Frisco RR file

Draft

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

UNITED STATES OF AMERICA, by RAMSEY CLARK, Attorney General, Plaintiff, vs. ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY AND BROTHERHOOD OF RAILROAD TRAINMEN, Defendants.	CIVIL ACTION NO. 67C243(1) PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE ACTION AND FOR A MORE DEFINITE STATEMENT

Both the St. Louis-San Francisco Railway Company and the Brotherhood of Railroad Trainmen have moved for a dismissal of the above entitled action, each arguing that the complaint fails to state a cause of action upon which relief can be granted. In the alternative, a more definite statement of the facts is sought. These motions are based upon the argument that notice pleading is not sufficient for actions brought under Section 707(a) of the Civil Rights Act of 1964.

MOTIONS TO DISMISS

The motion to dismiss is, at least in part, a carry-over from the old demurrer. Assuming that the allegations set out in the complaint are true, defendants argue that plaintiff has no cause of action. Defendants are prematurely looking to the ultimate question, whether or not plaintiff will ultimately prevail. The sole question

presented by a motion to dismiss is whether the complaint, construed in the light most favorable to the plaintiff and with all doubts resolved in favor of its sufficiency, states a claim upon which relief can be granted. Leimer v. State Mut. Life Assur. Co., 108 F2d 302 (C.A. 8, 1940).

In Conley v. Gibson, 355 U.S. 41 (1957), Negro members of the Brotherhood of Railway and Steamship Clerks brought a class action against the Brotherhood, its Local Union No. 28 and certain of its officers seeking to compel them to represent the plaintiffs without discrimination in protection of their employment and seniority rights under a contract between the union and the Railroad. In discussing defendants' motion to dismiss for failure to state a claim upon which relief could be given, the court declared at pp. 45-46, "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Plaintiff contends that the complaint states a cause of action upon which relief can be granted and defendants' motion to dismiss must therefore be denied. The complaint sets forth the basis of this Court's jurisdiction and the facts indicating that both FRISCO and the Brotherhood are within the purview of Title VII of the Civil Rights Act of 1964. The complaint then sets forth facts in paragraphs eight and nine which, if ultimately proven, will establish a pattern or practice of discrimination by both defendants

in violation of Title VII. Thus, if the validity of the allegations in the complaint are assumed, a cause of action upon which relief can be granted has been stated.

Defendants argue that notice pleading is not sufficient for an action pursuant to Section 707(a) of the Civil Rights Act of 1964. Plaintiff contends that & the defendants have seized upon the words "setting forth facts" to ask this Court to read an unintended requirement into Section 707(a). This position is delt with in greater detail inthe second portion of this memorandum. However, even if plaintiff's position regarding the requirements of Section 707 is not correct, defendants' motions to dismiss is still improper. In Winget v. Rockwood, 69 F2d 326, 329 (C.A. 8, 1934), the court declared, "A suit should not ordinarily be disposed of an such a motion [motion to dismiss] unless it clearly appears from the allegations of the bill that it must ultimately, upon final hearing, be dismissed. To warrant such dismissal, it should appear from the allegations that a cause of action does not exist, rather than that a cause of action has not been definitely stated."

MOTIONS FOR A MORE DEFINITE STATEMENT

Rule 8 of the Federal Rules of Civil Procedure provides:

> (a) CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain(1) a short and

plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

* * * * *

(e) PLEADING TO BE CONCISE AND DIRECT: CONSISTENCY. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(f) CONSTRUCTION OF PLEADINGS. All pleadings shall be so construed as to do substantial justice.

Rule 12(e) of the Federal Rules of Civil Procedure provides for a motion for a more definite statement "[i]f a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading ...."

Rule 12(e) originally provided for a motion for a more definite statement if necessary to prepare responsive pleading or to prepare for trial. The words "or to prepare for trial" were dropped when Rule 12(e) was amended. It is not the function of Rule 12(e) to provide a method of gathering facts in preparation for trial. Rules relating to discovery are provided for this purpose. Rule 12(e) can be properly invoked only when a complaint is so vague or ambiguous that a responsive pleading cannot be framed. Mitchell v. E-Z Way Towers, Inc. 269 F2d 126 (~~126~~ C.A. 5, 1959), Lincoln Laboratories, Inc. v. Savage Laboratories, Inc., 26 F.R.D. 141 (1960); and Wycoff v. Nichols, 32 F.R.D. 369 (1962).

In response to defendants' argument in Conley v. Gibson, supra, that the complaint failed to set forth

specific facts to support its general allegations, the Court declared a pp. 47-48. The decisive answer to this is that the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more darrowly the disputed facts and issues. Following the simple guide of Rule 8(f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U.S. 197.

An analysis of the allegations of the complaint makes it clear that it conforms to the standards of Rule 8 and the defendants are capable of framing responsive pleadings. ~~The defendants are improperly invoking Rule 12(e) as a method of preparing for trial.~~

Paragraph eight of the complaint alleges that FRISCO restricts job opportunities available to prospective Negro

employees and maintains artificial job classifications which cause many Negro employees to receive less compensation that that received by white employees performing similar duties and which impede the Negro employees' opportunity for advancement. FRISCO is aware of the skills required to perform each of its jobs and knows the skills and capabilities Negro applicants and Negro employees possess. In addition, FRISCO possesses knowledge of the various job classifications it utilizes and knows whether the skills required of employees in one classification are similar to those required in another classification. If similar job classifications do exist, FRISCO knows whether or not the employees in these similar classifications receive equal compensation and enjoy equal benefits. Therefore, FRISCO can frame a responsive pleading, both as to the allegation that job opportunities available to Negro employees are restricted and to the allegation that artificial job classifications are maintained which result in unequal benefits.

Paragraph nine alleges that the Brotherhood has used its position as collective bargaining representative to perpetuate the artificial job classifications. The Brotherhood, as bargaining representative of a number of FRISCO employees, knows the nature of the duties performed by the employees it represents. In addition, the Brotherhood would be aware of FRISCO employees who perform duties similar to those performed by employees it represents, yet are unrepresented or represented by another bargaining representative. If there are FRISCO employees

who perform services similar to those performed by individuals represented by the Brotherhood, the Brotherhood would possess knowledge of efforts on its part to use its bargaining position to perpetuate these discriminatory distinctions. Therefore, ~~defendant union~~ the Brotherhood can frame a responsive pleading and its motion for a more definite statement must be denied.

Each defendant argues that Congress, by directing that the Attorney General set forth facts pertaining to the alleged pattern or practice, intended to require more specific pleading than that provided for by Rule 8. It is plaintiff's position that the defendants have seized upon the use of the word "facts" and ask this Court to ignore the simplified pleading provided for by Rule 8 and place an unintended restriction upon the Attorney General's ability to meet the responsibilities Congress vested in him by Section 707.

Neither defendant ~~pointed~~ points to any portion of the Congressional debate pertaining to Section 707 to support the argument that notice pleading is not sufficient, nor is plaintiff aware of any legislative history to support this position.

In three recent cases brought by the Attorney General under Section 707, United States v. Building and Construction Trades Council of St. Louis, _____ F. Supp. _____, C.A. No. 66C58(2), (E.D. Mo. 1966), United States v. International Brotherhood of Electrical Workers Local 683, C.A. No. 67-101 (S.D. Ohio 1967) and United States v. Dillon Supply Company, C.A. No. 1972, (E.D. N.C. 1967), similar motions by the respective

defendants were rejected. 1/ As in the complaint in question, in each of these complaints general types of discriminatory practices were set forth but evidentiary details were properly omitted. In each case the motion for a more definite statement was denied. In the St. Louis Building Trades Council case, supra, the Court declared,

> Concerning the required allegation of facts, we find nothing in the language of the statute to indicate an intention to alter established rules of pleading. The prime requirement is still notice, and the present complaint is more than adequate in this regard. Established courses of discovery are available to allow the defendants to determine the precise details of the alleged "pattern or practice."

Defendant railroad cites a number of cases in support of its claim that "...courts have long held that Civil Rights litigation is not to be classified with litigation for which notice pleading is sufficient..." In essence, each of these cases involves an action for the deprivation of, or a conspiracy to interfer with, the civil rights of the plaintiff, under 42 U.S.C. secs. 1983 and 1985. Sec. 1983 is a broad prohibition against the deprivation of any rights, privileges or immunities secured by the Constitution and laws. The broad scope of this statute has led courts to require more specific pleading in order that responsive pleading can be formulated. Title VII of the Civil Rights Act of 1964 is specific; employment opportunities and benefits cannot be dependent upon an individual's race, color, religion, sex or national origin. Notice pleading is sufficient for a responsive pleading to be framed. Section 1985 prohibits a conspiracy to interfer with civil rights.

1/ copies attached

One of the elements of this statute is the showing of a purposeful discrimination. Hoffman v. Holden, 268 F2d 280 (C.A. 9, 1959). Hoffman declared that more than conclusionary allegations were required in order to show purposeful discrimination. No showing of a similar state of mind is required under Section 707 of the Civil Rights Act of 1964.

In areas of civil rights litigation in addition to Title VII actions the courts have denied motions for a more definite statement and held that notice pleading is sufficient.

United States v. Lynd, 301 F2d 818 (C.A. 5, 1965), was a suit under the Civil Rights Act of 1957 and 1960, 42 U.S.C. 1971(a) to enjoin continued racial discrimination in voter registration. The complaint set out four general categories of discriminatory acts and practices. The District Court granted defendant's motion for a more definite statement, requiring the United States to allege the specific victims, acts, dates, places, etc. The Court of Appeals reversed:

> Likewise, it is clear that there was no justification for the Court's requiring the government to amend its complaint in this civil rights action to allege specific details of voter discrimination as if this were an action for fraud or mistake under Rule 9, Federal Rules of Civil Procedure, 301 F2d at 822.

A different panel of the same Court reiterated this holding: United States v. Lynd, 321 F2d 26, 27 (C.A. 5, 1963), citing Conley v. Gibson, supra.

In United States v. Campbell, (unreported) No. G. C. 633 (N.D. Miss. 1964), another voter registration case, in which the complaint was couched in the same terms as in Lynd, the Court likewise denied a motion for a more definite statement on the following grounds:

> Two motions are before the court for disposition on memorandum briefs of the parties. One of these motions is by defendants for a more ~~and~~ definite statement under the provisions of Rule 12(e), Federal Rules of Civil Procedure. It is generally held that motions for more definite statement are not favored. This is not a proper remedy unless the complaint is so vague or ambiguous that a responsive pleading cannot reasonably be framed. Although this complaint is cast in general and conclusionary language, no great difficulty should be experienced in drafting a responsive answer. This seems particularly true in this case since the Court of Appeals for this Circuit has spoken in this very field although somewhat obliquely in the case of United States v. Lynd, et al, (5th Cir. 1963), 321 Fed. 2d 26, decided July 15, 1963. The usual and generally accepted way to obtain the information sought by such a motion is through the use of the discovery rules.

United States v. Northampton County Board of Education, C.A. No. ~~1026~~ 1025, (E.D. N.C., 1967) is a school desegregation suit brought pursuant to Title IV of the Civil Rights Act of 1964. The defendant moved for a more definite statement, asserting that the complaint was insufficiently specific. On June 28, 1967 defendants' motion was denied.

Defendants have improperly invoked Rule 12(e). The complaint conforms to the requirements of Rule 8 and the defendants are capable of formulating responsive pleadings. Because of the availability of a variety of pretrial discovery procedures and because of the great liberality of Rule 8, motions for a more definite statement are rarely granted and are looked upon with disfavor, Mitchell v. E-Z Towers, Inc., supra and Shore v. Cornell Dubilier Electric Corp., 33 F.R.D. 5 (1963), and defendants' motion should therefore be denied.

CONCLUSION

Plaintiff respectively submits that each of defendants' motions is without support in reason or authority. Accordingly, it is urged that these motions be denied and the defendants be required to file a prompt responsive pleading in order that the Congressional mandate for swift adjudication of cases of this sort may be implemented. See 42 U.S.C. 2000e-6(b).

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