

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

CIVIL ACTION NUMBER: 2:08-cv-02429-CWH-GCK

Gerald White,

Plaintiff,

vs.

Nucor Corporation and Nucor Steel
Berkeley,

Defendants.

**ANSWER OF NUCOR CORPORATION, FOR ITSELF, AND ON BEHALF OF AND
WITH ITS UNINCORPORATED DIVISION, DEFENDANT NUCOR STEEL
BERKELEY**

Defendant Nucor Corporation (hereinafter “Nucor”), for itself, on behalf of, and with its unincorporated division, Defendant Nucor Steel Berkeley (hereinafter “Nucor Steel Berkeley”) (hereinafter collectively “Defendants”), files this Answer in response to allegations of plaintiff Gerald White (hereinafter “Plaintiff”) involving the Nucor Steel Berkeley facility.

I. JURISDICTION

1. Defendants admit that this Court has jurisdiction pursuant to 42 U.S.C. § 1981, and deny that this Court has jurisdiction pursuant to Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§2000e, *et seq.*, as amended. Defendants deny that any violations of the code sections cited in Paragraph 1 of Plaintiffs’ Complaint have occurred.

2. Defendants deny that Plaintiff filed a charge of discrimination with the EEOC alleging retaliation for his discharge, and further deny that his discharge was discriminatory. Defendants never received notice of any charge of discrimination based on Plaintiff’s

termination. Defendants admit that Plaintiff filed a charge of discrimination on or around February 7, 2007 with the EEOC alleging discrimination and retaliation in being denied a promotion to Roll Shop Crew Leader, but deny that his denial of a promotion to Roll Shop Crew Leader constituted discrimination or retaliation.

3. Defendants admit that Plaintiff received a Dismissal and Notice of Rights from the EEOC on his charge of discrimination alleging discrimination and retaliation in being denied a promotion to Roll Shop Crew Leader on or about April 8, 2008. Defendants deny that Plaintiff ever received a Dismissal and Notice of Rights from the EEOC on his claim of retaliatory discharge because he never filed an EEOC charge of discrimination on that claim, and Defendants never received notice of such a charge.

II. PARTIES

4. Defendants admit that Plaintiff Gerald White was a Nucor Steel Berkeley employee in Huger, South Carolina up until his termination. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 4 of Plaintiff's Complaint, and therefore deny them.

5. Defendants admit that Nucor is a corporation that conducts business in various states and that its corporate headquarters are located in Charlotte, North Carolina. Defendants admit that Nucor is an employer as defined by 42 U.S.C. §2000e(b), but deny that any of the employment decisions related to the Plaintiff or any other employees at Nucor Steel Berkeley were made by any person not employed at Nucor Steel Berkeley. Defendants admit that Nucor is an individual subject to suit under 42 U.S.C. §1981, as amended. Defendants deny that actual or constructive control, oversight, or direction over the day-to-day operations, including the employment practices, of Nucor Steel Berkeley is exercised by any person not employed at

Nucor Steel Berkeley. Defendants deny each and every remaining allegation contained in Paragraph 5 of Plaintiff's Complaint.

6. Defendants admit that Nucor Steel Berkeley is an unincorporated division of Nucor Corporation conducting business in the state of South Carolina, and that Nucor Steel Berkeley was the sole decisionmaker relating to the employment decisions alleged by the Plaintiff in the Complaint. Defendants admit that, through Nucor Steel Berkeley, (Nucor's decision-making division), Defendants are employers as defined by 42 U.S.C. §2000e(b). Defendants admit that Nucor is an individual subject to suit under 42 U.S.C. §1981, as amended, for the actions taken by Nucor Steel Berkeley, (Nucor's decision-making division). Defendants deny each and every remaining allegation contained in Paragraph 6 of Plaintiff's Complaint.

III. CAUSES OF ACTION

7. Defendants restate and incorporate by reference their responses to Paragraphs 1-6 as their response to Paragraph 7 of Plaintiff's Complaint.

8. Defendants deny each and every allegation contained in Paragraph 8 of Plaintiff's Complaint.

9. Defendants deny each and every allegation contained in Paragraph 9 of Plaintiff's Complaint.

10. Defendants admit that the procedural history of this case and the *Brown* case as recited in Paragraph 10 of Plaintiff's Complaint is accurate, but deny that Defendants have discriminated against Plaintiffs in either case.

11. Defendants admit that Plaintiff was employed at Nucor Steel Berkeley from July 1998 until his termination on or about October 7, 2006. Defendants deny that Plaintiff's

termination was retaliatory and deny each and every remaining allegation contained in Paragraph 11 of Plaintiff's Complaint.

12. Defendants deny each and every allegation contained in Paragraph 12 of Plaintiff's Complaint.

13. Defendants admit that Plaintiff was terminated for accumulating four unexcused absences in one twelve month period in violation of Nucor Steel Berkeley policy. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 of Plaintiff's Complaint, and therefore deny them.

14. Defendants deny each and every allegation contained in Paragraph 14 of Plaintiff's Complaint.

15. Defendants deny each and every allegation contained in Paragraph 15 of Plaintiff's Complaint.

16. Defendants deny each and every allegation contained in Paragraph 16 of Plaintiff's Complaint.

17. Defendants deny each and every allegation contained in Paragraph 17 of Plaintiff's Complaint.

18. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint, and therefore deny them.

IV. PRAYER FOR RELIEF

19. Defendants deny the propriety of each and every one of Plaintiff's requests for relief and deny each and every allegation therein.

ADDITIONAL DEFENSES

Defendants hereby state the following affirmative and additional defenses to the complaint, but do not assume the burden of proof on any such defenses except as required by applicable law with respect to a particular defense asserted.

1. Any and all decisions with regard to Plaintiff were made solely by persons employed at Nucor Steel Berkeley, and no other persons employed by Defendants ever made any such decisions. Nucor does not maintain common management in the form of either centralized control of day-to-day operations or personnel decisions over the Nucor Steel Berkeley facility.

2. Plaintiff has failed to state claims for which relief can be granted under 28 U.S.C. §§1331, 1343(4), 42 U.S.C. §1981, and 42 U.S.C. §2000(e) *et seq.* This Court should therefore dismiss Plaintiff's Complaint. FRCP 12(b)(6).

3. This Court lacks subject matter jurisdiction over the Plaintiff's claims, and should therefore dismiss Plaintiff's Complaint. FRCP 12(b)(1).

4. Insofar as Plaintiff seeks to recover relief for (a) alleged incidents occurring prior to the applicable limitations period for filing of an administrative charge of discrimination; and (b) for alleged incidents of discrimination not listed in any charge against Defendant, Plaintiff may not be granted any relief for those incidents of alleged discrimination.

5. To the extent Plaintiff has failed to exhaust his administrative remedies, his claims for relief are barred.

6. To the extent Plaintiff has failed to institute this action within the time required under the applicable statute of limitations, his claims for relief are barred.

7. To the extent Plaintiff has failed to timely file charges of discrimination with the EEOC or any state agency, his claims for relief are barred.

8. To the extent Plaintiff has failed to cooperate with the EEOC in its conciliation efforts, his claims for relief are barred.

9. The employment decisions which form the basis of Plaintiff's Complaint were based on legitimate, non-discriminatory business reasons and not on discriminatory or retaliatory animus.

10. Plaintiff's employer exercised reasonable care to prevent and promptly correct any alleged discriminatory behavior and Plaintiff unreasonably failed to take advantage of any preventative or corrective opportunities provided by his employer or to otherwise avoid harm.

11. Even if Plaintiff could state a claim for relief in this action, Plaintiff cannot prove actual or punitive damages, and hence can only recover nominal damages if he prevails.

12. Plaintiff's prayer for relief must fail to the extent that Plaintiff has failed to mitigate his damages as required by law.

13. Plaintiff's claims are subject to damages caps under federal law.

14. No unlawful employment actions were taken against the Plaintiff by Defendants.

15. Defendants did not engage in any conduct warranting recovery by Plaintiff of front pay, back pay, compensatory or punitive damages, attorney's fees, costs or any other form of relief whatsoever.

16. In the unlikely event that back-pay damages are awarded to Plaintiff, Plaintiff's interim earnings, workers' compensation benefits and unemployment compensation benefits received shall operate as an offset to reduce the damages award.

17. Plaintiff's employer would have made the same employment decisions regarding Plaintiff irrespective of race.

18. Defendants did not act with malice or reckless disregard to the rights of Plaintiff, rendering inappropriate the imposition of any exemplary or punitive damages.

19. Plaintiff is not entitled to punitive damages because Defendants, at all times relevant to Plaintiff's employment, acted in good faith in its efforts to comply with federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1964, as amended, and section 1981.

20. Plaintiff's claims are barred in whole or in part by the doctrines of laches, estoppel, waiver, and all other applicable defenses listed in FRCP 8(c).

21. Although Defendants deny any discrimination or harassment occurred, to the extent that any alleged discrimination or harassment against Plaintiff did occur, any agents or employees of Defendants were not acting within the course and scope of their employment when any of the purported discrimination took place. Thus Defendants are not liable for alleged intentional acts committed outside the course and scope of employment.

22. Plaintiff is precluded from recovering damages under the after-acquired evidence doctrine.

23. The alleged adverse employment decisions about which Plaintiff complains were made by the same managers or supervisors who had previously hired or promoted Plaintiff. Therefore, there was no discriminatory animus.

24. Although Defendants deny any discrimination or harassment occurred, to the extent that the alleged discrimination or harassment against Plaintiff did occur, it was based on

nothing more than isolated, stray remarks made by individuals without decision-making authority, and not linked in time to any alleged adverse employment action.

25. Defendants reserve the right to add such further or supplemental defenses as may be warranted by the information developed through discovery. To the extent that any of the foregoing allegations in Plaintiff's Complaint have not been expressly admitted or denied, they are hereby denied.

WHEREFORE, Defendants request that Plaintiff's Complaint be dismissed in its entirety, with prejudice, that Defendants be awarded their full attorneys' fees incurred in defending this matter, that they be awarded all costs incurred, including any expert fees, and that they have such other and further relief as the Court may deem just and equitable.

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