

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 10-cv-00052-RPM

TIMOTHY NORWOOD,

Plaintiff,

v.

ITT SYSTEMS CORP.,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
PLAINTIFF'S MOTION TO FILE AMENDED COMPLAINT

On November 22, 2010, the defendant filed a motion for summary judgment. The motion has been fully briefed. The defendant asserts that Colorado law is not applicable to conduct occurring in a foreign country because Colorado has no authority to regulate such conduct. The argument misses the point made in this Court's previous order denying the defendant's motion to dismiss the complaint, that is, that the defendant is an employer in Colorado and Colorado has clear authority to regulate the conduct of a Colorado employer in discharging an employee. The defendant also contends that the plaintiff's claim is preempted by the Defense Base Act, 42 U.S.C. § 1651, *et seq.* This Court disagrees, that statute is limited to personal injuries and does not preempt a state law claim for wrongful discharge. The defendant also asserts that the wrongful discharge claim may not be pursued because federal law, particularly, 10 U.S.C. § 2409(a) provides for a prohibition of reprisals for certain disclosures concerning mismanagement of a Department of Defense contract. The plaintiff filed a

motion to file an amended complaint to include a claim under that statute as a precaution and the defendant has objected to the motion to amend complaint as untimely. The Court agrees that the motion to amend the complaint is untimely but does not agree that the existence of that federal statutory remedy precludes pursuing the plaintiff's Colorado claim because it is not clear that the plaintiff's reports of the conduct of other employees would come within the scope of the prohibition of retaliation in the federal statute. The remainder of the defendant's motion for summary judgment challenges the plaintiff's credibility which is not something this Court can determine on summary judgment. It is therefore

ORDERED that the defendant's motion for summary judgment is denied and the plaintiff's motion to amend the complaint is denied.

DATED: January 21st, 2011

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge