

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FLORIN G. PLENICEANU)	
)	
Plaintiff,)	
)	
v.)	No. 05 C 5675
)	
BROWN PRINTING COMPANY)	Judge Holderman
)	
Defendant.)	Magistrate Judge Mason
)	

ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

Defendant Brown Printing Company (“Brown Printing”), answers the Complaint filed by Plaintiff Florin G. Pleniceanu (“Pleniceanu”) as follows:

UNNUMBERED PARAGRAPH:

This is an action stating national origin discrimination in violation of Title VII of the Civil Rights Act of 1964 and its amendments, 42 U.S.C. §2000(e), the Civil Rights Act of 1991, 29 U.S.C. §621 *et seq.* Venue of this action lies in the Northern District of Illinois, Eastern Division pursuant to 28 U.S.C. §1391.

RESPONSE:

Brown Printing neither admits nor denies the allegations of the paragraph of the complaint entitled “Nature of the Case” because such paragraph is not permitted by Fed. R. Civ. P. 10(b) and contains legal conclusions, not the averment of issuable facts. Answering further, Brown Printing denies that it violated Title VII. Brown Printing does not dispute venue in the Northern District of Illinois.

PARAGRAPH NO. 2:

This Court has jurisdiction over the subject matter of this complaint pursuant to Title VII of the Civil Rights Act of 1964 and its amendments, 42 U.S.C. §2000(e), the Civil Rights Act of 1991, 29 U.S.C. §621 *et seq.* Venue of this action lies in the Northern District of Illinois, Eastern Division pursuant to 28 U.S.C. §1391.

ANSWER:

Brown Printing neither admits nor denies the allegations of paragraph 2 because they are legal conclusions and not the averment of issuable facts. Stating further, Brown Printing does not dispute jurisdiction or venue.

PARAGRAPH NO. 2 (SIC):

Plaintiff Florin G. Pleniceanu ("Plaintiff") is an individual residing at 1216 N. Ridge Rd. McHenry, Illinois.

ANSWER:

Based on information and belief, Brown Printing admits the allegations of this second paragraph 2.

PARAGRAPH NO. 3:

The Defendant, Brown Printing Company ("Defendant") is a corporation authorized to do business in the State of Illinois and conducting its business at 11595 McConnell Rd., Woodstock, Illinois.

ANSWER:

Brown Printing admits the allegation of paragraph 3.

PARAGRAPH NO. 4:

At times relevant hereto, Defendant was an "employer" within the meaning of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e (b).

ANSWER:

Brown Printing admits the allegation of paragraph 4.

PARAGRAPH NO. 5:

At all times relevant hereto, Plaintiff was an “employee” of the defendant within the meaning of Title VII of the Civil Rights Act, 29 U.S.C. § 2000e (b).

ANSWER:

Brown Printing admits that it employed Pleniceanu during the period January 10, 2002 until his termination on February 16, 2004. Brown Printing further states that it employed Pleniceanu during an earlier period from June 1997 to September 1999. Brown Printing denies the remaining allegations of paragraph 5.

PARAGRAPH NO. 6:

Plaintiff is of Romanian ancestry and was born in Romania.

ANSWER:

Based on information and belief, Brown Printing admits the allegations of paragraph 6.

PARAGRAPH NO. 6 (SIC):

On April 19, 2004, Plaintiff timely filed a written charge of national origin discrimination against Defendant with the Equal Employment Opportunity Commission and the Illinois Department of Human Rights. A true and correct copy of the Charge of Discrimination is attached hereto as Exhibit “A” and incorporated herein.

ANSWER:

Brown Printing admits that Pleniceanu filed the charge attached to the complaint as Exhibit A on or about April 19, 2004 with the Equal Employment Opportunity Commission and the Illinois Department of Human Rights. Brown Printing denies the allegations of discrimination contained in Exhibit A and denies the remaining allegations of second paragraph 6.

PARAGRAPH NO. 7:

On or about September 6, 2005 Plaintiff received from the EEOC a Notice of Right to Sue. A true and correct copy of the Notice of Right To Sue is attached hereto as Exhibit “B” and incorporated herein.

ANSWER:

Based on information and belief, Brown Printing admits that Pleniceanu received the notice of right to sue attached as Exhibit B to the complaint on or about September 6, 2005.

PARAGRAPH NO. 8:

This action has been timely filed within ninety (90) days of the receipt of the Notice of Right to Sue.

ANSWER:

Brown Printing admits the allegation of paragraph 8.

PARAGRAPH NO. 9:

Plaintiff is an individual who was employed by Defendant since January 10, 2001 as Binder Operator.

ANSWER:

Brown Printing admits that it rehired Pleniceanu on January 10, 2002 as a Binder Operator, and further states that he had been previously employed by Brown Printing in the same capacity.

PARAGRAPH NO. 10:

At all times relevant hereto, Plaintiff performed his job duties associated with his employment with Defendant in a satisfactory manner.

ANSWER:

Brown Printing denies the allegation of paragraph 10.

PARAGRAPH NO. 11:

Throughout his employment with Defendant, Plaintiff was subjected to severe & pervasive harassment by Defendant's manager and Plaintiff's supervisor, Andy Patterson based on Plaintiff's national origin (Romanian).

ANSWER:

Brown Printing denies the allegation of paragraph 11.

PARAGRAPH NO. 12:

Plaintiff's non-Romanian peers were not harassed by Plaintiff's supervisor Patterson and were treated much more favorably than Plaintiff.

ANSWER:

Brown Printing denies that Pleniceanu or any other employees were subjected to unlawful harassment, and therefore denies the allegations of paragraph 12.

PARAGRAPH NO. 13:

On February 16, 2004 Plaintiff was terminated from his employment by Defendant. The reason for termination expressed to Plaintiff by Defendant was that Plaintiff had intentionally hidden an error and intentionally falsified work records.

ANSWER:

Brown Printing admits the allegations of paragraph 13. However, to the extent the paragraph 13 alleges that Brown Printing's reason for terminating Pleniceanu is a pretext for discrimination, Brown Printing denies the allegations of paragraph 13.

PARAGRAPH NO. 14:

Plaintiff's non-Romanian peer, was actually responsible for the error, but he was not terminated from his employment.

ANSWER:

Brown Printing admits that Pleniceanu's assistant made a mistake in operating equipment during Pleniceanu's final shift and that his assistant was disciplined for the mistake. Brown Printing denies that the assistant was responsible for intentionally hiding an error or falsifying work records, and denies the remaining allegations of paragraph 14.

COUNT I

PARAGRAPH NO. 15:

From or about October, 2003 through February 16, 2004, Patterson (non-Romanian), Plaintiff's supervisor, verbally harassed Plaintiff on the basis of Plaintiff's national origin.

ANSWER:

Brown Printing denies the allegations of paragraph 15.

PARAGRAPH NO. 16:

On virtually a daily basis, Patterson referred to Plaintiff as a “fucking immigrant,” “an illegal immigrant,” a “fucking Romanian,” and a “butt sucker Romanian.”

ANSWER:

Brown Printing denies the allegations of paragraph 16.

PARAGRAPH NO. 17:

Patterson often made statements to Plaintiff such as “oh, you Romanians, you’re stupid, you don’t know anything,” and “those damn Romanians.”

ANSWER:

Brown Printing denies the allegations of paragraph 17.

PARAGRAPH NO. 18:

Plaintiff found the conduct of Patterson unwelcome, unwanted and extremely offensive.

ANSWER:

Brown Printing denies the allegations of paragraph 18.

PARAGRAPH NO. 19:

Defendant did not subject similarly situated non-Romanian employees to such harassment.

ANSWER:

Brown Printing denies that Pleniceanu or any other employees were subjected to unlawful harassment, and therefore denies the allegations of paragraph 19.

PARAGRAPH NO. 20:

Defendant verbally harassed Plaintiff because of Plaintiff’s national origin, Romania, in violation of Title VII of the Civil Rights Act of 1964.

ANSWER:

Brown Printing denies the allegations of paragraph 20.

PARAGRAPH NO. 21:

At all times relevant hereto, Defendant knew that and/or showed reckless disregard for whether their conduct was prohibited by Title VII of the Civil Rights Act of 1991. By this conduct, Defendant discriminated against Plaintiff.

ANSWER:

Brown Printing denies the allegations of paragraph 21.

PARAGRAPH NO. 22:

As a direct and proximate result of Defendant's illegal conduct, Plaintiff has been deprived of economic benefits, including but not limited to, lost wages, loss fringe benefits, and loss job opportunities and suffered emotional distress.

ANSWER:

Brown Printing denies the allegations of paragraph 22.

COUNT II

PARAGRAPH NO. 22 (SIC):

On February 16, 2004 Plaintiff was terminated from his employment by Defendant.

ANSWER:

Brown Printing admits the allegation of this second paragraph 22.

PARAGRAPH NO. 23 (SIC):

The reason for termination expressed to Plaintiff by Defendant was that Plaintiff had intentionally hidden an error and intentionally falsified work records.

ANSWER:

Brown Printing admits the allegations of paragraph 23. However, to the extent the paragraph 23 alleges that Brown Printing's reason for terminating Pleniceanu is a pretext for discrimination, Brown Printing denies the allegations of this second paragraph 23.

PARAGRAPH NO. 23:

Plaintiff's non-Romanian peer was actually responsible for the error.

ANSWER:

Brown Printing admits that Pleniceanu's assistant made a mistake in operating equipment during Pleniceanu's final shift. Brown Printing denies that the assistant was responsible for intentionally hiding an error or falsifying work records, and denies the remaining allegations of paragraph 23.

PARAGRAPH NO. 24:

Plaintiff's peer was not terminated from his employment.

ANSWER:

Brown Printing admits that Pleniceanu's assistant was not terminated for his error during Pleniceanu's shift, and denies the remaining allegations.

PARAGRAPH NO. 25:

Defendant's termination of Plaintiff was among other things, a pretext for unlawful intentional discrimination on the basis of Plaintiff's national origin.

ANSWER:

Brown Printing denies the allegations of paragraph 25.

COUNT III

PARAGRAPH NO. 26:

Plaintiff states that the national origin discrimination, ethnic slurs and associated work-related harassment over a period of time caused Plaintiff extreme emotional distress, and that although Defendant's managers were aware of this distress they not only failed to stop the harassment, they were in large measure responsible for it.

ANSWER:

Brown Printing denies the allegations of paragraph 26.

PARAGRAPH NO. 27:

Plaintiff further states that this harassment is actionable as an intentional infliction of emotional distress under the tort law of Illinois.

ANSWER:

Brown Printing denies the allegations of paragraph 27.

COUNT IV

PARAGRAPH NO. 28:

Plaintiff states that the national origin discrimination, ethnic slurs and associated work-related harassment over a period of time caused Plaintiff extreme emotional distress, and that although Defendant's manager were aware of this distress, they not only failed to stop the harassment, they were in large measure responsible for it.

ANSWER:

Brown Printing denies the allegations of paragraph 28.

PARAGRAPH NO. 29:

Plaintiff states negligent infliction of emotional distress as an alternative theory of recovery for this harassment.

ANSWER:

Brown Printing neither admits nor denies the allegations of paragraph 29 because they are legal conclusions and not the averment of issuable facts. Answering further, Brown Printing denies that Pleniceanu was subjected to any harassment or emotional distress.

PARAGRAPH NO. 30:

Plaintiff further states that this harassment is actionable as a negligent infliction of emotional distress under the tort law of Illinois.

ANSWER:

Brown Printing neither admits nor denies the allegations of paragraph 30 because they are legal conclusions and not the averment of issuable facts. Answering further, Brown Printing denies that Pleniceanu was subjected to any harassment or emotional distress.

AFFIRMATIVE DEFENSES

For its affirmative defenses to Pleniceanu's complaint, Brown Printing alleges:

1. To the extent Pleniceanu claims discrimination based upon acts occurring more than 300 days before he filed his charge of discrimination, such allegations are time-barred.

2. To the extent Pleniceanu purports to assert claims of that are not included in the charge of discrimination, Pleniceanu has failed to exhaust his administrative remedies.

3. Pleniceanu's claim for harassment is barred and/or any recovery of damages is precluded because Brown Printing exercised reasonable care to prevent and correct promptly any alleged harassing behavior and Pleniceanu unreasonably failed to take advantage of the defendant's preventative or corrective opportunities or to avoid harm otherwise.

4. Pleniceanu's claim for harassment is barred because: (1) Pleniceanu unreasonably delayed in asserting his claim; and (2) Pleniceanu's delay has prejudiced Brown Printing.

5. Pleniceanu's claims for damages in the form of backpay and benefits are barred by plaintiff's failure to diligently seek other employment or to otherwise mitigate his damages.

6. Pleniceanu's claim for negligent infliction of emotional distress is preempted by the Illinois Workers' Compensation Act.

Dated: December 5, 2005

BROWN PRINTING COMPANY

By: Cathryn E. Albrecht
Cathryn E. Albrecht

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CERTIFICATE OF SERVICE

I, Cathryn E. Albrecht, an attorney, certify that on this 5th day of December, 2005, a true and correct copy of the foregoing Answer and Affirmative Defenses to Complaint was served via the electronic filing system of the United States District Court for the Northern District of Illinois and first class mail upon the following:

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Cathryn E. Albrecht
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