1998 WL 671446
United States District Court, S.D. New York.

Xavier JONES, Plaintiff,
v.
CCH–LIS LEGAL INFORMATION SERVICES,
Defendant.

No. 97 CIV. 4372(RWS). | Sept. 28, 1998.

Opinion

MEMORANDUM AND ORDER

SWEET, D.J.

***1** Plaintiffs in this employment discrimination action have moved to certify the class pursuant to Rule 23(a) and 23(b)(2), Fed.R.Civ.P. Plaintiffs seek to certify a class that includes all black persons employed by CCH–LIS Legal Information Services ("CCH") at any time from June 13, 1994 through and including the date of the Order directing that Notice be given to the class. For the reasons set forth below, plaintiffs' motion to certify the class is granted.

I. *Standard for Certifying Class Action*

Rule 23(c)(1), Fed.R.Civ.P., provides: "As soon as practicable after the commencement of an action brought as a class action, the Court shall determine by order whether it is to be so maintained."

The Second Circuit has directed district courts to apply Rule 23 according to a liberal rather than a restrictive interpretation. *See Korn v. Franchard Corp.,* 456 F.2d 1206, 1208–09 (2d Cir.1972); *Green v. Wolf Corp.,* 406 F.2d 291, 298, 301 (2d Cir.1968). However, despite the liberal interpretation that this Court must give to Rule 23, it may certify this as a class action only after undertaking "rigorous analysis" to assure that the requirements of the Rule are satisfied. *General Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982).

II. *Rule 23(a) Requirements are Met*

Rule 23(a) of the Federal Rules of Civil Procedure provides that:

> 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.

If these four criteria are not met, an action may not be maintained as a class action. Fed.R.Civ.P. 23(b). Each of these criteria is considered in turn below.

A. *Numerosity and Impracticability*

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Impracticability means difficulty or inconvenience of joinder; the rule does not require impossibility of joinder. *See Northwestern Nat. Bank of Minneapolis v. Fox & Co.,* 102 F.R.D. 507, 509 (S.D.N.Y.1984); *Goldstein v. North Jersey Trust Co.,* 39 F.R.D. 363, 367 (S.D.N.Y.1966).

There is no magic minimum number that breathes life into a class. *See Bruce v. Christian,* 113 F.R.D. 554, 556 (S.D.N.Y.1986). Courts in this circuit have held that classes far smaller than the one proposed here are sufficiently numerous for class certification. *See, e.g., Korn,* 456 F.2d at 1209 (certifying class which may be limited to 70 investors); *McNeill v. New York City Hous. Auth.,* 719 F.Supp. 233, 252 (S.D.N.Y.1989) (1,059 Section 8 tenants whose subsidies were suspended or terminated); *Fidelis Corp. v. Litton Indus., Inc.,* 293 F.Supp. 164, 170 (S.D.N.Y.1968) (certifying class of 35–70 individuals).

***2** Here, the class numbers approximately 334. A class of this size plainly makes joinder of all members impracticable. Therefore, the numerosity requirement is satisfied.

B. *Commonality*

Rule 23(a)(2) requires that there must be "questions of law or fact common to the class." In their Complaint, plaintiffs identify several common questions of law and fact, including (1) whether CCH engaged in a practice of

denying equal opportunities for promotion to black employees because of their race, and (2) whether CCH engaged in a practice of discriminating against those black employees who did receive promotions by denying them terms and conditions of employment equal to those of white employees working in the same positions. Accordingly, the commonality requirement is met.

C. ***Typicality***

Rule 23(a)(3) requires that the "claims ... of the representative parties [be] typical of the claims of the class." Typicality refers to the nature of the claim of the class representatives, and the proper inquiry is whether other members of the class have the same or similar injury, whether the action is based on conduct not special or unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *See In re Drexel Burnham Lambert Group, Inc.,* 960 F.2d 285, 291 (2d Cir.1992); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 903 F.2d 176, 179 (2d Cir.1990); *Rossini v. Ogilvy & Mather, Inc.,* 798 F.2d 590, 598 (2d Cir.1986).

Plaintiffs meet the requirements for showing typicality. Each of the named plaintiffs contends that he or she has been denied promotion opportunities because of his or her race. These claims arise from the same course of conduct and are based on the same legal theories as the claims of other class members.

D. ***Adequacy of Representation***

Rule 23(a)(4) requires that the class representatives be adequately representative of the class. The Supreme Court has held that plaintiffs must satisfy a two-pronged test to qualify as adequate representatives: (1) the representatives' interests must not conflict with the class members' interests, and (2) the representatives and their attorney must be able to prosecute the action vigorously. *General Tel. Co.,* 457 U.S. at 157 & n. 13; *Dean v. Coughlin,* 107 F.R.D. 331, 334 (S.D.N.Y.1985).

Here, named plaintiffs have no interests that are "potentially antagonistic to the interests of absent class members." *Shankroff v. Advest, inc.,* 112 F.R.D. 190, 194 (S.D.N.Y.1986). Since their claims are "coextensive" with the claims of the proposed class, no potential conflict of interest exists. *See In re Gulf Oil/ Cites Service Tender Offer Litigation,* 112 F.R.D. 383, 387 (S.D.N.Y.1986).

As for the adequacy of counsel, plaintiffs' attorneys have extensive experience in both class action and race discrimination litigation. *See* Stroup Aff. ¶¶ 14–18. The proposed class would thus be well represented by both the named plaintiffs and their counsel in this action.

III. ***Rule 23(b)(2)***

***3** Rule 23(b)(2) was intended for use in civil rights class actions, including employment discrimination cases, where the class is seeking equitable relief. *See Allegheny–Ludlam Indus., Inc.,* 517 F.2d 826, 878 (5th Cir.1975), *cert. denied,* 425 U.S. 944. This subsection is particularly appropriate for actions such as this where injunctive relief is necessary to ensure equal treatment of employees.

Conclusion

For the reasons set forth above, plaintiffs' motion for class certification is hereby granted.

It is so ordered.

Parallel Citations

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