

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

YOLANDA G. BYRD,

No. C 11-4230 RS

Plaintiff,

v.

**ORDER GRANTING MOTION FOR  
SUMMARY JUDGMENT**

PATRICK R. DONAHOE,

Defendant.

---

I. INTRODUCTION

In late 2009 and early 2010, plaintiff Yolanda G. Byrd was disciplined and then fired by the United States Postal Service (“USPS”). Byrd contends the discipline and firing arose out of discrimination and retaliation, in violation of Title VII and the National Labor Relations Act (“NLRA”). Because the evidence shows that Byrd was disciplined and terminated for legitimate, non-discriminatory, non-retaliatory reasons, and she has shown no triable issue of fact to the contrary, summary judgment must be granted on her claims under Title VII. As jurisdiction to review claims arising out of any actions that USPS may have taken in response to Byrd’s alleged complaints about “working conditions” or in response to any union-related activities in which she may have engaged lies exclusively with the National Labor Relations Board, Byrd’s NLRA-based claims must be dismissed. Accordingly, judgment will enter for defendant.

1 II. BACKGROUND

2 Between 2007 and 2009, Byrd was employed as a “General Expediter” at the USPS’s  
3 Oakland Processing & Distribution Center (“OP&DC”), a 1.2 million square-foot facility where  
4 more than 3,000 employees process in excess of 2 million pieces of mail every day. The job of a  
5 General Expediter is to arrange for the proper transfer of mail to branch offices in Alameda, Solano,  
6 Contra Costa, and Napa Counties, where mail is then delivered to its final destination. General  
7 Expediters are assigned either to work “inside” the OP&DC facility, where they prepare and  
8 package mail to be loaded onto delivery trucks, or to work outside on the “docks” where they are  
9 responsible for making sure that the mail is on the proper truck and that USPS vehicles are  
10 dispatched in a timely manner.

11 Byrd was assigned to Tour-1 at OP&DC, an overnight shift that ran from approximately  
12 10:30 p.m. until 7:00 a.m. She was not assigned to a specific dock but instead worked as a “floater”  
13 or “relief” General Expediter, meaning that she was assigned to different docks depending on the  
14 facility’s needs, and she reported to different supervisors depending on the dock to which she was  
15 assigned. The supervisor who gave Byrd her work assignments was Robert Felix.

16 This lawsuit arises out of a series of disciplinary and other actions taken by USPS in late  
17 2009 and early 2010 with respect to Byrd’s employment. First, Byrd was disciplined because she  
18 failed to dispatch a loaded USPS truck to Walnut Creek on time on October 21, 2009. Byrd admits  
19 she dispatched the Walnut Creek truck late. Second, in December 2009, Byrd was restricted from  
20 using a USPS vehicle to perform her job duties. This restriction, however, applied to all General  
21 Expediters assigned to work on the docks. Byrd contends that a male General Expediter, Ricky  
22 Wylie, was permitted use of the vehicles, but she admits he was a “dock control clerk” who had  
23 different job duties than did she.

24 Third, Byrd was disciplined because she dispatched a loaded vehicle under circumstances  
25 that caused an unsecured mail container to fall to the ground, damaging parcels of mail. Byrd  
26 admits that she called the truck out and does not dispute that mail was damaged in the resulting  
27 accident. Fourth, Byrd was disciplined because she dispatched a Phoenix-bound USPS truck late on  
28

1 both March 21, 2010, and March 28, 2010. Byrd admits that the trucks were not dispatched on time  
2 on either date.

3 Fifth, Byrd was disciplined because she was found by USPS management to have harassed  
4 another USPS employee. Although Byrd denies she engaged in any wrongful conduct, she admits  
5 having twice confronted the employee in question. Sixth, on May 18, 2010, Byrd complained to  
6 Felix that she was having chest pains after being served with a notice of suspension. Byrd objects  
7 that she was required to notify her supervisor prior to leaving her shift and seeking hospital  
8 treatment for chest pains, was not provided with transportation back to OP&DC after her discharge  
9 from the hospital, and was forced to take sick leave during her absence from work.

10 Seventh, and finally, Byrd was terminated on the putative grounds that she failed to load and  
11 dispatch four first-class mail flats that were sitting on the loading dock to which she had been  
12 assigned. Byrd admits the flats could have been, but were not, dispatched on a particular truck,  
13 because she told the driver not to take them.

14 On the basis of these facts, Byrd has asserted claims under the NLRA and claims of  
15 retaliation and discrimination under Title VII. Byrd's retaliation theory relates to the fact that over  
16 the years she has filed, and has assisted others in filing, numerous EEO complaints. Specifically, in  
17 1996 and 1997, Byrd filed five formal complaints alleging discrimination and retaliation by USPS  
18 colleagues and supervisors. In those complaints, Byrd alleged that as many as eleven different  
19 USPS employees and supervisors discriminated and retaliated against her due to, among other  
20 things, her work for the American Postal Workers Union. All five of these prior complaints,  
21 however, were resolved in July of 2003, more than six years before any of the events at issue in this  
22 lawsuit occurred.

23 Between 2006 and 2008, and prior to the events giving rise to this case, Byrd filed three  
24 additional claims of discrimination and retaliation. Each of these three prior complaints was fully  
25 and finally resolved by October 15, 2008, roughly a year before the events giving rise to this action.

26 In 2009 and 2010, as Byrd was disciplined by multiple supervisors in a series of separate  
27 incidents, she began filing informal complaints with USPS. Specifically, she filed informal  
28 complaints of discrimination and/or retaliation on February 5, April 12, June 14, July 9, and

1 September 13, 2010. All of these informal complaints were consolidated into one formal  
2 administrative proceeding. Based on Byrd’s multiple filings, a discrete set of “issues” was accepted  
3 for administrative review, all of which are encompassed by the facts set forth above. Upon  
4 completion of USPS’s investigation, an administrative law judge ruled that several of Byrd’s  
5 “issues” did not involve an “adverse employment action,” and with respect to the remaining claims,  
6 found that Byrd had “not brought forth any evidence of pretext” to show that her treatment  
7 constituted either discrimination or retaliation. Because “no material fact [was] in genuine dispute  
8 when the evidence [was] viewed in the light most favorable to the complainant,” the ALJ issued an  
9 order without a hearing and entered judgment against Byrd and in favor of USPS. This lawsuit  
10 followed.

### 11 12 13 III. LEGAL STANDARD

14 Summary judgment is proper “if the pleadings and admissions on file, together with the  
15 affidavits, if any, show that there is no genuine issue as to any material fact and that the moving  
16 party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The purpose of summary  
17 judgment “is to isolate and dispose of factually unsupported claims or defenses.” *Celotex v. Catrett*,  
18 477 U.S. 317, 323-24 (1986). The moving party “always bears the initial responsibility of  
19 informing the district court of the basis for its motion, and identifying those portions of the  
20 pleadings and admissions on file, together with the affidavits, if any which it believes demonstrate  
21 the absence of a genuine issue of material fact.” *Id.* at 323 (citations and internal quotation marks  
22 omitted). If it meets this burden, the moving party is then entitled to judgment as a matter of law  
23 when the non-moving party fails to make a sufficient showing on an essential element of the case  
24 with respect to which it bears the burden of proof at trial. *Id.* at 322-23.

25 The non-moving party “must set forth specific facts showing that there is a genuine issue for  
26 trial.” Fed. R. Civ. P. 56(e). The non-moving party cannot defeat the moving party’s properly  
27 supported motion for summary judgment simply by alleging some factual dispute between the  
28 parties. To preclude the entry of summary judgment, the non-moving party must bring forth

1 material facts, *i.e.*, “facts that might affect the outcome of the suit under the governing law . . . .  
2 Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby,*  
3 *Inc.*, 477 U.S. 242, 247-48 (1986). The opposing party “must do more than simply show that there  
4 is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio,*  
5 475 U.S. 574, 588 (1986).

6 The court must draw all reasonable inferences in favor of the non-moving party, including  
7 questions of credibility and of the weight to be accorded particular evidence. *Masson v. New Yorker*  
8 *Magazine, Inc.*, 501 U.S. 496 (1991) (*citing Anderson*, 477 U.S. at 255); *Matsushita*, 475 U.S. at  
9 588 (1986). It is the court’s responsibility “to determine whether the ‘specific facts’ set forth by the  
10 nonmoving party, coupled with undisputed background or contextual facts, are such that a rational  
11 or reasonable jury might return a verdict in its favor based on that evidence.” *T.W. Elec. Service v.*  
12 *Pacific Elec. Contractors*, 809 F.2d 626, 631 (9th Cir. 1987). “[S]ummary judgment will not lie if  
13 the dispute about a material fact is ‘genuine,’ that is, if the evidence is such that a reasonable jury  
14 could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248. However, “[w]here the  
15 record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there  
16 is no ‘genuine issue for trial.’” *Matsushita*, 475 U.S. at 587.

17 The principles of summary judgment apply equally in discrimination cases. *Steckl v.*  
18 *Motorola, Inc.*, 703 F.2d 392, 393 (9th Cir. 1983). Mere assertions that a defendant had a  
19 discriminatory motive or intent in taking an adverse action are inadequate to defeat summary  
20 judgment unless supported by substantial factual evidence. *Id.* “A party cannot defeat a motion for  
21 summary judgment by offering ‘purely conclusory allegations of alleged discrimination, absent  
22 concrete particulars . . . , for to do so would necessitate a trial in all Title VII cases.’” *Nova v.*  
23 *Dalton*, C 96-3428 FMS, 1998 WL 355537, at \*3 (N.D. Cal. June 30, 1998) (*citing Candelore v.*  
24 *Clark Cnty. Sanitation Dist.*, 975 F.2d 588, 591 (9th Cir. 1992)).

25 Title VII makes it unlawful for an employer to “discriminate against any individual with  
26 respect to his compensation, terms, conditions, or privileges of employment, because of such  
27 individual’s race, color, religion, sex, or national origin.” 42 U.S.C. § 2000e-2. It also prohibits an  
28 employer from retaliating against an individual because he or she has made a charge of

1 discrimination or opposed a discriminatory practice. 42 U.S.C. § 2000e-3. Title VII claims  
2 involving alleged discrimination and retaliation are both governed by a burden-shifting framework.

3 Initially, the burden rests with the plaintiff to establish a prima facie case of discrimination  
4 or retaliation. *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802 (1973). To establish a prima  
5 facie case of discrimination, the plaintiff must show that: (1) she belongs to some protected class;  
6 (2) she was qualified for her position; (3) she suffered an adverse employment action; and (4) the  
7 employer treated similarly situated employees outside her classification more favorably. *Chuang v.*  
8 *Univ. of Cal., Davis, Bd. of Trustees*, 225 F.3d 1115, 1123 (9th Cir. 2000). To establish a prima  
9 facie case of retaliation, a plaintiff must show “(1) a protected activity; (2) an adverse employment  
10 action; and (3) a causal link between the protected activity and the adverse employment action.”  
11 *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1034-35 (9th Cir. 2006).

12 If the plaintiff can establish a prima facie case, “the burden shifts to the defendant ‘to  
13 articulate some legitimate, nondiscriminatory reason’ for the adverse action.” *Texas Dep’t of Cmty.*  
14 *Affairs v. Burdine*, 450 U.S. 248, 253 (1981) (quoting *McDonnell Douglas*, 411 U.S. at 802). Once  
15 the defendant has articulated a legitimate, non-discriminatory reason for its actions, the burden shifts  
16 back to the plaintiff, who must demonstrate that the employer’s reason for the adverse employment  
17 decision is a pretext for a discriminatory or retaliatory motive. *Burdine*, 450 U.S. at 253; *Wallis v.*  
18 *J.R. Simplot Co.*, 26 F.3d 885, 889 (9th Cir. 1994) (quoting *Lowe v. Monrovia*, 775 F.2d 998, 1005  
19 (9th Cir. 1985)). In this final analysis, the plaintiff “must do more than establish a prima facie case  
20 and deny the credibility of the [defendant’s] witnesses.” *Schuler*, 793 F.2d at 1011. Rather, he or  
21 she must offer “specific and significantly probative evidence” that the proffered reasons are  
22 pretextual. *Id.* A plaintiff can show pretext “either (1) directly by persuading the court that a  
23 discriminatory reason more likely motivated the employer or (2) indirectly by showing that the  
24 employer’s proffered explanation is unworthy of credence.” *Burdine*, 450 U.S. at 256.

25  
26 IV. DISCUSSION

27 A. Sex discrimination

28 Byrd’s claim of sex discrimination is based on the allegation that she was denied the use of a

1 postal vehicle in carrying out her job duties while another male employee was permitted to use one.  
2 The claim fails for at least three reasons. First, under the circumstances, there is no basis to  
3 conclude that denying Byrd the use of a postal vehicle would rise to the level of an “adverse  
4 employment action.” See *Chuang*, 225 F.3d at 1123; see also *Burlington Indus., Inc. v. Ellerth*, 524  
5 U.S. 742 (1998); *Nichols v. So. Ill. Univ. Edwardsville*, 510 F.3d 772, 780 (7th Cir. 2007)  
6 (employer’s conduct must result in something more than “mere inconvenience or an alteration of job  
7 responsibilities” (quoting *Rhodes v. Ill. Dep’t of Transp.*, 359 F.3d 498, 504 (7th Cir. 2004)). Byrd  
8 admits that use of the vehicle was at most a convenience, not a necessity, and losing that  
9 convenience is not a “significant change in employment status” cognizable under Title VII. See  
10 *Ellerth*, 524 U.S. at 761).

11 Second, Byrd cannot demonstrate that she was treated differently than any other “similarly  
12 situated individuals.” While Byrd compares herself to Rickie Wylie and Richard Adkins, other  
13 General Expediters, it is undisputed that Byrd was assigned to work outside on the docks at  
14 OP&DC, whereas Wylie and Adkins had duties as “dock control clerks.” USPS has shown, and  
15 Byrd has not rebutted, that dock control clerks are required to travel greater distances on the job,  
16 including between different docks and throughout the facility, such that they have a greater need to  
17 use a vehicle than do General Expediters assigned to specific docks. Thus, because the “dock  
18 control clerks” to whom she compares herself is not “similarly situated,” Byrd has not made out  
19 even a prima facie case.

20 Third, even if Byrd had met her initial burden, USPS has come forward with a “legitimate,  
21 nondiscriminatory reason” for its decision to prohibit her from using a postal vehicle to carry out her  
22 job duties. *Burdine*, 450 U.S. at 253 (quoting *McDonnell Douglas*, 411 U.S. at 802). Specifically,  
23 Senior Manager of Distribution Operations Toya Jackson restricted General Expediters’ use of  
24 USPS vehicles based on management’s view that, with the exception of “dock control clerks,”  
25 General Expediters did not need to use a USPS vehicle to do their jobs. The record is devoid of any  
26 evidence suggesting this basis for the restriction was a pretext for discrimination.

27  
28

1           B. Retaliation

2           Byrd’s’ multiple claims of retaliation fail because Byrd has not presented “specific and  
3 significantly probative evidence” that the legitimate, non-discriminatory, and non-retaliatory reasons  
4 provided by USPS for its discipline and termination of Byrd were pretextual. *Schuler*, 793 F.2d at  
5 1011. As to each of the disciplinary measures challenged by Byrd, USPS has articulated a  
6 legitimate and lawful reason for its conduct. *See Aragon v. Repub. Silver State Disposal, Inc.*, 292  
7 F.3d 654, 660-61 (9th Cir. 2002) (“poor job performance” is a “legitimate, nondiscriminatory reason  
8 for terminating . . . employment”); *Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1075(9th Cir.  
9 2003) (“a poor attitude toward her job and her co-workers” are “legitimate nondiscriminatory  
10 reasons for terminating . . . employment”).

11           Indeed, with respect to nearly all of these issues, Byrd concedes there was a non-  
12 discriminatory, non-retaliatory basis for USPS’s actions. Under the Title VII burden-shifting  
13 framework, it is incumbent on Byrd, therefore, to provide “specific and substantial evidence that  
14 [USPS’s] reasons are really a pretext.” *Aragon*, 292 F.3d at 661. Byrd has not done this. Byrd’s  
15 testimony in this matter provides no more than her own speculative conclusion and argument that  
16 her supervisors were acting with discriminatory or retaliatory animus.

17           This is inadequate: Byrd cannot rely on her own conclusory testimony to avoid summary  
18 judgment. *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1419 (9th Cir. 1988). Similarly, the  
19 fact that Byrd filed prior complaints of discrimination cannot defeat summary judgment, either,  
20 especially where, as here, these complaints were resolved well over a year before any of the  
21 disciplinary measures giving rise to this action. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054,  
22 1065 (9th Cir. 2002) (“A nearly 18-month lapse between protected activity and an adverse  
23 employment action is simply too long, by itself, to give rise to an inference of causation.”); see also  
24 *Paluck v. Gooding Rubber Co.*, 221 F.3d 1003, 1010 (7th Cir. 2000) (year-long gap between an  
25 employee’s prior complaint and her subsequent termination was “too long . . . to raise an inference  
26 of discrimination”). Because the record is devoid of evidence from which a reasonable trier of fact  
27 could conclude that USPS’s proffered reasons for its conduct were merely a pretext for unlawful  
28 discrimination or retaliation, summary judgment must be granted on Byrd’s Title VII claims.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

C. Retaliation arising from union activities

To the extent that USPS allegedly “retaliated against Byrd for discussing working condition with co-workers” or for any union-related activities in which she may have engaged, this Court lacks jurisdiction over any claims that Byrd intends to pursue based on these activities. As the Ninth Circuit has explained:

Activities to redress complaints about working conditions are “concerted activities” protected by the National Labor Relations Act (NLRA), 29 U.S.C. § 157. Violations of an employee’s right to engage in concerted activities are within the exclusive jurisdiction of the NLRB.

*Buscemi v. McDonnell Douglas Corp.*, 736 F.2d 1348, 1350 (9th Cir. 1984). A federal district court therefore has “no subject matter jurisdiction over [a] retaliation claim” based on USPS’s alleged response to Byrd’s supposed complaints about “working conditions, *id.* , or with respect to her alleged “union-related activities,” *Ethridge*, 861 F.2d at 1401-02. Accordingly, to the extent Byrd’s claims sound under the NLRA, they must be dismissed.

V. CONCLUSION

The motion for summary judgment is granted. A separate judgment will issue.

IT IS SO ORDERED.

Dated: 5/10/13



---

RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:**

**Yolanda G. Byrd**  
5917 Wyman Street  
San Pablo, CA 94806

DATED: 5/10/13

/s/ Chambers Staff  
Chambers of Judge Richard Seeborg