

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:09CV-742-H

IDY TALL

PLAINTIFF

V.

UNITED PARCEL SERVICE CO.

DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiff, Idy Tall, has moved to amend his complaint to assert claims of hostile work environment, a conspiracy violation of 42 U.S.C. § 1985(3) and violations of Article IV, Section 2, of the United States Constitution, in addition to the retaliation and discrimination claims set forth in his original complaint. Defendant has opposed the motion on the grounds that the amendments are futile. Plaintiff did not file an original supporting memorandum, which is not absolutely required. However, Plaintiff has also not responded to Defendant's objections. The Court has reviewed all the relevant arguments and concludes that each of Defendant's objections are well taken.

Plaintiff's claim of a conspiracy cannot succeed because joint activities of a corporation and its employees do not meet the legal definition of a conspiracy under § 1985. *Hull v. Cuyahoga Valley Joint Vocational Sch. Dist. Bd. of Educ.*, 926 F.2d 505, 509 (6th Cir. 1991). Because Plaintiff has alleged only a conspiracy among the corporation and its employees, his claim cannot possibly succeed and is, therefore, futile.

Plaintiff's claim under Article IV of the United States Constitution fails because that

section is applicable only to state actors. *Baldwin v. Fish and Game Com. of Montana*, 436 U.S. 371, 380 (1978). Because Defendant is not a state actor, this claim is futile.

Finally, Plaintiff's hostile work environment claim is futile because he has cited no evidence of having filed an administrative claim with the EEOC as required by 42 U.S.C. § 2000e-5(e)(1). The filing of such a claim is a prerequisite to initiating action in federal court.

For the reasons stated and being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion to amend his complaint is DENIED.

cc: Counsel of Record