1998 WL 777015
United States District Court, W.D. Virginia.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff,
and
Frederic JONES, Plaintiff–Intervenor
v.
ALLIANT TECHSYSTEMS, INC., Defendant,
and
LOCAL 3–495, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, Defendant,
and
OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL–CIO, Defendant.

No. Civ.A. 98–0084–R. | Sept. 18, 1998.

Attorneys and Law Firms

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Garrett M. Smith, Gary Wheeler Kendall, (See above), for Local 3–495, Oil, Chemical and Atomic Workers International Union, intervenor-defendant.

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Traci L. Buschner, Provost & Umphrey, Washington, DC, for Oil, Chemical and Atomic Workers International Union, AFL–CIO, cross-defendant.

Opinion

MEMORANDUM OPINION

KISER, Senior J.

***1** The Equal Employment Opportunity Commission ("EEOC"), plaintiff, and Mr. Jones, plaintiff-intervenor, bring this suit against defendants alleging violations of Title VII by refusing to accommodate Mr. Jones' religious beliefs. Before me now are plaintiff's and plaintiff-intervenor's motions for partial summary judgment, and defendants' motion for summary judgment. The parties have fully briefed the issues and have presented oral arguments. These motions are, therefore, ripe for disposition. For the reasons contained herein, plaintiff's and plaintiff-intervenor's motions for partial summary judgment are GRANTED, and defendants' motion for summary judgment is DENIED.

I. BACKGROUND

This case involves allegations by Frederic Jones ("Jones") that his employer and the defendant unions have violated Title VII by refusing to accommodate his religious beliefs. Jones maintains that his religious beliefs prevent him from belonging to any organization other than his church. He alleges that the defendants have violated Title VII by refusing to allow him to donate the monthly fee assessed by the union to charity.

In 1974, Jones began working at the Radford Arsenal in Radford, Virginia, operated by Hercules Corporation through a contract with the United States. The Hercules division which operated the arsenal was subsequently purchased by defendant Alliant Techsystems. In recent years, Jones has been employed in the manufacture of "nitro-cotton," with which the United States Army produces munitions for training and combat. For many years, Jones was a dues paying member of the defendant Local Oil, Chemical and Atomic Workers International union ("Local Union"), and in the early 1980s he held the position of shop steward for several terms.

In 1985, Jones was at or near the scene of a deadly explosion in which two of his co-workers were killed. There is some indication in the record that this event traumatized Jones and caused him to become progressively more religious. In 1988, Jones became a member of the Gethsemane Baptist Church.

For the next several years, Jones remained a member of the defendant Local Union. Jones claims, however, that his religious growth caused him to develop reservations about his union membership. Notwithstanding these growing reservations, in 1990 or 1991, Jones again chose to become a union shop steward. A short time later, Jones voluntarily chose to end his tenure as a steward by stepping down from the position. He also stopped paying union dues at this time since the union security clause did not require all employees to join the union or pay union dues.

In 1993, Jones sought protection under the labor union's contract by filing a grievance against Alliant, complaining that he was entitled to a transfer to the "nitroglycerine area" where he would have earned an additional $1.50 per hour. Jones alleged that he was not allowed to work in that area because Alliant had concerns about his mental health that stemmed from Jones' exposure to the deadly 1985 accident.

***2** Around October 1994, Jones learned of changes to the union security clause that would require all employees to pay "union fees ." After discussing this modification to the labor agreement with his superiors, Jones realized that he was not required to join the union, but he would be required to pay a "union fee" in order to keep his job.

Shortly thereafter, Jones learned that he could request his fees be paid to a charity instead of the union. Jones contacted Brenda Naff, an employee of the defendant Local Union, to find out more information. Ms. Naff referred Jones to Steve Gentry, an official with defendant Oil, Chemical and Atomic Workers International Union ("International Union").

Jones spoke with Gentry on several occasions. The two men discussed various aspects of Jones' religious beliefs and some political causes the Local Union supported. There is some dispute over precisely what type of objection to the union Jones voiced. At points in his deposition, he suggests that his criticism of the union was aimed primarily at the political causes which it supported. Other evidence in the record indicates that Jones may have also voiced a more general objection to union membership per se.

Subsequently, in either November or December 1994, Jones wrote a letter to Gentry, thanking Gentry for his assistance. The letter indicates that Gentry had mentioned the possibility of donating Jones' dues to charity. The letter also indicates that Jones had in fact voiced some general concerns about his objection to belonging to *any* union, regardless of the political causes it might support. Specifically, Jones wrote, "I am not in the union because it goes against what I believe" and "I am not a member of any nonreligious group." Finally, Jones also provided Gentry with the name of his church, his pastor, and the charity to which his union fee should be directed.

Apparently, Gentry determined that Jones' beliefs were "political" rather than "religious" in nature. Part of this decision was based on Gentry's conversations with Jones in which Jones had repeatedly noted that he was upset that the union supported candidates who did not oppose abortion and homosexuality. Gentry's understanding of Jones' views was also influenced by a conversation with Jones' pastor. Pastor Gibson indicated to Gentry that the Gethsemane Baptist Church did not have a rule that forbade its members from belonging to unions. Since Gentry viewed Jones' objections as "political," Gentry did not believe that the union had any obligation to accommodate those objections.

Gentry did not immediately communicate his decision to Jones. Only when Jones contacted Gentry several months later to make sure his "union fees" were being sent to the appropriate charity did Jones learn of Gentry's position. Jones explained to Gentry that his own interpretation of his religion, not that of his pastor, prohibited his membership in a union. Gentry then agreed to bring the matter up before the union.

***3** Over the next several months, Jones continued to develop his position regarding union membership. Jones alleges that he immersed himself in intense bible study and that his objections to the union became clear.

Specifically, he claims that he found clear biblical references that supported his anti-union stance. Jones focused on Luke 3:14, in which Jesus told his followers: "do violence to no man, neither accuse any falsely, and be content with your wages." Jones also studied Ephesians 6:5–9, which states: "[s]ervants, be obedient to them that are your masters ... as unto Christ." He decided that these two passages prohibited him from joining a union. Jones viewed union strikes as potentially violent, which he believed was inconsistent with Luke 3:14. Jones also decided that being part of a union that forced his employer to raise wages through force was inconsistent with Luke 3:14 and Ephesians 6:5–9. Jones alleges that by the summer of 1995 his beliefs had evolved into their present form.

The defendants point out that during this time Jones also contacted the Rutherford Institute ("Institute"). The defendants suggest that Jones's increased convictions were the product of "coaching" by the Rutherford Institute instead of intense bible study. Jones states that he was not sure if his discussions with the Institute "had any bearing on the change in my beliefs." Whether or not this is true, it is clear that by July 1995, Jones had discussed the case with the Institute. Near the end of July 1995, the Rutherford Institute wrote Jones a letter telling him that the Institute believed he was entitled to direct all of his "union fees" to charity, which Jones showed to his employer. The Institute also suggested that Jones contact the National Right to Work Legal Defense Foundation ("Foundation"), which he did.

Meanwhile, Alliant informed Jones in a letter dated September 15, 1995, that it would not agree to the accommodation proposed by the Rutherford Institute. Alliant indicated that it did not believe that it was required to accommodate Jones, and that it "was contractually bound" to collect his "union fees." On September 14, 1995, International Union sent Jones a letter indicating that it did not believe that his "stated objection was recognized under current NLRB law."

On November 10, 1995, an attorney for the Foundation sent letters to International Union and Alliant requesting that Jones' religious beliefs be accommodated and suggesting that neither party's reasons for denying such accommodation were appropriate. On February 29, 1996, Jones, by letter, again requested that his "union fees" be donated to charity. He also stated that he was in the process of filing a complaint with the EEOC and the Virginia Counsel on Human Rights ("VCHR"). Jones then filed his complaints that day.

The EEOC investigated Jones' complaint and on December 31, 1996, determined that there was reasonable cause to believe that the defendants had violated Title VII. The EEOC then attempted, unsuccessfully, to resolve the matter amongst the parties. On February 3, 1998, the EEOC filed suit, alleging that the defendants violated Title VII by refusing to accommodate Jones' religious beliefs. The case was initially assigned to Judge James Turk. On February 4, 1998, Jones filed a motion to intervene in the case and a one count complaint alleging that the defendants had violated Title VII. On February 6, 1998, Judge Turk granted Jones' motion to intervene. On April 22, 1998, this case was reassigned to my docket. All parties have since filed motions for summary judgment on the issue of liability under Title VII.

II. DISCUSSION

***4** Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). A genuine issue of a material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial and summary judgment is appropriate. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). In making this determination, "the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party." *Shaw v. Stroud,* 13 F.3d 791, 798 (4 th Cir.) (citations omitted), *cert. denied,* 513 U.S. 813, 115 S.Ct. 67, 130 L.Ed.2d 24 (1994).

A. Timeliness of Jones' EEOC Complaint

Defendants, relying on statements made by Jones in his deposition, argue that Jones did not file his complaint in a timely manner, and that this action is barred by Title VII's statute of limitations. The court of appeals recently ruled that the Virginia Council on Human Rights is a deferral agency under Title VII, and, therefore, the 300–day limitation period applies. *Tinsley v. First Union Nat'l Bank,* No. 97–2640 (4 th Cir. Sep. 2, 1998).[1]

[1] Previously, the Western District of Virginia applied the 180–day limitation period, *see Tokuta v. James Madison University,* 977 F.Supp. 763, 764 (W.D.Va.1997); however, my decision does not turn on the 180–day/300–day distinction.

Mr. Jones' complaint was timely filed for two reasons. The first reason is the ongoing nature of the negotiations. The defendants argue that Jones was aware that his request for accommodation was not going to be granted in March 1995, following his telephone conversations with Steve Gentry and that this date should be used to trigger

the running of the limitation period. However, until the letters of September 14 and 15, 1995, Jones and his employer were involved in negotiations concerning his request for accommodation, and until the September letters, Jones' request for accommodation was not finally and irrevocably denied. Only upon such denial, September 14 or 15, 1995, does the limitation period begin to run. *See EEOC v. University of Detroit,* 701 F.Supp. 1329, 1330 (E.D.Mich.1988) (citing *Abramson v. University of Hawaii,* 594 F.2d 202, 208–09 (9 th Cir.1979)) *rev'd on other grounds,* 904 F.2d 331 (6 th Cir.1990). Starting from this date, Jones' complaint was timely filed.

Second, the violation of Jones' rights is a continuing one. The defendants attempt to analogize this case to *Sessom v. Milwaukee Distribution Center,* 645 F.Supp. 202 (N.D.Miss.1986). In *Sessom,* the plaintiff, citing her religious beliefs, wished to wear a dress while working in a large warehouse and commercial hand tool operation. Citing safety reasons, her employer required all employees to wear pants, slacks, or shorts. The court found that the triggering event was the first refusal by the employer to permit the employee to wear the dress and that subsequent refusals by the employer did not constitute a continuing violation. However, in *Sessom,* the court was relying on the "discrete and final" nature of the denial. *Id.* at 204. There was no ongoing negotiation; it was clear from the first refusal that the employer was not going to accommodate the plaintiff's beliefs.

***5** I think this case is more akin to the cases where a new violation occurs each time an employee is discriminated against in their paychecks. *See Bazemore v. Friday,* 478 U.S. 385, 396–96, 106 S.Ct. 3000, 92 L.Ed.2d 315 (1986); *Brinkley–Obu v. Hughes Training, Inc.,* 36 F.3d 336, 347 (4 th Cir.1994). Those cases have held that each time a new paycheck is issued a new violation occurs. Under this continuing violation theory, Mr. Jones has filed his complaint in a timely manner.

B. Prima Facie Case

Sections 703(a)(1) and (c)(1) of Title VII make it illegal for employers and labor unions to "discriminate against any individual because of his ... religion." 42 U.S.C. § 2000e–2(c)(1). "The term 'religion' includes all aspects of religious observance and practice, as well as belief...." 42 U.S.C. § 2000e(j). Under Title VII, an employer must reasonably accommodate an employee's religious observance or practice unless such accommodation will cause undue hardship on the employer's business. *See* 42 U.S.C. § 2000e(j); *Trans World Airlines, Inc. v. Hardison,* 432 U.S. 63, 74, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977).

In order to establish a prima facie case of failure to accommodate under Title VII, the employee must demonstrate that:

> (1) he or she has a bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was disciplined for failure to comply with the conflicting employment requirement.

Chalmers v. Tulon Co., 101 F.3d 1012, 1019 (4 th Cir.1996), *cert. denied,* 522 U.S. 813, 118 S.Ct. 58, 139 L.Ed.2d 21 (1997) (citations omitted).

Viewing the facts in a light most favorable to the defendants, plaintiffs have fulfilled the second and third elements of a prima facie case. The defendants, particularly Alliant, contend that the second element, employer notice, was not satisfied. The defendants contend that, while Jones "very vaguely communicated a disgruntlement," they were never informed of Jones' "new" religious beliefs. The facts show that Jones first notified Mr. Gentry of his religious beliefs in November or December of 1994. In a letter dated September 19, 1995, from the International Union to Jones, the union makes it clear that it is aware of Jones' request for accommodation of his religious objections. This letter also shows that Alliant had been notified Jones' objection. Although Mr. Jones' beliefs have been evolving over time, it is clear that the defendants have been notified of religious beliefs for which Jones has sought to accommodation. Therefore, the employer notification element has been satisfied. Finally, it is clear, and defendants concede, that the third element is not at issue.

The pivotal issue is the first element, whether or not Mr. Jones' beliefs are sincerely held. Defendants contend that they are not. Instead, the defendants argue that Jones' conduct is inconsistent with the beliefs he asserts. The defendants point to several activities, most prominently that he became a union steward during a downsizing period.[2] During this period, stewards were given super seniority, and, therefore, not laid off. The defendants argue that this action contradicts Jones' stated position that the Bible teaches an employee should be satisfied with his wages. In my opinion, this incident cuts in favor of the plaintiffs. Mr. Jones later voluntarily gave up his position as shop steward, which would indicate that (1) he does not now seek the super protection of the position against future layoffs, and (2) his religious beliefs have continued to evolve. I think the defendants are hard-put to mount a challenge as to the sincerity of Mr. Jones' religious beliefs. Moreover, Jones' concern about the union's support of candidates who did not oppose abortion and homosexuality–which Gentry classified as political beliefs–are clearly mainline religious tenets.

[2] Defendants also point to the inconsistency of Jones working for a weapons manufacturer and using the union's grievance procedure in protesting Alliant's refusal to transfer him to a higher paying job.

***6** Defendants also argue that Jones' motive for not belonging to the union and for not paying dues is that in the past he belonged to the union to "[benefit] his own economic self interest." If that argument means that Jones is asserting religious beliefs to avoid paying union dues, it simply does not fly. It is clear that in his discussions with Gentry that he wanted Alliant to withhold an amount of money equivalent to the amount of union dues and pay it to charity. This was the reason for his follow up call to Gentry.

Plaintiffs argue, and I agree, that the proper analysis of what constitutes a religious belief under Title VII is the same as that applied in the selective service cases, *Welsh v. United States,* 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308 (1970) and *United States v. Seeger,* 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733 (1969). *See Redmond v. GAF Corp.,* 574 F.2d 897, 901 n. 12 (7th Cir.1978). In those cases, the Court held that to be religious, the belief must only "stem from [the person's] moral, ethical, or religious beliefs about what is right and wrong and that these beliefs be held with the strength of traditional religious convictions." *Welsh,* 398 U.S. at 340. A plaintiff's religious beliefs "need not be acceptable, logical, consistent, or comprehensible to others." *Thomas v. Review Bd. of Ind. Employment Sec. Div.,* 450 U.S. 707, 714, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981). The Supreme Court has made it clear that as long as a party's beliefs are religiously asserted, it is not for the courts to challenge the truthfulness of such assertions simply because they developed "from revelation, study, upbringing, gradual evolution, or some source that appears entirely incomprehensible." *Hobbie v. Unemployment Comm'n of Fla.,* 480 U.S. 136, 144 n. 9, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987) (citing *Callahan v. Woods,* 658 F.2d 679, 687 (9th Cir.1981)). Plaintiffs have fulfilled the elements of a prima facie case; defendants' evidence is insufficient to raise an issue as to the sincerity of Jones' religious beliefs. Therefore, plaintiffs prima facie case stands unrebutted.

C. Reasonable Accommodation

Once an employee has informed an employer of his or her sincerely held religious belief, the employer must reasonably accommodate that belief unless such accommodation would cause undue hardship. *Hardison,* 432 U.S. at 66. The defendants argue that they have offered reasonable accommodation by allowing Jones to donate the portion of his union fees attributable to objectionable political causes to charity, with the remainder being paid to the union to cover administrative expenses for collective bargaining and job rights (i.e. a *Beck* accommodation).[3] *Beck,* however, did not involve religious discrimination under Title VII. *Beck* was an interpretation of the dues requirement under the National Labor Relations Act. That act protected employees from being forced to join the union, but the trade off was that they could not "free ride" on the members. Instead, they would have to pay those expenses which were connected with union functions in collective bargaining and other job-related expenses.

[3] This is known as a *Beck* accommodation, first approved in *Communications Workers of Am. v. Beck,* 487 U.S. 735, 108 S.Ct. 2641, 101 L.Ed.2d 634 (1988).

***7** In a Title VII case, a reasonable accommodation must address all of the religious beliefs which constitute objections to the employer's and unions' practices. In *EEOC v. University of Detroit,* 904 F.2d 331 (6th Cir.1990), the plaintiff, Roesser, objected both to contributing financial support to the union and associating with the organization because it supported views that the plaintiff found to conflict with his religious beliefs. The union offered Roesser a *Beck*-type accommodation. The court of appeals determined this was not a reasonable accommodation since it did not address all of his objections. *Id.* at 335. In this case, Jones feels that the support of the union which, in turn, supports candidates and causes that are contrary to his religious beliefs, transgresses his religious beliefs, and, therefore, any payment, even the *Beck*-type, would not satisfy his objections. Since the accommodation offered by the defendants does not accommodate all of Jones' objections, it does not meet the standard of a reasonable accommodation.

D. Undue Hardship

Finally, the defendants argue that accommodation of Jones' religious beliefs would result in an undue hardship. Once an employee establishes a prima facie case, an employer is required to reasonably accommodate an employee's religious beliefs unless the employer can show that such accommodation will cause undue hardship. *Hardison,* 432 U.S. at 66; *Chalmers,* 101 F.3d at 1019. The defendants argue that providing a charity-substitution accommodation to Mr. Jones will touch off a cascading economic effect, resulting in a financial crisis for the union that amounts to undue hardship. It strains credulity to believe there will be a mass movement of union members to withhold their dues and pay them over to charity.

The defendants' argument relies heavily the hypothetical speculation by the International Union's Regional Director, Mr. Bradley. However, "[u]ndue hardship means something greater than hardship. Undue hardship cannot be proved by assumptions nor by opinions based on hypothetical facts." *Anderson v. General Dynamics Convair Aerospace Div.,* 589 F.2d 397, 402 (9th Cir.1978). The loss of one employee's dues does not amount to undue hardship, and such "financial core" arguments have been previously rejected by other courts. *International Ass'n of Machinists & Aerospace Workers v. Boeing Co.,* 833 F.2d 165, 168 (9th Cir.1987); *Anderson,* 589 F.2d at 402. At most, such a loss is de minimis. Therefore, accommodation of Jones' beliefs would not amount to undue hardship.

III. CONCLUSION

Jones timely filed his complaint with the EEOC, and Jones and the EEOC have established a prima facie case. Having done so, the burden shifts to the defendants to show they have either reasonably accommodated Jones' religious beliefs or that to do so would cause an undue hardship. Viewing the evidence in a light most favorable to the defendants, no material issue of fact exists. I am of the opinion that, as a matter of law, the defendants have failed to reasonably accommodate Mr. Jones' religious beliefs under Title VII and that doing so would not cause an undue hardship. Therefore, plaintiff's and plaintiff-intervenor's motions for partial summary judgment are GRANTED; defendants' joint motion for summary judgment is DENIED. The remaining issues to be decided are the types of relief to which the plaintiffs are entitled.

Parallel Citations

159 L.R.R.M. (BNA) 2664, 78 Fair Empl.Prac.Cas. (BNA) 37, 74 Empl. Prac. Dec. P 45,518