

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

PLAINTIFF

v.

Civil No. 11-2153

OLD DOMINION FREIGHT LINE, INC.

DEFENDANT

O R D E R

Now on this 29th day of May, 2012, comes on for consideration **Defendant's Motion To Strike Portions Of Intervenor, Charles Grams' Amended And Substituted Complaint In Intervention** (document #60), and from said motion, and the response thereto, the Court finds and orders as follows:

1. Plaintiff Equal Employment Opportunity Commission ("EEOC") brought suit (the "EEOC Complaint") upon the charge of Charles Grams ("Grams") that he was denied reasonable accommodation under the Americans With Disabilities Act ("ADA") by policies of defendant Old Dominion Freight Line, Inc. ("Old Dominion"). Those policies, according to the EEOC Complaint, prohibit any truck driver who self-reports alcohol abuse from returning to a driving position, and condition return to a non-driving position upon enrollment in a treatment program.

Grams was allowed to intervene, and then to file an Amended And Substituted Complaint In Intervention ("Amended Complaint").

2. Old Dominion now moves to strike portions of the Amended Complaint. It challenges allegations that its policy regarding

alcoholism is "sad" and that "at Old Dominion, alcoholism must stay in the closet." It also challenges several paragraphs which recite that Grams tried unsuccessfully to work out the problem with Old Dominion by means short of litigation. It contends that such statements would not be admissible in evidence, and therefore should be stricken from the Amended And Substituted Complaint, citing **U.S. ex rel. Alsaker v. CentraCare Health System, 2002 WL 1285089 (D. Minn. 2002)**.

3. Grams responds that the first two contested phrases are true, and that the paragraphs about trying to work out the claim are evidence that he attempted to engage in the interactive process required under the Americans With Disabilities Act.

4. The Court first notes that Old Dominion made this same motion in connection with an earlier unauthorized Amended And Substituted Complaint filed by Grams. In disposing of that motion, the Court said the following:

18. Upon the filing of Grams' Amended Complaint, as allowed by this Order, Old Dominion's final objection to Grams' Amended Complaint may come to the fore, *i.e.*, that Grams' Amended Complaint contains impertinent material that should be stricken. The Court is not persuaded that, to the extent Grams' Amended Complaint contains irrelevant matter, it is sufficiently offensive or obstructive that it merits a recasting of the document. Thus, inasmuch as that argument has been asserted as to Grams' Amended Complaint (now stricken), and Grams' Amended Complaint (upon refile) will mirror it, the argument is rejected.

(docket entry 55.)

Because the same language is involved in the Amended

Complaint here under consideration, the instant motion is a simply a motion for reconsideration.

5. Nothing presented by Old Dominion persuades the Court that it was wrong in its initial decision on this issue. While the challenged portions of the Amended And Substituted Complaint may be irrelevant, and may be inadmissible in evidence, the Court does not anticipate that the document will be allowed into evidence, and absent that use of it, these portions are simply not sufficiently offensive or obstructive to merit recasting of the document. Motions to strike are viewed with disfavor and seldom granted, Stanbury Law Firm v. I.R.S., 221 F.3d 1059, 1063 (8th Cir. 2000), and the Court does not find the instant case an appropriate one for the exercise of this discretionary power.

IT IS THEREFORE ORDERED that **Defendant's Motion To Strike Portions Of Intervenor, Charles Grams' Amended And Substituted Complaint In Intervention** (document #60) is **denied**.

IT IS SO ORDERED.

/s/ Jimm Larry Hendren
JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE