk of the elements of the class members' claims are established by the proof offered in support of the named plaintiffs' claim. *See, Retired Chicago Police Association v. City of Chicago*, 141 F.R.D. 477 (N.D.Ill.1992), *Spencer v. Central States*, 778 F.Supp. 985, 990 (N.D.Ill.1991).

Typicality applies not only to the characteristics of the

representative's claim, but also to the defenses applicable to that claim. The existence of unique defenses applicable only to the representative plaintiff is capable of destroying typicality and may warrant the denial of class certification. *See, Koos v. First National Bank of Peoria*, 496 F.2d 1162 (7th Cir.1974), *Rodriguez v. Dept. of Treasury*, 108 F.R.D. 360 (D.D.C.1985); *Fradkin v. Ernst*, 98 F.R.D. 478, 488 (N.D.Ohio 1983).

The plaintiffs' allegations in this action charge Saturn with failing to make reasonable accommodations of their known medical restrictions. The named plaintiffs suffer from a variety of medical conditions ranging from spinal related back injuries to carpal tunnel syndrome. The variance in the named plaintiffs' personal characteristics, coupled with the individualized, case-by-case analysis required by the ADA, renders the proposed representatives in this action unable to establish the necessary elements of the claims of the class in the course of establishing their own. Furthermore, the highly personal nature of each representative's disability also subjects their claims to unique defenses under the ADA which are significant enough to destroy typicality.

The representative plaintiffs assert that because most of the individuals that make up the class they seek to represent suffer from similar disabilities, class action treatment is proper. Rule 23(a), however, requires that the representative plaintiffs' claims be typical of the class as a whole. Yet, supposing that the parameters of the class were narrowed to include only those individuals with disabilities similar to the representative plaintiffs, as Rule 23(c)(4) gives this Court the authority to do, the representatives' claims would still not be significantly typical to justify class certification.

For example, even though two Saturn employees may be classified as suffering from a similar disability, it does not necessarily follow that they are subject to the same medical restrictions concerning individual work abilities. One employee classified with a "back injury" may be restricted from lifting heavy objects, where as another employee with a "back injury" could be restricted from standing for long periods of time. Under the ADA's required case-by-case analysis, the issue of whether the employee can perform, with reasonable accommodation, the essential functions of a desired position with reasonable accommodations would involve litigation highly individualized to each of the employees' particular situations. That is to say, the fact that one of the representative plaintiffs, with a certain type of disability, is able to prove the elements of discrimination under the ADA does not mean that the elements have been satisfied with respect to all members of the class with similar types of disabilities.

**\*5** Additionally, the ADA provides employers with a list of potential defenses which may be utilized with respect to charges of employment discrimination. A valid defense to a charge of failing reasonably to accommodate disabled employees is that the requested accommodation would subject the employer to undue hardship. 42 U.S.C. § 12113(a); *see also*, 29 C.F.R. Pt. 1630, App. at 423. The ADA mandates that the determination of what hardship is undue entails a close analysis of each plaintiff's disability, the extent to which their disability affects their ability to perform the duties of the position desired, and the reasonable accommodation requested. Thus, even though the representatives are classified with the same types of disabilities as the class, the ADA's case-by-case approach provides Saturn with a unique defense applicable to each representative, rendering their claims atypical of the claims of the class.

In seeking to certify this class, the plaintiffs relied on a number of class certification cases where dissimilar characteristics in a representative's claim were not found to be significant enough to destroy typicality. However, none of those actions were brought pursuant to a statute mandating a detailed analysis similar to the individualized approach of the ADA.

Several statutes have prohibited employment discrimination based on certain individual characteristics. However, a disability, as an individual characteristic, necessarily is more multi-faceted than characteristics such as race or gender. In discrimination cases involving race or gender, differences in individual characteristics among the representatives and class members are seldom significant as long as the common race or gender is shared. However, in discrimination cases based on a disability, the shared characteristic is being disabled, which unlike race and gender, involves varying degrees. Congress recognized this fact by developing the individualized, case-by-case approach utilized by the ADA.

Case law concerning Title I of the ADA is sparse. However, in cases involving class certification brought under the Rehabilitation Act of 1973, it has also been recognized that dissimilarities between the representatives and the class become more significant due to that statute's individualized approach, which, except for its limited applicability to government entities, is essentially the

same analysis mandated by the ADA. *See, Chandler v. City of Dallas*, 2 F.3d 1385, 1396 (5th Cir.1993).

Where a representative plaintiff purports to represent a class of individuals with the same type of disability which affects their ability to perform the duties of a similar position in a similar manner, the issue of which accommodations requested of the employer would be reasonable is essentially the same for the entire class and can be fairly and economically decided on the basis of the representative plaintiff's proof alone. In such a case, the representative's claim would be typical of the class at large, making certification of the class proper.

**\*6** However, in the action before this Court, the representative plaintiffs' claims involve characteristics and defenses which are highly individualized. The varying disabilities and resulting medical restrictions of the representative plaintiffs are significant enough to render their claims atypical of the claims of the class. Accordingly, the plaintiffs' motion for class certification should be denied.

## RECOMMENDATION

Based on the foregoing, I RECOMMEND that the plaintiffs' motion for class certification be DENIED.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of service of this notice, and must state with particularity the specific portions of this Report, or the proposed findings or recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

## All Citations

Not Reported in F.Supp., 1994 WL 760811, 3 A.D. Cases 1490, 8 A.D.D. 506