1994 WL 113079
United States District Court, N.D. Illinois, Eastern Division.

Savino LATUGA, individually and as a representative of a class of class of similarly situated persons, Plaintiffs,
v.
HOOTERS, INC., d/b/a Hooters, individually, and Hooters of Orland Park, Inc., d/b/a Hooters, individually and as a representative of a defendant class of similarly situated entities, Defendants.

No. 93 C 7709. | April 1, 1994.

Opinion

MEMORANDUM OPINION

KOCORAS, District Judge:

***1** This matter is before the Court on a motion to dismiss portions of the plaintiff's complaint. For the reasons that follow, the motion is granted.

BACKGROUND

This is a Title VII employment discrimination case. The plaintiff, Savino Latuga ("Latuga") claims that he was the victim of gender discrimination because he was not hired by defendant Hooters of Orland Park, Inc. ("HOOP"). HOOP is a bar and restaurant that employs scantily-clad women as waitresses, bartenders, and hostesses. Latuga asserts that HOOP implements a policy developed and enforced by defendant Hooters, Inc. ("HI") of hiring only women for these three "front of the house" positions.

Latuga alleges that he learned that jobs were available at HOOP, which was about to open for business, in January, 1993 and that he completed an application for a position as a waiter. He was not offered a job, although he had experience as a waiter. Latuga alleges that other men who applied were also not hired and that women who applied later were hired.

Latuga filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") and received a right-to-sue letter. He brought this lawsuit on behalf of a similarly situated class of males who have been refused employment at establishments owned, operated, licensed, or sublicensed by defendant HI. He named HOOP and HI as defendants and also named a class of similarly situated entitities as defendants. Latuga alleges that HI has a policy of refusing to hire men for front of the house positions that is implemented at restaurants it owns, operates, or licenses nationwide.

The named defendants, HI and HOOP, now move to dismiss the claims brought on behalf of a plaintiff class on the grounds that the EEOC charge did not indicate that a class action was intended. Further, HI moves to dismiss the charges against it on the grounds that the EEOC charge did not name it as a party to be charged. Finally, HI and HOOP move to dismiss the claims directed to a defendant class on the grounds that the defendant classes alleged in the Complaint do not meet the requirements of Rule 23. The Defendants do not urge the dismissal of Latuga's individual claims against HOOP. We will address each of the grounds raised in the motion to dismiss below.

DISCUSSION

A. The Motion to Dismiss the Plaintiff Class Allegations

A prerequisite to filing a Title VII case in federal court is the timely filing of a charge with the EEOC encompassing the acts at issue. *Alexander v. Gardner–Denver Co.,* 415 U.S. 36, 47 (1974). The scope of the EEOC charge limits the scope of a subsequent complaint. *Schnellbaecher v. Baskin Clothing Co.,* 887 F.2d 124, 127 (7th Cir.1989). Defendants first move to dismiss Latuga's plaintiff class allegations, on the grounds that they are not supported by the charge Latuga filed with the EEOC. Defendants cite *Schnellbaecher,* where the Seventh Circuit looked to whether the charge or the EEOC investigation put the defendants on notice that the plaintiff intended to file a lawsuit containing allegations of class-wide discrimination and concluded that it did not. *Id.* at 127–28. In response, Latuga cites *Levine v. Bryant,* 700 F.Supp. 949 (N.D.Ill.1988), for the proposition that an EEOC charge provides a proper basis for a plaintiff class action suit if it "gives notice to the employer that the consequences of an individual's charge may transcend an isolated individual claim." *Levine,* 700 F.Supp. at 955.

***2** In *Levine,* the plaintiff's EEOC charge alleged age discrimination and went on to state that "Respondent has made statements that they want 'new blood' in management. Since the new management started, many employees over 50 years old in managerial positions have been discharged throughout the country. All have been replaced by younger employees in the age group 20's and 30's." *Id.* We agree with the district court in *Levine* that the charge there contained sufficient references to the existence of other similarly situated persons to apprise the employer that it could be facing claims from multiple plaintiffs. *Id., see also Anderson v. Montgomery Ward & Co.,* 852 F.2d 1008, 1016 (7th Cir.1988) (construing EEOC charge preceding ADEA suit in light of FLSA requirements).

Is that standard met in the instant case? Latuga points to the language, "Respondent does not hire male waiters" in his EEOC charge, contending that it refers to a policy that discriminates against a class of persons and that such a reference provides adequate notice of a potential class action lawsuit. Obviously, Latuga's language does not give as clear of an indication of potential class allegations as did the charge in *Levine.* Latuga's charge does not refer to the defendants' actions toward anyone other than Latuga. The charge was prepared by an attorney and thus, the especially liberal reading afforded charges written by laypersons is not warranted here. *See Mufich v. Commonwealth Edison Co.,* 735 F.Supp. 897, 900 (N.D.Ill.1990). We conclude that Latuga's EEOC charge does not provide a basis for a plaintiff class action because it does not sufficiently apprise the defendants that Latuga intended to pursue a class action lawsuit on behalf of similarly situated males. Accordingly, we will dismiss the class allegations from Latuga's complaint.[1]

B. The Motion to Dismiss Allegations against Hooters, Inc.

Defendant Hooters, Inc. moves to dismiss the allegations against it on the basis that Latuga did not name it in his EEOC charge. Ordinarily, a party not named in an EEOC charge may not be sued under Title VII. *Schnellbaecher,* 887 F.2d at 126. That case, though, also recognizes an exception to the rule, where an unnamed party had adequate notice of the charge and had an opportunity to participate in conciliation proceedings. *Id., citing Eggleston v. Chicago Journeymen Plumbers' Local Union No. 130,* 657 F.2d 890, 905 (7th Cir.1981), *cert. denied,* 455 U.S. 1017 (1982). In *Eggleston,* the Seventh Circuit observed that in light of the broad remedial purpose underlying Title VII, Congress could not have intended to require that a person accurately ascertain the name of every entity that could be liable before filing a charge with the EEOC. *Eggleston,* 657 F.2d at 906. However, in *Schnellbaecher,* the Seventh Circuit retreated from this position. The court affirmed the dismissal of Title VII claims against Hartmarx Specialty Stores, Inc., the corporate parent of the entity named in the EEOC charge. *Id.* at 127. The court found that although Hartmarx had actual notice of the charge against its subsidiary, Baskin, it did not have notice of any charges against it (Hartmarx). *Id.*

***3** Here, Latuga wrote "Hooters" in the space provided for identifying the allegedly discriminating party. Latuga argues that that could refer to either HI or HOOP, because both have the word "Hooters" in their name. Defendants point out that Latuga wrote the address of the Orland Park Hooters establishment in the space provided for the address and argue that this unequivocally identifies HOOP as the only entity charged. Applying *Schnellbaecher* here, we must agree with the Defendants' position. While the reasoning of *Eggleston* has appeal, we note that in this case, the plaintiff was represented by counsel who completed the EEOC charge. It is easier to excuse the failure of a pro se plaintiff to accurately name all chargeable entities than to excuse counsel.

Although we agree with Defendants that the information provided in the space for naming the allegedly discriminating party does not adequately name HI, this conclusion is not dispositive of the question of whether HI had adequate notice of charges against it. As we recognized recently in *Mihalik v. National Trade Association,* No. 93 C 6782 (N.D.Ill.Feb. 25, 1994), parties sufficiently alluded to in the factual statement portion of the EEOC charge are to be joined. *Mihalik,* slip op. at 4; *see also Eggleston,* 657 F.2d at 906. Latuga urges that in his factual statement, the sentence "Respondent does not hire male waiters" is sufficient to alert HI that he is complaining of a policy adopted and enforced by it. We are not able to accept that reading of the sentence. First, the sentence refers to "respondent" in the singular. Moreover, it does not mention the existence

of a policy. In sum, we conclude that the EEOC charge does not sufficiently place HI on notice of charges against it to allow Latuga to bring a claim against HI in this lawsuit.

Latuga's argument concerning the acceptance of service of the complaint by HI for HOOPS does not persuade us otherwise. First of all, it came after the EEOC issued a right to sue letter, so it was not contemporaneous with the filing of the EEOC charge. More importantly, the Seventh Circuit in *Schnellbaecher* found actual notice of the existence of a claim to be irrelevant and identified the relevant inquiry as whether the defendant had notice of charges against *it. Schnellbaecher,* 887 F.2d at 127. As discussed above, Latuga's EEOC charge failed to provide adequate notice to HI of charges against it. Accordingly, all claims against Hooters, Inc. will be dismissed for failure to comply with the requirement that parties must be named in an EEOC charge before they are subject to suit under Title VII.

III. The Motion to Dismiss Allegations against a Defendant Class

Defendants also move to dismiss the allegations against a defendant class of Hooters restaurants on the grounds that the EEOC charge did not apprise the members of the putative class that charges were being brought against them. For the reasons set forth above, we agree. The EEOC charge definitely did not provide other Hooters restaurants with notice of charges against them or provide them with an opportunity to participate in conciliation proceedings. We will dismiss the claims against the putative defendant class on the basis that the EEOC charging requirement was not met.

***4** We will not reach the arguments concerning the propriety of a Rule 23(b)(1) defendant class. It is not necessary to our disposition of the present motion in light of our ruling regarding the scope of the EEOC charge. Moreover, neither Rule 12 nor Rule 23 provides for challenges to class certification at the motion to dismiss stage. However, we do note that the defendants are correct in their assertion that the Seventh Circuit refuses to allow certification of defendant classes under Rule 23(b)(2). *See Henson v. East Lincoln Township,* 814 F.2d 410, 416 (7th Cir.1987), *cert. dismissed,* 113 S.Ct. 1035 (1993).

CONCLUSION

For the reasons set forth above, we grant the Defendants' motion to dismiss for failure to comply with the EEOC charging requirements as to Hooters, Inc. and the putative defendant class. Latuga's individual claims against defendant Hooters of Orland Park were not challenged in this motion and they remain in the case.

Parallel Citations

64 Empl. Prac. Dec. P 43,094

Footnotes

[1] Latuga submitted copies of the EEOC charges filed by two other men who were refused employment with HOOP or other HI-owned locations allegedly on the basis of their gender. As those charges clearly indicated an intent to file a class action lawsuit, Latuga may be able to join a class represented by one of those men. Defendants object to the submission of those charges as being irrelevant. We agree that they are not relevant to the issue of what Latuga's charge says, but note that other courts have looked to the filing of numerous EEOC charges as a circumstance indicating that the defendants had knowledge of a potential class action. *See, e.g., Anderson,* 852 F.2d at 1017. Nonetheless, we find that these particular charges were filed too late to be relevant to defendants' notice of the potential ramifications of Latuga's EEOC charge, because they were filed after Latuga instituted this suit.