

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

RONALD CHERRY

PLAINTIFF

vs.

Case No. 4:13-cv-04095

SOUTHERN REFRIGERATED
TRANSPORT

DEFENDANT

ORDER

BEFORE the Court is Defendant's Motion for Sanctions. ECF No. 38. Pursuant to the provisions of 28 U.S.C. § 636(b)(1) and (3) (2005), United States District Judge Susan O. Hickey referred the Motion to the undersigned for decision. A hearing was held on this motion on February 11, 2015. This matter is ready for decision.

1. Background:

On October 15, 2013, Plaintiff filed a *pro se* Complaint against Defendant, Southern Refrigerated Transport, alleging discrimination based on race and color. ECF No. 1. On October 31, 2014, Defendant, served written discovery requests on Plaintiff by mail to Plaintiff's mailing address. ECF No. 39. Plaintiff's answers and responses were due on December 4, 2014. *See* Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A), and 6(d).

On December 9, 2014, Defendant counsel sent an inquiry to Plaintiff regarding his failure to provide discovery responses. *Id.* Plaintiff claimed he had not received the requests. *Id.* On December 10, 2014, Defendant sent a courtesy copy of the discovery requests to Plaintiff by email.

In that correspondence, Plaintiff was asked if he would be able to provide responses that week, but Plaintiff indicated he would not. *Id.*

On December 23, 2014, Defendant filed a Motion to Compel based on Plaintiff's failure to answer discovery requests. ECF No. 33. On January 6, 2015, Defendant's Motion to Compel was granted and Plaintiff was ordered to answer discovery requests by January 16, 2015. ECF No. 35. On January 15, Plaintiff sent Defendant's counsel an email with an attachment entitled "Answers 1.doc" which stated, in its entirety:

Answer to all questions and requests for productions from Defendant:

Plaintiff's position is that each question or answer cannot be at this time be fully answered; based on the fact they are not relevant to this matter or that the Plaintiff will be requesting a hearing to question and fully have the Defendant's counsel explain its specific merit. This request was to be submitted today; January 15th, but the Clerk's office was closed early and prevented Plaintiff from submitting the needed documents. In such; Plaintiff is not refusing to answer any question or produce any document requested, but maintains a position to wait until the Court has deemed all requests valid; by each point; and will such comply with the Courts direction.

The previous response is submitted for every question or request submitted by the Defendants counsel prior to January 15th.

ECF No. 39-1.

Based on Plaintiff's failure to responded to the outstanding discovery requests, Defendant filed the pending Motion for Sanctions seeking dismissal of Plaintiff's Complaint or any further relief deemed necessary. ECF No. 38. Plaintiff responded to Motion for Sanctions on January 30, 2015 with a document titled "Notice to Court." ECF No. 44. This response references emails exchanges between the parties and the above referenced response sent to Defendant's counsel on January 15, 2015. *Id.*

2. Discussion:

Plaintiff acknowledges both with his January 15, 2015 statement to Defendant and statements to the Court at the February 11, 2015 hearing, that he has not responded to the discovery requests. Although Plaintiff is proceeding *pro se* and is given some latitude in pleadings, Plaintiff clearly violated a Court Order requiring him to answer the discovery requests. Defendant expended attorney time and expense in filing the Motion for Sanctions as well as for travel to attend the Hearing on February 11, 2015. The expenses incurred in this regard were a result of Plaintiff's failure to comply with his discovery obligations and an Order of this Court.

Accordingly, Defendant's Motion to Sanctions (ECF No. 38) is **GRANTED**. Plaintiff is Ordered to pay \$500.00 in monetary sanctions to Defendant within sixty (60) days of the Order. Payment should be made to Southern Refrigerated Transport and sent to Defendant's counsel. Furthermore, concerning any future discovery disputes, and prior to the filing of any Motions to Compel, the parties will follow Local Rule 7.2(g) and shall meet and confer in person or by telephone in an effort to resolve in discovery dispute.

Although the Court is not inclined to recommend a dismissal of Plaintiff's action at this time, Plaintiff is notified any further such action on the part of Plaintiff may result in dismissal of his complaint or other sanctions.

DATED this 12th day of February, 2015.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE