

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF INDIANA  
 FORT WAYNE DIVISION

JAMES R. TABB, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:12-CV-220-JD-RBC
	)	
BF GOODRICH TIRE	)	
MANUFACTURING PLANT, a/k/a BF	)	
GOODRICH,	)	
	)	
Defendant.	)	

**OPINION AND ORDER**

Now before the Court is Defendant BF Goodrich Tire Manufacturing Plant’s Motion for Partial Judgment on the Pleadings [DE 13] filed on August 6, 2012. Plaintiff James Tabb, Jr., by counsel, did not file a response to the motion. For the following reasons, Defendant’s Motion for Partial Judgment on the Pleadings is hereby **GRANTED**.

**I. BACKGROUND**

On April 23, 2012, Mr. Tabb filed a complaint against “Goodrich Corporation” in the Allen Superior Court [DE 1]. The Complaint alleged race discrimination under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964, as amended. *Id.* On June 5, 2012, Mr. Tabb filed an amended complaint only to change the Defendant’s name to “BF Goodrich Tire Manufacturing Plant” [DE 2]. On June 29, 2012, BF Goodrich filed its Notice of Removal to this Court, pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441(a)-(c), and 1446 [DE 3]. On August 6, 2012, BF Goodrich filed its answer and affirmative defenses [DE 12], along with its Motion for Partial Judgment on the Pleadings [DE 13]. The matter is ripe for ruling.





placed on suspension pending an investigation, and was subsequently terminated in early December [DE 2 at ¶ 4(c); DE 14-1 at 2]. Mr. Tabb’s co-worker, Rambo, was not terminated. *Id.*

On October 11, 2011, Mr. Tabb filed a Charge of Discrimination with the EEOC against BF Goodrich [DE 2 at ¶¶ 1, 4(a); DE 14-1 at 2]. On January 25, 2012, Mr. Tabb received a Dismissal and Notice of Right to Sue letter, which indicated that the EEOC was closing its file on Mr. Tabb’s charge because it was not timely filed with the EEOC [DE 2, ¶ 4(a); DE 14-2, Exhibit B].

#### IV. DISCUSSION

Indiana is a “deferral state,” meaning it has state agencies with enforcement powers parallel to those of the EEOC, as evidenced by the City of Fort Wayne Metro Human Relations Commission’s handling of Mr. Tabb’s initial Charge of Discrimination in this case. Thus, Mr. Tabb had 300 days from the date of his termination to file a charge alleging a Title VII violation. *Laouini v. CLM Freight Lines, Inc.*, 586 F.3d 473, 475 (7th Cir. 2009); *see also* 29 C.F.R. § 1601.80.<sup>3</sup> The Court assumes (in his favor) that Mr. Tabb was terminated on the latest date alleged, December 8, 2010, and it is undisputed that he filed his EEOC charge on October 11, 2011, 307 days later. His charge needed to be filed by October 4, 2011. In fact, the EEOC dismissed the Title VII claim on January 25, 2012 because it was untimely—although this does not influence the Court’s determination.

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<sup>3</sup>The court notes that our circuit’s case law on the Title VII filing deadline for Indiana is, to some extent, in conflict. *See, e.g., Chaudhry v. Nucor Steel-Ind.*, 546 F.3d 832, 836 (7th Cir. 2008) (“[An EEOC] charge must be filed within 300 days after the alleged unlawful employment practice occurred or else the employee may not challenge the practice in court”); *but see Williamson v. Ind. Univ.*, 345 F.3d 459, 463 (7th Cir. 2003) (“A claimant may file a charge of discrimination with the EEOC within a 180-day window permitted under Title VII”). But the distinction makes no difference in this case; more than 300 days is too long under either rule.

The amended complaint incorporates by reference Mr. Tabb's Charge of Discrimination and Dismissal and Notice of Right to sue letter. Thus, these documents are referred to in the pleadings and are central to Mr. Tabb's claims. Further, the amended complaint itself contains all the relevant dates needed to show that BF Goodrich must prevail on the affirmative defense that the Title VII claim is time barred, without resorting to the EEOC charge or right to sue letter. Mr. Tabb did not respond to BF Goodrich's statute of limitations argument, perhaps implicitly conceding that the argument is a sound one. Nor has any basis for tolling the time period been presented by defense counsel. The Court finds that given the dates evidenced in the complaint and the documents incorporated therein, Mr. Tabb failed to timely file his Charge of Discrimination with the EEOC relative to his Title VII race discrimination claim.

Mr. Tabb has also made a claim under 42 U.S.C. § 1981. BF Goodrich did not move to dismiss the claim as untimely. This is likely because claims arising under the amendment to § 1981 contained in the 1991 Act are subject to a 4-year statute of limitations and do not require exhaustion of administrative remedies. 28 U.S.C. § 1658; *Jones v. R. R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004); *Smith v. Bray*, 681 F.3d 888, 896 n.2 (7th Cir. 2012); *Fane v. Locke Reynolds, LLP*, 480 F.3d 534, 539 (7th Cir. 2007).

## V. CONCLUSION

For the reasons stated herein, Defendant's Motion for Partial Judgment on the Pleadings [DE 13] is **GRANTED** and Plaintiff's Title VII claim is **DISMISSED WITH PREJUDICE**.

The claim alleged pursuant to 42 U.S.C. § 1981 remains pending.

SO ORDERED.

ENTERED: November 20, 2012

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/s/ JON E. DEGUILIO  
Judge  
United States District Court