

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM MARCHIONNI,	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 98-6491
SOUTHEASTERN PENNSYLVANIA	:	
TRANSPORTATION AUTHORITY,	:	
G. ROGER BOWERS, Esq., THOMAS	:	
CAIN, JOSEPH J. DEVANNEY, Esq.	:	
PETER DIACZENKO, EILEEN KATZ, Esq.	:	
VINCENT J. WALSH, Esq.	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

February 2, 2000

Presently before the Court is the Defendants' Motion to Dismiss. For the reasons stated below, the Motion is Granted in part and Denied in part.

I. PROCEDURAL HISTORY

On December 5, 1996, Plaintiff William Marchionni's ("Plaintiff") employment with Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") was terminated. On November 5, 1998, Plaintiff initiated this action in the Court of Common Pleas, Philadelphia County, by filing a Praecipe and Writ of Summons. SEPTA removed the case to this Court on November 14, 1998. No further action was taken regarding this case until October 30, 1999, when SEPTA filed a Motion to Compel Plaintiff to File a Complaint. Plaintiff filed the

Complaint on November 5, 1999, naming SEPTA and six of its officials as Defendants.¹

Apparently, the clerk's office was assigned an incorrect docket number. On January 28, 1999, this Court granted an Order stating that all pleadings filed in William Marchionni v. SEPTA were to be considered *nunc pro tunc* to have been filed under the correct civil action number.

Therefore, this Court recognizes that the Plaintiff's Complaint was filed on November 5, 1999.

II. FACTUAL BACKGROUND

Plaintiff began working for SEPTA in 1983 and was promoted to maintenance manager in 1989. On October 4, 1996 and November 1, 1996, SEPTA investigators observed two union employees under Plaintiff's supervision retrieve envelopes containing money and football pools from the Hospital at the University of Pennsylvania. Mr. Marchionni was interviewed concerning these incidents on two occasions. Eventually, he was terminated on December 5, 1996. Plaintiff requested and received a post-determination hearing to challenge the basis for his discharge. On February 28, 1997, Defendant Thomas Cain, Esq. ("Cain"), issued an opinion and decision upholding Plaintiff's discharge from employment.

Plaintiff challenged the constitutionality and fairness of the hearing process in the Philadelphia Court of Common Pleas. The court ordered a new hearing for Plaintiff. SEPTA appealed this order up the Supreme Court of Pennsylvania, which ruled in Plaintiff's favor on March 8, 1999. A new post-termination proceeding has not been held. Plaintiff also asserts that

1. The officials included, G. Roger Bowers, Esq., Thomas Cain, Esq., Joseph J. Devanney, Esq., Peter Diaczenko, Eileen Katz, Esq. and Vincent J. Walsh, Esq. (collectively, the "Individual Defendants").

he was terminated because he refused to cooperate with SEPTA officials in their unfounded investigation of an attorney, Robert A. Kossef.²

III. LEGAL STANDARD

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at *1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993). The Court must determine whether, under any reasonable reading of the pleadings, the law allows the plaintiff a remedy. See, Nami v. Fauver, 82 F.3d 63, 65 (3d. Cir. 1996).

2. Plaintiff alleges that he was terminated because he refused to cooperate with SEPTA officials in an investigation of Robert Kossef, an attorney who represented several railroad employees in various law suits.

IV. DISCUSSION

A. § 1983 and Pennsylvania Constitution (Counts I and VI)

Defendants argue that the Plaintiff's claims under 42 U.S.C. § 1983 and the Pennsylvania Constitution are time-barred under the applicable statute of limitations. It is agreed by the parties that the two-year statute of limitations applicable to personal injury actions in Pennsylvania is the correct standard. The Plaintiff concedes that he knew or had reason to know of the illegal activity that forms the basis for his cause of action no later than December 5, 1996. The parties differ though on whether the statute was tolled by the filing of the Praecipe in state court on November 5, 1996.

In Pennsylvania, a civil action is commenced by filing a complaint, or by filing a Praecipe for Writ of Summons. Pa. R. Civ. Pro. 1007(1). The action was commenced in state court on November 5, 1998. The Defendants do not give any reason to suggest that Plaintiff had reason to know of any of the alleged injuries prior to the November 6, 1996 meeting with Defendant Diaczenko. Therefore, this action was timely filed and Counts I and VI are not time barred.

B. Injunctive Relief (Count II)

In Count II, the Plaintiff requests injunctive relief that would restore him to his position as a maintenance manager with SEPTA. Defendants argue that the count should be dismissed under the equitable doctrine of laches. A request for injunctive relief has no specifically applicable statute of limitations. See King v. Township of East Lampeter, 17 F.Supp.2d 394 (1998). The doctrine of laches may act as a bar to untimely requests for injunctive relief in connection with at § 1983 claim. However, laches is not a defense to an

action filed within the applicable statute of limitations. See Ivani Contracting Corp. v. City of New York, 103 F.3d 257, 260 (2d Cir.1997) (laches can not be used in § 1983 action when legal claim is not time barred); Ashley v. Boyle's Famous Corned Beef Co., 66 F.3d 164 (8th Cir.1995). Since, as discussed above, the statute of limitations has not expired on Plaintiff's §1983 cause of action, the doctrine of laches can not bar Plaintiff's claim for injunctive relief.

C. Public Policy Claim (Count III)

Pennsylvania recognizes a cause of action for wrongful discharge "only in the absence of a statutory remedy and only when important and well recognized facets of public policy [are] at stake." Rettinger v. American Can Co., 574 F.Supp. 306, 311 (M.D.Pa.1983) Pennsylvania courts recognize this public policy-wrongful discharge cause of action only when the employment is at-will. Harrison v. Fred S. James, P.A., Inc., 558 F.Supp. 438 (E.D.Pa.1983). Thus, this cause of action may be pursued only if no statutory or contractual remedy is available. See Darlington v. Gen Elec., 350 Pa. Super. 183, 208, 604 A.2d 306, 318 (1986). Defendants claim that SEPTA employees are "just cause" employees who enjoy statutory remedies for allegedly wrongful discharge. The Plaintiff argues that the cause of action survives because he never alleged that he was a "just cause" employee³, although he admits being a SEPTA employee.

SEPTA's enabling statute defines SEPTA officers and employees as just cause employees. See 74 Pa. C.S.A. § 1724(a)(3) (" No officer or employee shall be discharged or demoted except for just cause"); Murphy v. SEPTA, 1993 WL 313133 (E.D. Pa. August 9,

3. The Plaintiff actually does admit being a just cause employee in ¶ 20 of the Complaint, attached as Exhibit A to the Defendant's memorandum.

1993)(It is undisputed that the plaintiff, as an employee of SEPTA, enjoyed the statutory status of a just cause employee). As a SEPTA employee, Plaintiff is not entitled to a public policy cause of action. Plaintiff has already used the appropriate remedy of a post-termination hearing.

Therefore, Count III must be dismissed.

D. Punitive Damages (Count IV)

The Supreme Court has held that a court is permitted to "assess punitive damages in an action under § 1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others". Smith v. Wade, 461 U.S. 30, 56 (1983). Plaintiff acknowledges that punitive damages can not be recovered against Defendant SEPTA. See Bolden v. SEPTA, 953 F.2d 807 (3d. Cir. 1991) (SEPTA like a municipal corporation, is immune from punitive damages under § 1981a(b)(1)). Likewise, the Individual Defendants, in their official capacities, are immune from suit. See Owens v. City of Philadelphia, 1998 WL 240526, * 13 (E.D. Pa. May 13, 1998) (official capacity suits are in effect suit against the governmental entity). For liability to attach at the individual level under § 1983, the state official must have been personally involved in the challenged conduct or knowingly acquiesced in it; liability cannot be predicated on principles of respondeat superior alone. See Paratt v. Taylor, 451 U.S. 527, 537 n. 3 (1981); accord Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir.1988) ("Personal involvement can be shown through allegations of personal direction or of actual knowledge and acquiescence ... made with appropriate particularity."). The Complaint contains sufficient allegations of individual involvement so that punitive damages against the Individual Defendants in their individual capacities must remain a possibility at this stage of the proceedings.

V. CONCLUSION

For the reasons stated above the Defendant's Motion is Granted only with respect to Count III. The Defendants Motion is Denied in all other respects.

An appropriate Order follows.

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VINCENT J. WALSH, Esq.	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 2nd day of February, 2000, upon consideration of Defendants' Motion to Dismiss and the Plaintiff's Response thereto; it is hereby **ORDERED** that Defendants' Motion is **GRANTED** with respect to Count III of Plaintiff's Complaint and **DENIED** in all other respects.

BY THE COURT:

RONALD L. BUCKWALTER, J.