

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington, Suite 3040
Chicago, Illinois 60602

James EVANS, Complainant)	Case No. 2013E008
)	
v.)	Entered: October 25, 2013
)	
Marc TUDOR and COOK COUNTY, ¹)	
Respondents)	

ORDER

Complainant James Evans (“Evans”) brought this action on February 11, 2013, against his employer, Respondent Cook County (“County”), and County Highway Department supervisor, Respondent Marc Tudor (“Tudor,” and collectively with County, “Respondents”), ostensibly for various violations of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). However, neither Evans’s initial complaint nor his October 15, 2013 amendment state any claim for relief under the Human Rights Ordinance. As such, this Commission dismisses Evans’s complaints against both Respondents *sua sponte*.

Background

Evans February 11, 2013 complaint states, in relevant part:

Denial of accident report/FMLA time/Medical Treatment

[***]

Upon returning back to the office around 2pm, Mark yelled to me “Evans, where is your log sheet”! I told him that I left it in my truck and that I got hurt while at Dist 3 and needed fill out an accident report. I told Marc that I was leaving and FMLA.... Marc replied with NO you go get your log sheet. I proceeded in the office to ask Bharat for the accident reports – Bharat was nowhere to be found and I signed out a little after 2pm as FMLA -07. After signing out I walk out to the warehouse where Ricky Walker was and asked him to be my witness to what just happened. Marc asked me again where my log sheet was, I again informed Mark that I was off the clock and I was hurt and I’m FMLA and still need the accident

¹ The named Respondent, as filed, in this amended matter is the Cook County Highway Department. The Commission has substituted Cook County as the correct responding party.

paperwork. Marc replied again NO go get your log sheet. I then went to get the log sheet. Upon returning with the log sheet I verified the time with Fred as I did not have my watch on. I was in a lot of pain and very much distraught by this time and just wanted to go seek medical treatment and get away from work before anything else happened.

Compl. ¶¶ I, II (emphasis, spelling and grammar in original). Although Evans makes no mention of a protected status or protected conduct under the Human Rights Ordinance in this *pro se* pleading, he checked the boxes on the Commission's form complaint for employment discrimination, race, disability and retaliation. Evans's initial complaint also named only Tudor as a respondent.

On September 26, 2013, after learning that Evans had retained legal counsel, the Commission contacted Evans, through counsel, and was advised that Evans intended to amend his complaint. On October 15, 2013, Evans, through counsel, filed an amendment to his initial complaint.

The October 15th amendment adds Cook County as a party and the following allegations, which are set out in their entirety:

1. That on May 29, 2013 the Respondent² made unwarranted and non-factual allegations accusing the Complainant of dumping personal items in the facilities dumpster. The Respondent continued to verbally harass the Complainant and subjected the Complainant a tirade of swearing in the presence of other employees.
2. That on May 31, 2013 in conversation with the Respondent the Complainant was the subject of numerous insults regarding his having a mistress, being the subject of numerous lawsuits. These statements are not true and were made in front of other employees at the facility. The Respondent concluded this conversation by calling the Complainant "White Trash."
3. On June 4th a meeting was set-up between the Complainant and the Respondent. In that meeting the Respondent continued to verbally harass the Complainant by name calling, insulting the Complainant, and then ordered him to get back to work.
4. June 6, 2012, the Complainant left work early in accordance with his FMLA. The Complainant had an approved FMLA. The Respondent ordered him to bring a doctor's note excusing the Complainant. This conduct was a direct violation of the

² Presumably Tudor (as opposed to the County), though the Amended Complaint does not specify.

Counties FMLA Provisions and was nothing, but continued harassment by the Respondent.

5. On June 7th, the Respondent held a meeting with all the drivers at the facility and singled the Complainant out in a threatening manner advising the consequences of anyone calling downtown to report the conduct of the Respondent. The Respondent intimated that he was friends, with the Highway Department investigator and if the Respondents conduct was reported he would only be given anger management classes and that employees including the Complainant would still have to deal with the Respondent.
6. That between June 8, 2012 and June 13, 2012 the Complainant was ordered to perform tasks during the course of his employment that were personal in nature by the Respondent and benefitted the Respondent.
7. That on July 16, 2012, the Complainant attempted to leave work early under FMLA provisions. The Respondent denied the request and made the Complainant wait an hour before he was permitted to leave. The Complainant ended up being hospitalized and the Respondent once again requested a physician's statement.
8. On September 24, 2012, the Respondent verbally harassed the Complainant denied him Union Representation, continued to swear, and insult the Complainant. The Respondent refused the Complainant from filing a work related accident report and denied medical treatment for a work related injury. The Complainant has been consistently told to keep working while other employees were sitting around and taking work breaks authorized by the Respondent. The Respondent has directed the Complainant not to call downtown to correct payroll errors. Finally the Respondent attempted to discipline the Complainant for cutting down a tree on private property which the Complainant had nothing to do with this incident.

Am. Compl. ¶¶ 1-8 (spelling and grammar in original).

Discussion

Conflict, of some variety, is unavoidable in the relationship between any employee and his or her supervisor or employer. After an exchange of harsh words, for example, a worker may think his boss has an anger management issue while a supervisor may think she was addressing a supervisee's performance issue. In the ordinary course, such conflicts – like conflicts in any

other relationship – are resolved through conversation and interpersonal negotiation between the employee and the supervisor. When this process breaks down, an employer or employee may look to a third party, such as a personnel department or a union grievance panel, to mediate and provide some official recourse.

This Commission, however, is not an appropriate forum for hashing out an employer-employee dispute, unless that conflict alleges a violation of the Human Rights Ordinance. The Human Rights Ordinance prohibits an employer from directly or indirectly discriminating “against any individual in hiring, classification, grading, recruitment, discharge, discipline, compensation, selection for training and apprenticeship, or other term, privilege, or condition of employment *on the basis of unlawful discrimination.*” County Code, § 42-35(b)(1) (emphasis supplied). As used in the Human Rights Ordinance, “unlawful discrimination” means discrimination against a person on the basis of one or more of fifteen, specified protected statuses: “race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity or housing status[.]” *Id.* at § 42-31. When an employee is the victim of this type of unlawful discrimination, he or she may make a complaint to this Commission for investigation and adjudication. *Id.* at § 42-34(b)-(c). In order to protect this process from interference by the employer, the Human Rights Ordinance further includes an anti-retaliation provision that states that “[n]o person shall retaliate against any person because that person in good faith has opposed that which the person reasonably believed to be unlawful discrimination[.]” *Id.* at § 42-41(a).

The County Board devised this scheme in which disputes of the “my boss yelled at me *because he is a jerk*” variety remain with human resources, the union or some other arbitrator so that the limited resources and specialized expertise of this Commission could be reserved for disputes of the “my boss yelled at me *because I am black/female/old/Jewish/wheelchair-bound/Hispanic/gay/childless/veteran/on-public-aid/homeless/etc.*” variety. That the Commission can read every word of Evans’s initial and amended complaints without ever discovering his race, disability status or protected conduct under the Human Rights Ordinance demonstrates that his case does not belong with the Commission.

There is no allegation that “Mark” or “Marc” from the February 11, 2013 complaint (presumably both Tudor) asked Evans for his log sheet because Evans is white, black, American Indian, Asian, Native Hawaiian, or some other race. There is no allegation that Tudor denied Evans an accident report because Evans is blind, deaf or otherwise disabled. There is no allegation that Tudor denied Evans medical treatment because Evans had previously filed a complaint with this Commission. Even if this had been the case, there is no allegation that Tudor is even Evans’s employer, a necessary prerequisite in order to be the subject of an employment discrimination claim under the Human Rights Ordinance. *See id.* at §§ 42-31 (defining “employer”); 42-35(b)(1).

The October 15, 2013 amendment to Evans’s initial complaint does nothing to remedy these deficiencies. While Evans’s legal counsel adds Cook County as the proper employer-respondent, the amended complaint adds nothing that would even suggest that Evans has any protected status or engaged in any protected conduct under the Human Rights Ordinance. Instead, what the amended allegations suggest is that the incident that forms for the basis of

Evans's initial complaint occurred on July 16, 2012. See Am. Compl. ¶ 7. Evans's initial February 11, 2013 complaint to this Commission was therefore outside of the 180-day statute of limitations established for claims under the Human Rights Ordinance. County Code, § 42-34(b)(1)(a); *Mendez v. Autozone*, 200E037 (CCHRC Sept. 24, 2001); *Pleasant v. The Thresholds*, 2001E007 (CCHRC July 13, 2001).

The sole mention of race is a May 31, 2013 conversation in which the amended complaint alleges that Tudor called Evans "White Trash." Am. Compl. ¶ 2. But insulting words, even when racially charged, without a change in the terms and conditions of employment, do not amount to employment discrimination. See, e.g., *Washington v. Cook County*, 2005E065 (CCHRC Sept. 26, 2013); *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 77 (1986) (the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to [a] sufficiently significant degree to violate Title VII"); *George v. Leavitt*, 407 F.3d 405, 416-17 (D.C. Cir. 2005) (holding that statements by three employees over a six-month period telling plaintiff to "go back where she came from," separate acts of yelling and hostility and allegations that plaintiff was singled out for undesirable work assignments were insufficient to demonstrate a hostile work environment); *Woodland v. Joseph T. Ryerson & Son, Inc.*, 302 F.3d 839, 844 (8th Cir. 2002) (concluding that no severe or pervasive hostile work environment existed although the plaintiff had been exposed to racial poems and drawings of KKK, swastika, and a hooded figure on the bathroom wall).

Conclusion

For the foregoing reasons, the Commission orders that complaint 2013E008 be DISMISSED for FAILURE TO STATE A CLAIM under the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date of this order.

October 25, 2013

By delegation:



Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights