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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTHUR POLKEY,

Plaintiff,

v.

WASTE MANAGEMENT OF
WASHINGTON, INC.,

Defendant.

Case No. C09-0447-JCC

ORDER OF REMAND

This matter comes before the Court on Plaintiff’s Motion to Remand (Dkt No. 5), Defendant’s Response (Dkt. No. 10), and Plaintiff’s Reply (Dkt. No. 12). Having thoroughly considered the parties’ briefing and the relevant record, the Court hereby GRANTS the motion and remands the case to King County Superior Court for the reasons explained herein.

I. BACKGROUND

In his complaint, Plaintiff states that he began working as a mechanic for Defendant in June 1996. (Compl. ¶ 4.4 (Dkt. No. 3 at 11).) He claims to have been actively involved in protected union activity for the last five years of his employment. (*Id.* ¶ 4.4.) On October 27, 2006, Plaintiff suffered an injury to his arm. (*Id.* ¶ 4.2.) Defendant claimed that the injury was the result of Plaintiff’s own reckless conduct in improperly securing the arms of a truck and

1 terminated Plaintiff, allegedly on the grounds that his conduct violated the collective
2 bargaining agreement (“CBA”) between Defendant and the General Teamsters Local Union
3 No. 174 (“Teamsters”). (Termination Letter (Dkt. No. 11 at 46).) Two days after the
4 termination, Teamsters filed a grievance report stating that Plaintiff had been wrongfully
5 discharged “without just cause.” (Grievance Filing (Dkt. No. 11 at 48).) Plaintiff appears to
6 have withdrawn from that process before obtaining a final determination. (Reply 2 (Dkt. No.
7 12).)

8 On February 26, 2009, Plaintiff filed the instant complaint in King County Superior
9 Court. (Compl. 6 (Dkt. No. 3 at 14).) Plaintiff claims to have been wrongfully terminated for
10 his union activity in violation of Washington State public policy. (*Id.* ¶ 1.) He also claims that
11 his termination constituted impermissible discrimination based on physical disability in
12 violation of Washington’s antidiscrimination laws. (*Id.*)

13 On April 3, 2009, Defendant removed to federal court. (Notice of Removal (Dkt. No.
14 1).) Defendant invokes federal question jurisdiction, claiming that this complaint raises causes
15 of action preempted by the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185(a).
16 (*Id.* ¶ 3.)

17 Plaintiff now moves to remand the case back to state court, arguing that “[t]he
18 Complaint in this matter asserts no federal claims” and instead relies solely on Washington
19 law. (Mot. 3–7 (Dkt. No. 5).) Plaintiff also requests “just costs and actual expenses” incurred
20 as a result of removal pursuant to 28 U.S.C. § 1447(c). (Mot. 8 (Dkt. No. 5).)

21 **II. DISCUSSION**

22 In civil actions, “[t]he presence or absence of federal-question jurisdiction is governed
23 by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when
24 a federal question is presented on the face of the plaintiff’s well-pleaded complaint.” *Abada v.*
25 *Charles Schwab & Co., Inc.*, 300 F.3d 1112, 1118 (9th Cir. 2002) (*quoting Caterpillar, Inc. v.*
26 *Williams*, 482 U.S. 386, 392–93 (1987)). As “master of the complaint,” Plaintiff “may avoid

1 federal jurisdiction by exclusive reliance on state law.” *Id.* (internal quotation omitted).
2 However, “[u]nder the artful pleading doctrine, a plaintiff may not defeat removal by omitting
3 to plead necessary federal questions in a complaint.” *Lippitt v. Raymond James Fin. Servs.,*
4 *Inc.*, 340 F.3d 1033, 1041 (9th Cir. 2003) (internal quotation omitted). Furthermore, a cause of
5 action raises a federal issue where a statute “so completely preempt[s] state law that it occupies
6 the entire field, barring assertion of any state law claims.” *Abada*, 300 F.3d at 1118–19.
7 However, “[t]he removal statute is strictly construed, and any doubt about the right of removal
8 requires resolution in favor of remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241,
9 1244 (9th Cir. 2009) (citation omitted). Defendant always bears the burden of overcoming the
10 presumption against removal jurisdiction. *Id.*

11 Defendant reads Plaintiff’s complaint to allege causes of action that are preempted by
12 LMRA § 301. (Resp. 2 (Dkt. No. 10).) “Section 301 [of the LMRA] governs claims founded
13 *directly* on rights created by collective-bargaining agreements, and also claims *substantially*
14 *dependent* on analysis of a collective-bargaining agreement.” *Caterpillar*, 482 U.S. at 394
15 (emphasis added) (internal quotation omitted). Defendant argues that language within the
16 complaint raises several claims preempted by the LMRA, including wrongful termination in
17 violation of the CBA, *see Int’l Bhd. Of Elec. Workers v. Hechler*, 481 U.S. 581, 857 (1987)
18 (“The ordinary § 301 case is a contract claim in which a party to the [CBA] expressly asserts
19 that a provision of the agreement has been violated.”); negligence, *see Ward v. Circus Circus*
20 *Casinos, Inc.*, 473 F.3d 994, 999 (9th Cir. 2007) (“State law negligence claims are preempted
21 if the duty relied on is ‘created by a [CBA] and without existence independent of that
22 agreement.’”) (quoting *United States v. Rawson*, 495 U.S. 362, 369 (1990))); and emotional
23 distress, *see Chmiel v. Beverly Wilshire Hotel Co.*, 873 F.2d 1283, 1286 (9th Cir. 1989) (noting
24 that emotional distress claims are preempted when the “resolution of the claims is inextricably
25 intertwined with the interpretation of the CBA” (internal quotation omitted)).
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1 Plaintiff argues that Defendant overreads the complaint, which does not raise any of the
2 claims that Defendant suggests. (Reply 1 (Dkt. No. 12).) Plaintiff asserts that the complaint’s
3 reference to termination “without good cause” (Compl. ¶ 4.5 (Dkt. No. 3 at 11)) relates to the
4 employer’s burden of production after a prima facie case of discrimination is established (Mot.
5 6–7 (Dkt. No. 5)). Plaintiff also denies that his complaint alleges claims of negligence or
6 infliction of emotional distress. (*Id.* at 5). Instead, he claims that his reference to emotional
7 distress “[a]s a direct and proximate cause of defendant’s unlawful, negligent, willful,
8 knowing, and intentional conduct” (Compl. ¶ 4.10 (Dkt. No. 3 at 12)) relates to recovery for
9 emotional distress and anguish based on his discrimination claim (Reply 5–6 (Dkt. No. 12)).
10 Plaintiff states that he “bases his claims exclusively on substantive, non-negotiable rights
11 secured to him under [Washington Revised Code] 49.60 (disability discrimination/retaliation)
12 and . . . 49.32.020 (prohibiting union activity discrimination/retaliation).” (Mot. 4 (Dkt. No.
13 5).) Accordingly, Plaintiff argues that the case does not require any interpretation of the CBA.
14 (*Id.* at 7.)

15 The Court finds that the complaint is ambiguous, lending plausibility to both parties’
16 interpretations. Reading the complaint broadly, language in the complaint referring to
17 termination without good cause, negligence, and emotional distress could be understood as
18 raising separate causes of action. On the other hand, these phrases could just as easily be found
19 simply to be explanatory or redundant, and thereby not affecting the scope of Plaintiff’s actual
20 claims.

21 Faced with such ambiguity, the Court must defer to Plaintiff’s interpretation. *See*
22 *Lippett*, 340 F.3d at 1040 (deferring to Plaintiff’s interpretation of a complaint that was “the
23 opposite of a model of clarity” because the complaint “c[ould] be read in the way [Plaintiff]
24 assert[ed]”); *E. States Health & Welfare Fund v. Philip Morris, Inc.*, 11 F. Supp. 2d 384, 393
25 (S.D.N.Y. 1998) (“[T]he principle that the plaintiff is master of the complaint also counsels in
26 favor of construction in accordance with the representations of the plaintiffs.”). The deference

1 to Plaintiff's interpretation is particularly crucial given the presumption against removal. As
2 this Court has noted, "Federal courts have repeatedly held that vague, ambiguous, or passing
3 references to federal law in a complaint are not sufficient to support removal based on federal
4 question jurisdiction." *Shelley's Total Body Works v. City of Auburn*, No. C07-0126-MJP,
5 2007 WL 765205, at *2 (W.D. Wash. Mar. 9, 2007); *see also Hardin v. Morgan Bldgs. &*
6 *Spas, Inc.*, No. SA-07-CA-388, 2007 WL 2021775, at *2 (W.D. Tex. June 26, 2007) ("Because
7 . . . ambiguities with respect to removal should be construed in favor of remand, the unclear
8 phrasing of plaintiff's statement weighs in favor of remanding this case to state court."
9 (internal quotation omitted)) .

10 As master of the complaint, which is ambiguous as to whether he is seeking
11 relief under state or federal law, [plaintiff's] motion to remand clearly
12 demonstrates his desire to rely exclusively on rights conferred by state law.
Therefore, [federal labor laws] cannot be the basis for a removal.

13 *Atanasio v. Bhd. of Locomotive Eng'rs & Trainmen*, 424 F. Supp. 2d 476, 485 (E.D.N.Y.
14 2006).

15 Defendant's reference to the artful pleading doctrine (Resp. 7 (Dkt. No. 10)) is
16 inapplicable in the instant case, where "the Plaintiff has a choice between state and federal
17 remedies [] and . . . merely ignored the federal cause of action." *Gardon v. City of El Paso*,
18 No. EP-03-CA-110, 2003 WL 21961178, at *3 (W.D. Tex. July, 17, 2003) (internal quotation
19 omitted); *see also Sullivan v. First Affiliated Sec., Inc.*, 813 F.2d 1368, 1372 (9th Cir. 1987)
20 ("The artful pleading doctrine is a narrow exception to the straightforward rules of removal
21 jurisdiction, which we will apply only if the particular conduct complained of [is] governed
22 exclusively by federal law." (emphasis added) (internal quotation omitted)). In both his
23 complaint and in subsequent papers, Plaintiff has indicated that his causes of action solely
24 concern rights guaranteed under Washington state law that are independent from the CBA.
25 (Compl. ¶ 1 (Dkt. No. 3 at 9); Mot. 7–8 (Dkt. No. 5).) Given Plaintiff's choice to forego his
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1 federal claims, this Court lacks jurisdiction and therefore GRANTS Plaintiff's motion to
2 remand the case to state court.

3 However, the Court finds that Plaintiff is not entitled to fees and expenses under 28
4 U.S.C. § 1447(c). (Mot. 8 (Dkt. No. 5).) "Absent unusual circumstances, courts may award
5 attorney's fees under § 1447(c) only where the removing party lacked an objectively
6 reasonable basis for seeking removal. Conversely, when an objectively reasonable basis exists,
7 fees should be denied." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). The Court
8 has already explained that Defendant's reading of the complaint was plausible given the
9 ambiguity introduced by Plaintiff's poor drafting. Because Defendant had an objectively
10 reasonable basis for seeking removal, Plaintiff's motion for fees and expenses must be
11 DENIED.

12 **III. CONCLUSION**

13 For the foregoing reasons, the Court hereby REMANDS this case to King County
14 Superior Court for all further proceedings. The Clerk is directed to close the case and to mail a
15 certified copy of this Order of remand to the Clerk of the state court pursuant to 28 U.S.C.
16 § 1447(c). Plaintiff's motion for fees and expenses is DENIED.

17 DATED this 6th day of July, 2009.

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21 John C. Coughenour
22 United States District Judge
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