

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

SUDASH BHAGWANDASS,

Plaintiff,

v.

HOVENSA, L.L.C.,

Defendant

CIVIL NO. 2001/5

TO: Lee J. Rohn, Esq.
Beth Moss, Esq./Linda Blair, Esq.

ORDER ON PLAINTIFF'S MOTION TO COMPEL

THIS MATTER came for consideration on Plaintiff's Motion to Compel. Defendant filed opposition to the motion and Plaintiff filed a reply to such opposition.

A. Plaintiff's discovery requests concerning Plaintiff's employment with HOVIC.

Plaintiff's First Amended Complaint alleges that HOVENSA is a joint venture between HOVIC and a Venezuelan Corporation and is the successor in interest to HOVIC (par. 3); that Plaintiff was originally employed by HOVENSA's predecessor HOVIC in 1985 (par. 4); that Plaintiff has been the victim of a pattern and practice of discrimination based on race, color and national origin that culminated in specific acts of discrimination (par. 5); that Defendant's actions are a continuing pattern by Defendant of failing to post available positions so that locals are prevented from applying and advancing (par. 23); that Plaintiff continues

to be the victim of illegal discrimination and has been discriminated in his overtime, job assignments, training benefits, promotions, pay and upon information his evaluations (par. 25); that the (above described) actions are as a result of continuing illegal discrimination (par. 33).

Plaintiff's Complaint details specific incidents of alleged discrimination by HOVENSA commencing in January 1999 and continuing in January 2000, March 2000, June 2001 and August 2001. (Paragraphs 6-32). Plaintiff also alleges timely complaints to EEOC and resultant right to sue notices (par. 26-27, 34-35). Copies of such notices have not been provided by either party. HOVENSA is the only Defendant named in Plaintiff's Complaint. HOVENSA's Answer denied that it is the successor in interest to HOVIC.

Plaintiff's motion seeks to have HOVENSA respond to discovery requests concerning actions of HOVIC during the period of Plaintiff's employment by HOVIC. It is not disputed that Plaintiff was employed by HOVENSA from October 30, 1998. Plaintiff asserts that the information concerning HOVIC is necessary for Plaintiff to establish a pattern and practice of discrimination.

This Court has continuously held that answers to

interrogatories must include all information within the party's control or known by the party's agents. *Cage v. NY Cent. R. Co.*, 276 F.Supp. 778-785-87 (W.D.Pa. 1967), *aff'd* 386 F.2d 998 (3d Cir. 1967).

The answering party cannot limit his answers to matters within his own knowledge and ignore information immediately available to him or under his control... If an appropriate interrogatory is propounded, the answering party will be required to give the information available to him, if any, through his attorney, investigators employed by him or on his behalf or other agents or representatives, whether personally known to the answering party or not.

Miller v. Doctor's General Hospital, 76 F.R.D. 136, 140 (N.D. Okl. 1977) [internal citations omitted]. See also *Hansel v. Shell Oil Corp.*, 169 F.R.D. 303, 306 (E.D. Pa 1996); *Ballard v. Allegheny Airlines, Inc.*, 54 F.R.D. 67, 69 (E.D. Pa. 1972)1. To the extent any response remains unknown after due inquiry, Defendant may so aver. Fed. R. Civ. P. 34; *Schwartz v. Marketing Publishing Co.*, 153 F.R.D. 16, 21 (D.Conn. 1994); *Rayman v. The American Charter Fed. Sav. & Loan Assoc.* 148 F.R.D. 647, 651 (D. Neb. 1993).

A party must produce all discoverable documents or things responsive to a request that are in the party's possession, custody or control. *Kissinger v. Reporters Comm. For Freedom of Press*, 445 U.S. 136 (1980). Documents are deemed to be within

the possession, custody or control of a party if the party has actual possession, custody or control, or the legal right to obtain the documents on demand. *In Re: Bankers Trust Co.*, 61 F.3d 465, 469 (6th Cir. 1995). Documents held by a subsidiary or affiliated corporation may be within a party's control. *Uniden America Corp. v. Ericsson, Inc.*, 181 F.R.D. 302, 306 (M.D.N.C. 1998).

Thus, to the extent relevant information is readily available to HOVENSA by virtue of its continuing relationship with HOVIC, it must be produced.

Other than the naked allegations of a pattern and practice of discrimination asserted at paragraphs 5, 23, 25, and 33, Plaintiff's Complaint is bereft of any particular assertion of discrimination by HOVIC prior to October 30, 1998. The cited allegations of Plaintiff's Complaint contain no temporal designation including such earlier period of time. Accordingly, the Court finds that Plaintiff has not established the relevancy of the requested information regarding Plaintiff's employment by HOVIC.¹ *West v. Philadelphia Electric Company*, 45 F.3d 744, 755

1. "The rule is well established in this circuit that a civil rights complaint that relies on vague conclusory allegations does not provide 'fair notice' and will not survive a motion to dismiss." *U.S.A. v. City of Philadelphia*, 655 F.2d 187, 204 (3d Cir. 1980); *Spurlock v. Nynex*, 949 F.Supp. 1022, 1030 (W.D. N.Y.

(3d Cir. 1995) [holding that the employee had alleged facts sufficient to support use of continuing violations theory]; *Henry v. Industrial Maintenance Corp.*, D.V.I. STX Civ. 1999/28, Memo. Op. C.J. Finch d. 3/27/01).

B. Plaintiff's discovery requests concerning information from personnel files of other employees.

In determining appropriate discovery to be allowed from the files of other employees, the Court must weigh Plaintiff's right to relevant discovery against the privacy interest of such non-parties. On balance, it appears that the extent of discovery allowed must be tailored to the particular allegations at issue.

Dorchy v. Washington Metropolitan Area Transit Authority, 45 F.Supp. 2d 5, 15 (D.C. 1999); *Onwuka v. Federal Express Corp., et al.*, 178 F.R.D. 508, 517-18 (D.Minn. 1997):

We think the proper balance between privacy interests of non-party third persons and the discovery interests of a party litigant is to assure that only those portions of the pertinent personnel files, which are clearly relevant to the parties' claims are open to disclosure and then

1995)"...an employment discrimination action 'cannot rest on naked assertions or conclusory allegations or fact indicating a deprivation of rights, instead of a litany of general conclusions that shock but have no meaning.'" "In order to survive a motion to dismiss, the plaintiff must specifically allege the events claimed to constitute intentional discrimination as well as circumstance giving rise to a plausible inference of racially discriminatory intent." *Yusef v. Vassar College*, 35 F.3d 709, 713 (2d Cir. 2000); *Williams v. John Hancock Ins. Co.*, 1992 WL 201106 *4 (E.D. Pa); *Muhammad v. Matuszk*, 1992 WL 230427 *4 (D.N.J.); *Huptman v. Wilentz*, 570 F.Supp. 351, 374 (D.N.J. 1983).

subject to an appropriate Confidentiality Order as the circumstances require.

See also: *Northern v. City of Philadelphia* 2000 WL 355526 *3 (E.D. Pa.). "Although personnel files are discoverable, they contain confidential information and discovery of them should be limited." Similarly, *Miles v. The Boeing Company*, 154 F.R.D. 112, 115 (E.D. Pa. 1994).

After finding that statistical evidence is relevant under either a disparate treatment or a disparate impact theory, the Court noted that the information "must be limited in scope in accordance with Fed. R. Civ. P. 26(b)(1) and tied to the allegations of Plaintiff's complaint" *Kresefky v. Panasonic Communications & Systems Co., et al.* 169 F.R.D. 54, 66 (D.N.J. 1996).

Plaintiff's complaint alleges in pertinent party:

1. He was initially employed as a process operation (par. 4).
2. That he was wrongfully denied the position of Area IV Superintendent in January 1999 (par. 6-9).
3. That he was wrongfully denied the position of Area IV Complex manager in January 2000 (par. 12-14).
4. That he was given the position of Area IV Superintendent on March 20, 2000 but was wrongfully

paid less and received less benefits than his white counterparts (par. 16-17).

5. That he was not properly informed of an Area VI Manager position in March 2000 and that job was given to a white Statesider (par. 20, 21, 24).
6. That Plaintiff continues to be discriminated against with regard to overtime, job assignments, training, benefits, promotions, pay, and evaluations (par. 25).
7. That in June 2001, he submitted a bid to be considered for the position of Area Manager and then received an unfair and improper reprimand to prevent him from consideration for such position (par. 29-31).
8. That on August 31, 2001, he was wrongfully demoted from Area IV Superintendent to Operating Assistant in Area I and II where he has not received equal pay and benefits and that such actions were based on illegal discrimination and in retaliation for filing his EEOC and V.I. Civil Rights claims.

Plaintiff's motion requests further information concerning the following other employees:

1. All Operating Assistants employed by Defendant during the past seven (7) years (interrogatory #8).

2. All persons employed by Defendant as Supervisor Process Shift Operator during the past ten years (interrogatory #9).
3. All persons employed by Defendant as an Area Superintendent (all areas of refinery) during the past 7 years (interrogatory #10).
4. All persons employed by Defendant as an Area Manager (all areas of refinery) during the past seven (7) years (interrogatory #11).
5. All persons employed by Defendant as a Complex Shift Superintendent (all areas of refinery) during the past seven years (interrogatory #12).
6. Regarding Cliff Pickens who apparently was a Complex Shift Superintendent (interrogatory #13 - See Plaintiff's First Amended Complaint, par. 6-9).
7. Regarding Chris Lowe who apparently was an Area Manager (interrogatory no. 14 - See Plaintiff's First Amended complaint, par. 20-24).
8. Regarding Gary Meyers who apparently was an Area Manager and/or Complex Shift Superintendent (interrogatory #15).
9. All persons who applied interviewed and/or were

considered for a position as Area Manager (all areas of refinery) during the past seven years (interrogatory #16).

10. All persons who applied interviewed and/or were considered for a position as Area Superintendent (all areas of refinery) during the past seven years (interrogatory #17).

11. All persons who applied interviewed and/or were considered for a position as Area Complex Shift Superintendent (all areas of refinery). For the past seven years (interrogatory #18).

HOVENSA argues that its response should be limited to information after October 30, 1998 and restricted to similarly situated employees.

C. Discovery Requests concerning HOVENSA's affirmative defenses.

The parties are entitled to know the factual basis of the claim, defenses, or denials of their opponents. Fed. R. Civ. P. 26(b)(1). See *Audio Text Communication Network, Inc. v. U.S. Telecom, Inc.* 1995 WL 625963 (D.Kan.); *Lance, Inc. v. Ginsburg*, 32 F.R.D. 51, 53 (E.D. Pa. 1962). A party must supplement its discovery response if additional or corrective information has not otherwise been made known to the other parties. Fed. R. Civ.

P. 26(e)(2). Regarding affirmative defenses, Defendant must respond to interrogatories by stating all facts currently known to Defendant as requested by Plaintiff. The names and addresses of persons with knowledge of such facts are generally discoverable. Wright, Miller & Marcus Federal Practice & Procedure, Civ. 2d § 2013. The Court does not require any response regarding purely legal assertions (interrogatory #22 regarding affirmative defense no. 3).

Accordingly, it is hereby;

ORDERED as follows:

1. All responses ordered herein shall be served on Plaintiff within twenty (20) days of the date of this Order.
2. Regarding Interrogatory No. 1
HOVENSA shall provide Plaintiff with the last known address of Michael McKee. Plaintiff's motion is otherwise DENIED.
3. Regarding Interrogatory No. 2
HOVENSA shall provide Plaintiff with the last known address of Tolbert Routt. HOVENSA shall provide an averred statement concerning the job descriptions as asserted in its response to this motion. Plaintiff's

motion is otherwise DENIED.

4. Regarding Interrogatory No. 3

HOVENSA shall provide Plaintiff with a statement of the objective criterion relied upon by HOVENSA in assessing Plaintiff's performance (from 10/30/98). To the extent HOVENSA's response refers to documents produced it must do so with particular designation. Fed. R. Civ. P. 33(d); *Oleson v. Kmart Corp.*, 175 F.R.D. 560, 564, (D. Kan. 1997), *Martin v. Easton Publishing Co.*, 85 F.R.D. 312, 315 (E.D. Pa. 1980). Plaintiff's motion is otherwise DENIED.

5. Regarding Interrogatory No. 4

HOVENSA shall further respond by providing what steps were taken by it to monitor and/or improve the programs (from 10/30/98). Plaintiffs motion is otherwise DENIED.

6. Regarding Interrogatory No. 6

HOVENSA's response is adequate and accordingly Plaintiff's motion is DENIED.

7. Regarding Interrogatory No. 7

HOVENSA shall respond further as requested in Plaintiff's interrogatory with regard to its hiring

policies and procedures from 10/30/98 concerning "Supervisor Process Shift Operator," "Operating Assistant" and "Area Superintendent positions." To the extent there is ambiguity concerning such job titles as noted in Plaintiff's reply, the parties shall promptly confer in such regard. Plaintiff's motion is otherwise DENIED.

8. Regarding Interrogatories No. 8-12

a. HOVENSA shall supplement its responses by providing the following information (to the extent not previously done) applicable only to the areas in which Plaintiff was actually employed or to the positions detailed in Plaintiff's Complaint for which he sought employment or was denied application:

1. Operating Assistants in Areas 1 and 2 from August 31, 2001 to date. Respond to Interrogatory #8(a)(b)(c)(e) [limited to employment as Operating Assistant].
2. Area Superintendent (or Complex Shift Superintendent) in Area 4 from January 1999 to date. Respond to interrogatory

#10(a)(b)(c)(e) [limited to employment in such position) (f)(g)(h) and (k).

3. Area Managers in Area VI from March 2000 to date and Area Managers in area applied for by Plaintiff in June 2001 from such date.²

Respond to interrogatory #11(a)(b)(c)(e) [limited to employment at such position] (f)(g)(h) and (k).

b. Plaintiff's motion is otherwise DENIED.

9. Regarding Interrogatories No. 13-15

a. HOVENSA shall supplement its responses by providing the following information (to the extent not previously done):

1. Clifford Pickens. Respond to interrogatory #13 by providing any pay raises as Complex Shift Superintendent and by detailing his qualifications and experience for such position.

2. Plaintiff's Complaint alleges at paragraph 20 that Plaintiff was not informed of an opening for Area Manager in Area VI in March 2000 and was not hired as Area Manager (unspecified area) in June 2001 (par. 29-31). The parties shall promptly confer in such regard. HOVENSA need only reply concerning the appropriate areas.

2. Chris Lowe. Respond to interrogatory #14 by detailing his qualifications and experience as Area Manager

3. Gary Meyers (Mares). Respond to interrogatory #15 by detailing his qualifications and experience as Complex Shift Superintendent.

b. Plaintiff's motion is otherwise DENIED.

10. Regarding Interrogatories No. 16-18

a. HOVENSA shall supplement its responses by providing the following information (to the extent not previously done) limited to the Operations Area:

1. Area Manager. Respond to interrogatory #16 (a) to (j) restricted to the period from March 2000.

2. Area Complex Shift Superintendent (Complex Shift Superintendent). Respond to interrogatory #18 (a) to (j) restricted to the period from January 1999.

b. Plaintiff motion is otherwise DENIED.

11. Regarding Interrogatory No. 19

HOVENSA shall supplement its response by making particular designation of any previously produced responses or documents referred to (see #4 above).

12. Regarding Interrogatory No. 20-25

HOVENSA shall respond to interrogatories number 20-21 and 23-25 by stating all facts currently known to Defendant as requested by Plaintiff. Plaintiff's motion is DENIED with regard to interrogatory #22.

13. Regarding Demand for Production No. 2

Plaintiff's demand requests personnel files and all other documents with regard to HOVENSA's employment of John Newton, Cliff Pickens, Chris Lowe, Gary Meyers and Tolbert Rout. Plaintiff offers no narrative explanation as to who such persons are and why their particular files are relevant to Plaintiff's issues. Upon review of other pleadings the court is able to discern that:

- a. Cliff Pickens was formerly a Complex Shift Superintendent and was laterally transferred on May 12, 1999, sic, "from Complex Shift Superintendent to Refinery Shift Superintendent, Dept. 26 to Complex Shift Superintendent to Refery

Shift Superintendent." (HOVENSA's response to interrogatory no. 13).

- b. Chris Lowe is an Area Manager (HOVENSA's response to interrogatory no. 11).
- c. Gary Meyers (Mares) is a Complex Shift Superintendent (HOVENSA's response to interrogatory no. 12) and was an Area Manager at sometime (HOVENSA's response to interrogatory no. 15).
- d. Tolbert Routt was an Area IV Manager (HOVENSA's response to interrogatory no. 2).

Accordingly, HOVENSA shall provide the following information from its personnel files:

- a. Cliff Pickens
Qualifications and experience for position of Complex Shift Superintendent and pay and benefits (including housing) at such position from October 30, 1998 to date.
- b. Chris Lowe
Qualifications and experience for position of Area Manager and pay and benefits (including housing) at such position from October 30, 1998 to date.

c. Gary Mares

Qualifications and experience for positions as Complex Shift Superintendent and Area Manager, and pay and benefits (including housing) at such positions from October 30, 1998 to date.

d. Tolbert Routt

Qualifications and experience for positions as Area IV Manager and pay and benefits (including housing) at such position from October 30, 1998 to date.

e. Plaintiff's motion is otherwise DENIED.

14. Regarding Demand for Production No. 3

Plaintiff does not explain who Joel Stephens is nor why his file is relevant hereto. The Court cannot readily locate any appropriate reference for Mr. Stephens and accordingly Plaintiff's motion is DENIED.

15. Regarding Demand for Production No. 8

HOVESNA shall provide all information from its personnel files concordant with the requirements and limitation set out paragraph no. 8(a)(1-3) above (regarding interrogatories no. 8-12) and in paragraph No. 10(a)(1-2) (regarding interrogatories no. 16-18).

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ENTER:

Dated: October 29, 2002

_____/s/_____
JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By: _____
Deputy Clerk