IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

LAWRENCE WATSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 02-2587-DV
	)	
BARLOWORLD FREIGHTLINER, INC.,	)	
	)	
Defendant.	)	

ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW ADMISSIONS

On September 4, 2003, the defendant, Barloworld Freightliner, Inc., filed a motion pursuant to Federal Rule of Civil Procedure 36(b) to withdraw admissions that were deemed admitted by default pursuant to Rule 36(a) due to Barloworld's untimely responses to plaintiff Lawrence Watson's requests for admissions. The motion was referred to the United States Magistrate Judge for determination.

Lawrence Watson filed suit against Barloworld on July 25, 2002, alleging unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964. Barloworld answered the complaint admitting some allegations and denying others. In September of 2002, Watson served Barloworld with discovery requests, including requests for interrogatories, requests for production of documents, and requests for admissions. The requests for admissions consisted of four separate requests. Barloworld's counsel did not carefully review the discovery requests, failed to notice that requests for admissions were included, and failed to respond to the requests

within the time period allowed by Rule 36.

Having received no responses to the discovery within thirty days after service, Watson's counsel sent a letter, dated December 2, 2002, to Barloworld inquiring about the responses and stating that since Barloworld had not served timely responses to the requests for admissions, all requests were deemed admitted. Barloworld's counsel denies recollection of receiving this letter, but admits finding the letter in his file while reviewing the file.

On March 17, 2003, Barloworld served responses to all of Watson's written discovery, including the requests for admissions. Barloworld admitted the matters set forth in Requests Nos. 1 and 3, but denied the matters set forth in Requests Nos. 2 and 4.[1] Baroloworld now seeks to have the court withdraw its defaulted admissions to Requests Nos. 2 and 4, or, in the alternative, to consider its responses to the requests to be timely served.

Barloworld argues that it has repeatedly and consistently denied the allegations by Watson contained in the Requests Nos. 2 and 4 since the inception of this litigation. Specifically,

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[1] Request No. 2 asks Baroloworld to "[a]dmit that Plaintiff, in reporting Ken Knych's racist comment to Scott Simmons, was opposing race discrimination, which is an employment practice illegal under Title VII and 42 U.S.C. § 1981." (Def.'s Rule 36(b) Mot. to Withdraw Admis., Ex. 1 at 1.)

Request No. 2 states: "Admit that there was a causal connection between Plaintiff's exercise of his civil rights, i.e., his report to Scott Simmons of Ken Knych's racist comment, and Defendant's termination of Plaintiff." (*Id.* at 2.)

Barloworld states it has denied the allegations in its statement of position submitted to the EEOC, in its answer to Watson's complaint, in its answers to interrogatories, and in the depositions of its representatives. Barloworld also denied the allegations in sworn denials in response to the request for admission, but admits these denials were served outside of the thirty days as required under Rule 36(a).

Rule 36(b) allows a court to "permit withdrawal or amendment [of an admission] when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits." FED. R. CIV. P. 36(b). A court, exercising discretion, may grant a party's motion to amend or withdraw defaulted admissions to assist in the "normal, orderly presentation of the case" absent a showing of prejudice by the other party. *St. Regis Paper Co. v. Upgrade Corp.,* 86 F.R.D. 355, 357 (W.D. Mich. 1980).

In determining whether to permit withdrawal of an admission, courts apply a two-prong test: (1) whether the presentation of the merits of the action will be subserved if the admission is not withdrawn; and (2) whether the party who obtained the admission will be prejudiced. *Kerry Steel, Inc. v. Paragon Indus., Inc.,* 106 F.3d 147, 154 (6th Cir. 1997); *Dynasty Apparel Indus. v. Rentz*, 206

F.R.D. 596, 601-02 (S.D. Ohio 2001); *Herrin v. Blackman*, 89 F.R.D. 622, 624 (W.D. Tenn. 1981). The first prong is satisfied when refusing withdrawal of the admission would practically eliminate any presentation on the merits of the case. *Dynasty*, 206 F.R.D. at 601. Here, Request No. 2 seeks an admission that Watson engaged in a protective activity and Request No. 4 seeks an admission that there was a causal connection between Watson's exercise of his civil rights and Barlowworld's termination of his employment. These two admissions would basically satisfy the critical elements of a prima facie case of retaliation and would virtually eliminate the need for Watson to present any evidence at trial to prove retaliation.

With regard to the second prong, the burden is on the party who obtained the admission to satisfy the court that he would be prejudiced if the admission is withdrawn. To date, depositions have been taken, interrogatories and other discovery devices have been propounded, and responses have been filed. In Watson's response to the present motion of Barloworld to withdraw admissions, Watson does not claim any prejudice, such as proof problems due to the unavailability of witnesses, for example, that may result if the defaulted admissions are withdrawn. Watson merely argues in his response that Barloworld cannot claim surprise because Barloworld had notice in December of 2002 that Watson was

going to treat the admissions as admitted. There is no prejudice in requiring Watson to perform the tasks that he originally set out to fulfill by bringing this lawsuit. Absent the defaulted admissions, Watson would be bound to prove disputed issues in his case in order to prevail on the merits. This requirement is the most fundamental one for a plaintiff and cannot be considered prejudicial under any circumstance. The court finds therefore that Watson has failed to satisfy the court that he will be prejudiced in any capacity by allowing Barloworld to withdraw the defaulted admissions.

Barloworld's motion to withdraw its defaulted admissions to Requests Nos. 2 and 4 is granted. In the interest of convenience, the court will allow Barloworld's untimely responses to the two requests for admissions that were served on Watson on March 17, 2003, to be accepted as timely filed. Each party will bear its own expenses and attorney fees incurred with respect to this motion.

IT IS SO ORDERED this 6th day of October, 2003.

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DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE