

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

Civil Action Number 11-cv-02548-RPM

ROBERT M. MIERAU,

Plaintiff,

vs.

TURNER CONSTRUCTION COMPANY,

Defendant.

ORDER OF DISMISSAL

In this civil action complaint, Robert M. Mierau alleges that the termination of his employment after more than 22 years of service was in violation of 29 U.S.C. § 1140 because it was motivated by an intent to deprive him of his right to pension benefits under the defendant's ERISA Plan. The defendant moved to dismiss under Fed.R.Civ.P. 12(b)(6). In that motion the employer includes a statement of facts with exhibits A and B, being the Cash Balance Retirement Plan and Amendment Number Two. The plaintiff's benefit accruals ended on December 31, 2003, so Mr. Mierau's were vested and only earning's based credits are added, which do not require continued employment. In his opposition to defendant's motion, the plaintiff does not challenge this fact but in the complaint and his response Mr. Mierau contends that he was entitled to unspecified "make-up" payments.

Because the plaintiff has not pleaded facts making a plausible claim for a violation of § 1140, it is

ORDERED that this civil action is dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

Dated this 16th day of February, 2012.

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge