1997 WL 24708
United States District Court, N.D. Illinois, Eastern Division.

Francene HOLLEY, Sarah Hughes, Gladys Jeter, Nancy Morgan, Brenda Rigg, Janet Salkeld, Cheryl Treleaven, Mary Elizabeth Grimm, Plaintiffs,
v.
PANSOPHIC SYSTEMS, INCORPORATED, Computer Associates International Inc., David J. Eskra, Robert Fortelka, G. Gordon M. Large, Anthony Paoni, Douglas R. Percy, Defendants.

No. 90 C 7505. | Jan. 17, 1997.

Opinion

MEMORANDUM OPINION AND ORDER

ANN CLAIRE WILLIAMS, District Judge.

***1** Plaintiffs Francene Holley, Sarah Hughes, Gladys Jeter, Nancy Morgan, Brenda Rigg, Janet Salkeld, Mary Elizabeth Grimm, Cheryl Treleaven, *et al.,* sue defendants Pansophic Systems, Inc., Computer Associates International, Inc., David J. Eskra, Robert Fortelka, G. Gordon M. Large, Anthony Paoni, and Douglas R. Percy, claiming sex discrimination and unlawful retaliation under Title VII of the Civil Rights Act of 1964 and the Equal Pay Act, as well as various state common law violations. Defendants move for summary judgment on plaintiffs' breach of contract, intentional interference with contract, and negligence claims alleged in Counts IV, V, and VI of plaintiffs' amended complaint. For the reasons stated below, the court grants defendants' motion for summary judgment on these counts.

Background

Pansophic Systems Inc. ("Pansophic") was a computer software design company. In November, 1991, Computer Associates International, Inc. ("CA") purchased Pansophic. Plaintiffs Sarah Hughes (Pansophic Director), Nancy Morgan, Brenda Rigg, and Janet Salkeld (Pansophic Managers), and Francene Holley and Gladys Jeter (Pansophic Supervisors), were laid off during a reduction in force in May, 1990. Plaintiff Elizabeth Grimm (Pansophic Vice President) was discharged in June, 1991, and Cheryl Treleaven (Pansophic Director) was terminated in September, 1991. David J. Eskra was President of Pansophic; G. Gordon M. Large and Douglas R. Percy were Senior Vice Presidents; and Robert Fortelka and Anthony Paoni were Vice Presidents.

Pansophic had an affirmative action plan ("AAP") for minorities and women during the period when plaintiffs were discharged. The plan existed in a printed book and was described to plaintiffs during company meetings. When plaintiffs were laid off, less qualified male employees holding similar positions allegedly were not. Pansophic conducted performance evaluations during the layoffs, but allegedly ignored the results where women outranked men, adversely considered women managers' marital and parental status, and refused to credit women managers for their years of service while crediting men for their years of service. Moreover, Pansophic allegedly offered male managers more prestigious positions in lieu of termination, but offered women managers less prestigious positions.

Analysis

The court will grant a motion for summary judgment only if the factual record shows that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Bratton v. Roadway Package Sys., Inc.,* 77 F.3d 168, 173 (7th Cir.1996) (quoting Fed.R.Civ.P. 56(c)). The court will not render summary judgment if "a reasonable

jury could return a verdict for the nonmoving party." *Sullivan v. Cox,* 78 F.3d 322, 325 (7th Cir.1996) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986)). In ruling on a motion for summary judgment, the court views the facts in the light most favorable to the nonmoving party. *Bratton,* 77 F.3d at 171 (citation omitted); *Sullivan,* 78 F.3d at 325 (citation omitted).

***2** Plaintiffs contend that defendants had a contractual duty to refrain from sexually discriminating against plaintiffs when they discharged plaintiffs through a reduction in force. The common law claims, reflected in Counts IV, V, and VI of plaintiffs' amended complaint, rest on the supposition that defendants' affirmative action plan ("AAP") granted plaintiffs enforceable contract rights against sexually discriminatory layoffs. The specific issue for resolution by this court is whether defendants' AAP contains sufficiently definite promises to constitute an enforceable contract under Illinois law.

In Illinois, employment without a fixed term is presumed to be employment-at-will, but a party may rebut that presumption by demonstrating that an employer and employee have contracted otherwise. *Duldulao v. Saint Mary of Nazareth Hospital Ctr.,* 115 Ill.2d 482, 490; 505 N.E.2d 314, 318 (Ill.1987). An employee handbook or policy statement may create enforceable contract rights if the following requirements are satisfied: (1) "the language of the policy statement must contain a promise clear enough that an employee would reasonably believe that an offer has been made," (2) "the statement must be disseminated to the employee in such a manner that the employee is aware of its contents and reasonably believes it to be an offer," and (3) "the employee must accept the offer by commencing or continuing to work after learning of the policy statement." *Id.* This court examines defendants' AAP in light of the *Duldulao* test.

The first prong of the *Duldulao* test requires an examination of the policy itself. Plaintiffs contend that there are three ways by which defendants made a clear and definite promise not to downsize in a sexually discriminatory way: (1) the language of the AAP book itself, (2) oral statements made to plaintiffs at company meetings, and (3) charts and graphs shown at company meetings that depicted the percentage of women employees working for Pansophic and their positions in the company relative to men. (Pl.Opp., at 6.) None of plaintiffs' arguments are sufficient to defeat defendants' motion for summary judgment.

The AAP book does not articulate a clear promise to plaintiffs because it speaks only of Pansophic's commitment to the company's general goals of hiring, promoting, and retaining more women. The booklet is nearly two hundred pages long and the vast majority of it consists of statistical tables showing how many women were employed by Pansophic in 1990 and at what levels. (Def.Sum.Jud. Motion Exh. A.) The tone of the AAP book reflects nothing more than Pansophic's general pursuit of an affirmative action plan. It reads in pertinent part as follows:

> The Company affirms its policy of commitment to the affirmative action goals set forth herein and its active pursuit of such goals.... The EEO Coordinator will monitor the Affirmative Action Plan and will be responsible for reporting to the Chief Executive Officer the effectiveness of the program. Such reports will include recommendations for necessary actions to ensure attainment of the Company's equal opportunity objectives. The Chief Executive Officer will take necessary action upon receiving those reports.

***3** (Def.Sum.Jud. Motion Exh. A, at 1.)

The standard for determining whether a promise is clear is an objective rather than a subjective one. *Saint Peters v. Shell Oil Co.,* 77 F.3d 184, 187 (7th Cir.1996). A "primary principle" of the *Duldulao* test is that employment policies create contract rights only when "specific procedures have been prescribed by positive and mandatory language." *Id.* (citation omitted). Pansophic's AAP does not prescribe any specific procedures to follow during a reduction in force, let alone procedures prescribed by mandatory language. Instead, the book refers only to "reports," "recommendations," "objectives," and "necessary action," without stating what action may in fact prove necessary. Without a specific statement by Pansophic that managers will follow certain steps to ensure no discrimination during layoffs, defendants' AAP book can only be understood as a statement of a general, desired goal. *See, Jones v. Holiday Inn, Inc.,* No. 94 C 7463, 1995 WL 340925, at *2 (N.D.Ill. June 2, 1995).

In addition, on page four of the Introduction to the AAP book, the final paragraph contains a disclaimer which reads, "[a]ll representations made in the Plan are intended merely to serve as a guide for the Company's affirmative action efforts and are not binding contracts." (Def.Sum.Jud. Motion Exh. A, at iv.) Contrary to plaintiffs' contention, the disclaimer does not appear "in the middle of the affirmative action statement" (Pl.Opp., at 5–6), rather, it appears conspicuously as the final paragraph of a four page Introduction to the AAP book. A document that unambiguously disclaims any purpose to

contractually bind the parties cannot constitute a promise. *Doe v. First Nat'l Bank of Chicago,* 865 F.2d 864, 873 (7th Cir.1989) (citing *Duldulao v. Saint Mary of Nazareth Hospital Ctr.,* 115 Ill.2d 482, 490; 505 N.E.2d 314, 318 (Ill.1987)). Since the AAP book contains a clear and prominently located disclaimer, the AAP cannot constitute a contract between plaintiffs and defendants.

In addition to citing the language of the AAP book, the Plaintiffs also argue that oral statements made to them at company meetings, as well as charts and graphs shown at those meetings, were sufficient to create contractually binding promises to them. Those arguments fail, however, because the oral statements that plaintiffs refer to are even less specific than those found in the AAP book. Plaintiffs state in affidavits that they were "made aware" of Pansophic's commitment to affirmative action through company meetings where Pansophic managers discussed the company's general goal of increasing the number of women at Pansophic. (Pl.Opp.Exh. B.) Although one such meeting featured a slide presentation of charts showing that women were underrepresented in Pansophic's management, plaintiffs fail to show that the charts represented a contractually binding promise; numerical disparities, even coupled with a stated general intent to remedy the disparities, do not create a promise. Furthermore, none of the plaintiffs could recall the precise words used in the discussions of Pansophic's affirmative action policy, they could only recall statements that the company was generally committed to hiring and promoting women. (Pl.Opp.Exh. B.)

***4** Moreover, plaintiffs' reliance on *Decker v. Andersen Consulting,* 860 F.Supp. 1300 (N.D.Ill.1994) is misplaced. Plaintiffs attempt to use that case to show that oral representations about Pansophic's affirmative action policy made at company meetings constituted contractually binding promises. However, *Decker* is distinguishable from the case at bar. The *Decker* court found that a promise existed where a superior made oral representations to an individual employee about that individual's specific eligibility requirements for making partner in her firm. The case at bar, by contrast, involves no such specific, individualized representations. Therefore, *Decker* is unpersuasive in the context of this case. Even if plaintiffs could show the existence of a clear promise, they still cannot satisfy the second prong of the *Duldulao* test: that a company policy was disseminated to plaintiffs in a way that plaintiffs could reasonably believe that an offer was made. The AAP book states that Pansophic publicizes its commitment to equal employment opportunities through a notice posted throughout the Company. (Def.Sum.Jud. Motion Exh. A, at 1.) That notice reads in pertinent part as follows: "[o]ur policies and practices provide that we shall ... lay off ... without regard to ... sex." (Def.Sum.Jud. Motion Exh. A, Appendix A.) Furthermore, the book states that all levels of Pansophic management are responsible for communicating to employees the Equal Employment Opportunity policy, using such means as corporate policy manuals and bulletin boards. Despite these passages in the AAP book, plaintiffs nowhere claim that they ever saw a printed copy of Pansophic's affirmative action policy. The only indication that plaintiffs knew anything about the company's policy was that they were "made aware" of the policy through the company meetings discussed above. (Pl.Opp.Exh. B.)

An employee cannot satisfy the dissemination requirement of *Duldulao* by merely showing that she knew of the existence of a company policy. *Shepley v. E.I. DuPont De Nemours and Co., Inc.,* 722 F.Supp. 506, 511–12 (C.D.Ill.1989). In *Shepley,* the plaintiff never received a written copy of the company policy at issue; her knowledge of its contents was based on two company meetings. *Id.* at 512. At those meetings, the policy was "discussed" in general, and the plaintiff admitted that at one of the two meetings she "was only half-listening and [could not] recall what the description entailed." *Id.* at 510. Like Shepley, plaintiffs' in the case at bar were exposed to Pansophic's policy only through company meetings where the policy was discussed in merely general terms and where plaintiffs could not recall the exact words used to describe the policy. Because plaintiffs argue only that they were "made aware" of Pansophic's policy, and since that awareness was only of the most general, vague nature, plaintiffs have not shown dissemination of a plan by Pansophic sufficient to show that an offer was made.

***5** Because plaintiffs fail to satisfy both the first prong and the second prong of the *Duldulao* test, the court concludes that no reasonable jury could find in favor of plaintiffs on Counts IV, V, and VI of their amended complaint.

Conclusion

For the reasons stated above, the court grants defendants' motion for summary judgment on Counts IV, V, and VI of plaintiffs' amended complaint. The parties should discuss settlement before the next court date.

Parallel Citations

74 Fair Empl.Prac.Cas. (BNA) 952, 70 Empl. Prac. Dec. P 44,687