Klestadt v. US Doe, NYC Board of Education

2016 | Cited 0 times | E.D. New York | February 26, 2016

STATES COURT

OF YORK KURT

Plaintiff,

OF EDUCATION, U.S. DEPARTMENT OF EDUCATION, BOARD OF EDUCATION,

NICHOLAS GARAUFIS, United

b/r

MEMORANDUM ORDER

Pro Plaintiff

U.S. ("DoED") 1 ("BOE"), U.S.C. 2000e 2000e-17 VII"), ("ADEA"), U.S.C. (See Plaintiff

if

Procedure (See ("DoED's Mot.")

1 Plaintiff U.S. DOE U.S. DOE U.S. U.S.

Plaintiff U.S.

"head Supp. U.S. Postal Serv., 06-CV-5067 (JS) 2008 *4 2008)).)

U.S. DOE Secretary See 10-CV-3192 2012 *11 2012)

P. ("The

U.S. DOE Secretary U.S. UNITED DISTRICT EASTERN DISTRICT NEW
----------)(

Klestadt v. US Doe, NYC Board of Education

2016 | Cited 0 times | E.D. New York | February 26, 2016

L. KLESTADT,

-against-

ARNE DUNCAN, SECRETARY

and NYC

Defendants. ----------)(

G. States District Judge.

& 14-CV-2831 (NGG) (LB)

se Kurt L. Klestadt brings this employment discrimination action against Defendants the Department of Education and the New York City Board of Education for violations of Title VII of the Civil Rights Act of 1964, 42 §§ to ('Title and the Age Discrimination in Employment Act

29 §§ 621-34. Comp!. (Dkt. 1).) alleges that Defendants discriminated against him on the basis of his gender, national origin, and age. (Id. 7.) Defendants have moved to dismiss the Complaint for failure to state a claim pursuant to Federal Rules of Civil 12(b)(6). DoED's Not. of Mot. (Dkt. 33);

originally named the as a defendant in this action. (Comp!.) The court first notes that is the acronym for the Department of Energy rather than the Department of Education. Defendant DoED also argues that should have named Ame Duncan, Secretary of Education, Department of Education, because the proper defendant in a Title VII or ADEA lawsuit is the of the federal agency in which the alleged discriminatory actions occurred." (Mem. in ofDoED's Mot. (Dkt. 34) at 5-6 (quoting Tulin v.

No. (ARL), WL 822126, at (E.D.N.Y. Mar. 25, The DoED requests that the caption be amended to substitute with Duncan, which the court grants. Elhanafy v. Shinseki, No. (JG) (JMA), WL 2122178, at (E.D.N.Y. June 12, (amending caption to include proper defendant in a prose action); see also Fed. R. Civ. 15(a)(2) court should freely give leave [to amend] when justice so requires."). The Clerk of Court is respectfully directed to replace with Ame Duncan, of Education, Department of Education, in the case caption. BOE's ("BOE's Mot.") GRANTS GRANTS

BACKGROUND

(Comp!.'\[1980, BOE. (Id.'\[

1980s. (PL Opp'n ("Pl. Opp'n") Plaintiff BOE. (Comp!.'\[8-9.)2

Klestadt v. US Doe, NYC Board of Education

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Plaintiff October 20, 2013, 2014, '\I'll

Plaintiff School

(Id.'\[Plaintiff

(IQ) Plaintiff

On Plaintiff

'"they' [Plaintiff] job." (IQ) United

Plaintiff

Not. of Mot. (Dkt. 28-1).) For the reasons stated below, the court

both motions to dismiss, and Plaintiff leave to amend the Complaint. I.

The following facts are drawn from the Complaint and the court takes them as true for purposes of Defendants' motions to dismiss.

Plaintiff is a male of German national origin and was born in 1928. 7.) In he became a probationary teacher at the 8.) He received tenure at some point during the 's Aff. in to Defs.' Mot. 's (Dkt. 28-4) at 3.)

alleges a series of incidents during his employment with the 8 & Specifically, alleges that he was discriminated against on 1993, February 23, and March 3, on the basis of his gender, national origin, and age. (Id.

5, 7.)

While was working at the High of Graphic Communication Arts, the Dean of the school claimed that Plaintiff allowed one of his students to roam the halls unattended. 8.) disputed this claim and informed his supervisor that he generally does not allow his students out of the classroom. While working at a separate school,

was assigned to patrol the halls, which he explains was not part of his duties as a teacher. (Id. at 8.) another occasion, received a telephone message from an unspecified person, in which the person stated, ... were after or better [his]

After these incidents, Plaintiff consulted with a colleague at the Federation of Teachers, a teachers'

union, who told Plaintiff that he would receive a conference with the

2

used a prose fonn complaint to initiate the instant action, appending additional pages to end of the fonn for further allegations. The pro se form contains enumerated paragraphs, but the additional pages do not. The court will cite to paragraph numbers where available, and the page numbers of the Complaint otherwise.

2 (.!QJ Plaintiff October 20, (.!QJ Plaintiff

Plaintiff BOE, (.!QJ On 2013, BOE Plaintiff

Plaintiff 2012,

(.!QJ 2013, Plaintiff Q040,

Plaintiff "Do Call" (.!QJ "Do Call"

Plaintiff

(Pl. Opp'n

On 2014, BOE Plaintiff Plaintiff

P.S. 2014, 2014, 2014, BOE 2014, 2013, BOE Plaintiff

Plaintiff "suspended reasons." (.!QJ Plaintiff BOE. (.!QJ school administration ifhe resigned. resigned on 1993, after reaching 65 years of age. never received a conference with the administration. (Id.)

At some point after his resignation, began working again for the this time as a substitute teacher. March 15, the sent a letter to regarding his performance. (Id. at 7.) The letter noted that had been notified in an earlier December 3, letter that his performance at past assignments had been deemed unsatisfactory. The letter also stated that on or about February 22, received an assignment at and the school recorded his performance as unsatisfactory because he left his class unattended. (Id.) Because of this incident, the school requested that be placed on its Not list. A substitute teacher on a school's Not list will not be offered future assignments at the school. (Id.) explained that he missed one period of class because he fainted from an adverse reaction to a prescribed medication. 's

at 3.)

June 24, the sent another letter, informing that his performance was deemed unsatisfactory by 111 for a March 3, assignment due to poor classroom management. (July 9, Ltr. attaching June 24, Ltr. (Dkt. 4) at 2.) The June 24, letter also referenced a November 12, letter that notified that his performance at past assignments were unsatisfactory. (Id.) was more than 5 times for disciplinary (Comp!. at 8.) He claims that he has not seen any of the complaints about him. was never suspended during his prior employment with the

3 On 2014, Commission ("EEOC") iJ 10.) On

2014, EEOC "discriminated age."

CMJ EEOC "Right Sue" (MJ

On 2014, On 2015, BOE

Complaint. (BOE's On 2016,

2015. 2016,

Clark, 508 106, Cir. 2007).

See ATSI Commc'ns. Shaar Cir. 2007). "[A]

lawyers." U.S. (2007) "the

suggest," 470 Cir. 2006)

"sufficient face,"' U.S. (2009) Coro. 550

March 25, Plaintiff filed a charge with the Equal Employment 0pportunity

alleging that Defendants discriminated against him. (Id. March 29, the notified Plaintiff that it had reviewed his allegations that he was

against based on [his] national origin and (Id. at 6.) The results of the investigation was inconclusive. The dismissed the case, then issued Plaintiff a

to letter, which allowed Plaintiff to pursue his claims in federal court.

May 2, Plaintiff commenced the present action. April 3, the filed its fully briefed motion to dismiss the Mot.) February 19, the DoED filed its motion to dismiss, which the DoED represented it had

previously served on Plaintiff on January 23, (DoED's Mot.; see also Feb. 19, DoED Ltr. (Dkt. 35).) II. LEGAL STANDARD

A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal sufficiency of a plaintiffs claims for relief. Patane v. F.3d 112 (2d In reviewing a complaint, the court accepts as true all allegations of fact and draws all reasonable inferences from these allegations in favor of the plaintiff. Inc. v. Fund, Ltd., 493 F.3d 87, 98 (2d prose complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by Erickson v. Pardus, 551 89, 94 (internal quotation marks omitted). While submissions ofa pro se litigant must be construed liberally and interpreted to raise the strongest arguments that they Triestman v. Fed. Bureau of Prisons, F.3d 471, 474 (2d (internal quotation marks omitted), even a pro se complaint will be dismissed if it does not contain

factual matter, accepted as true, 'to state a claim to relief that is plausible on its Ashcroft v. Iqbal, 556 662, 678 (quoting Bell At!. v. Twombly,

4 U.S. 570 Plausibility "is requirement," "more

unlawfully." 550 U.S. "A

alleged." "[M]ere

level."' 120 2010) 550 U.S. DISCUSSION Plaintiff

"against

origin." U.S.C. ("[A]n

practice."). "against

age." U.S.C.

U.S.

Plaintiff Supp. 544, (2007)). not akin to a probability but requires than a sheer possibility that a defendant has acted Id. (citing Twombly, at 570). claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct Id. 'labels and conclusions' or 'formulaic recitation[s] of the elements of a cause of action will not do'; rather, the complaint's '[f]actual allegations must be enough to raise a right to relief above the speculative Arista Records. LLC v. Doe 3, 604 F.3d 110, (2d Cir. (quoting Twombly, at 555). III.

claims that Defendants discriminated against him on the basis of his gender, national origin, and age, in violation of Title VII and the ADEA. Title VII prohibits an employer from discriminating any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national

42 § 2000e-2(a)(l); see also id.§ 2000e-2(m) unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the The ADEA prohibits an employer from discriminating any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's 29 § 623(a)(l).

A. Claims against the Department of Education The Do ED argues that it should be dismissed from the action because was not a DoED employee. (Mem. in of Def. DoED's Mot. (Dkt. 34) at 3-5.) The court agrees. It is well settled that Title VII and ADEA claims do not lie against non-employers. Gulino v. N.Y.

5 State 460 370 2006) ("[T]he

VII 2014 6473507, 2014) ("[T]he

"plac[ing]

tasks." Salamon Our 2008)

Storage, 2000)).

BOE. (See Plaintiff

"manner means" Plaintiff

York Statute BOE Plaintiff's

Supp. ofBOE's VII

U.S.C. 2000e-5(e)(l) VII); U.S.C. 200 2003) VII); Sch., 2008) York, 300 EEOC

(VMS), 2014 Educ. Dep't, F.3d 361, (2d Cir. existence of an employer-employee relationship is a primary element of Title claims."); Sanders-Peay v. N.Y.C. Dep't of Educ., No. 14-CV-4534 (CBA) (MDG), WL at *3 n.3 (E.D.N.Y. Nov. 18, scope of the ADEA does not extend to claims against non-employers or individuals."). Where the existence of an employment relationship is disputed, courts analyze the parties' relationship under common law agency principles, special weight on the

extent to which the hiring party controls the 'manner and means' by which the worker completes her assigned

v. Lady of Victory Hosp., 514 F.3d 217, 227 (2d Cir. (quoting Eisenberg v. Advance Relocation & Inc., 237 F.3d 111, 117 (2d Cir. Here, Plaintiff does not allege that he ever worked for the DoED; he only alleges that he was an employee of the

Comp!. 8 & 8-9.) does not refer to the Do ED at all except in the caption of the case, and there are no suggestions that the DoED had any control over the and by which completed his assigned tasks. Accordingly, Plaintiff was not an employee of the DoED, and his claims against the DoED must be dismissed.

B. Claims against the New City Board of Education

I. of Limitation The first raises a threshold issue regarding the timeliness of certain of claims. (Mem. in Mot. (Dkt. 28-2) at 3-4.) As a prerequisite to filing a Title or ADEA claim in federal court, a plaintiff must first pursue the charges of discrimination with the Equal Employment Opportunity Commission. 42 § (Title 29

§ 626(d)(l) (ADEA); see also Deravin v. Kerik, 335 F.3d 195, (2d Cir. (Title Ximines v. George Wingate High 516 F.3d 156, 158 (2d Cir. (ADEA). In New Title VII and ADEA claims accruing more than days prior to the filing are time barred. Almontaser v. N.Y.C. Dep't of Educ., No. 13-CV-5621 (ILG)

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EEOC 2013-300

"continuing violation" "The

"' 400 2010)

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Plaintiffs Plaintiffs (See if

Plaintiff (See Plaintiff

"negative acts."

10019, Plaintiffs WL 3110019, at *5 (E.D.N.Y. July 8, 2014). Because Plaintiff filed his charge with the on March 25, 2014, all claims arising from acts occurring before May 29, days before March 25,

2014-are untimely.

Even if Plaintiff were to argue that his untimely claims are saved by the

exception, he has not shown that such exception applies here. continuing violation doctrine applies 'to cases involving specific discriminatory policies or mechanisms .... Valtchev v. Citv ofNew York, F. App'x 586, 588 (2d Cir. (quoting Lambert v. Genesee Hosp., F.3d 46, 53 (2d Cir. 1993)). If a plaintiff can show that a continuing discriminatory policy or mechanism existed, then acts pursuant to the policy or mechanism committed without the limitations period would be saved so long as one act occurred within the limitations period. Id. at 588-89. Allegations of discrete instances of discrimination, even similar ones, are insufficient. Id.

The incidents upon which claims are based consist mostly of negative evaluations of job performance. Comp!. 8 & 7-8.) These incidents occurred over a period of more than thirty years, during which time worked at different schools and in different capacities. id.) has not alleged that these acts were committed as part of a continuing discriminatory policy or mechanism. In any case, courts have held that

performance evaluations are considered discrete Almontaser, 2014 WL 31 at * 5 (collecting cases). allegations of discrete acts occurring over decades do not justify the application of the continuing violation exception. Accordingly, only acts occurring on or after May 29, 2013, can support Plaintiffs employment discrimination claims; all other claims are barred.

7 "it

plausible." 2014) Under "what

intent." York, 2015). Under

"but for" 14-CV-1900 2015 Sept. 2015).

Yet,

Plaintiff

EEOC. (See 'II EEOC Plaintiff "discriminated age").)

EEOC Plaintiffs

"reasonably agency." S.P.A., 2001)

"reasonably EEOC made."

359-60 2001) See Sicular Servs., 09-CV-0981 (AJP), 2010 423013, at* (S.D.N.Y. 2010) EEOC Sloth Supp. 2012)

N.Y.C. Supp. (S.D.N.Y. 2005)

\vhether 2. Claims for Discrimination. Although a complaint need not allege facts establishing each element of a prima facie case to survive a Rule 12(b)(6) challenge, must at a minimum assert nonconclusory factual matter sufficient to nudge its claims across the line from conceivable to E.E.O.C. v. Port Auth. ofN.Y. & N.J., 768 F.3d 247, 254 (2d Cir. (internal quotation and alteration marks omitted). Title VII, must be plausibly supported by facts alleged in the complaint is that the plaintiff is [I] a member ofa protected class, [2] was qualified, [3] suffered an adverse employment action, and [4] has at least minimal support for the proposition that the employer was motivated by discriminatory Littlejohn v. City of New 795 F.3d 297, 311 (2d Cir. the ADEA, in contrast to Title VII, it is insufficient that an employer's discriminatory intent was a motivating factor in the adverse employment action; rather, age must be the cause. Ingrassia v. Health & Hosp. Com., No. (PKC), WL 5229444, at *6 (E.D.N.Y. 8,

Plaintiff asserts claims for discrimination based on gender, national origin, and age. 3 he does not allege, even conclusorily, that his gender, national origin, or age played a role in the

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alleges discrimination based on his gender, but it does not appear that he exhausted his administrative remedies by first asserting gender discrimination claims before the Compl. 7 & 6 (letter from the

stating that alleged he was against because of[his] national origin and Because a filing with the is a prerequisite for a federal Title VII or ADEA action, gender discrimination claims would be barred unless his gender discrimination claims are related to those that were filed with the Legnani v. Alitalia Linee Aeree Italiane. 274 F.3d 683, 686 (2d Cir. (internal quotation marks omitted). A claim is related if the conduct complained of would fall within the scope of the investigation which can reasonably be expected to grow out of the charge that was Fitzgerald v. Henderson, 251F.3d345, (2d Cir. (internal quotation marks omitted). Courts have found that gender discrimination claims are not reasonably related to national origin or age discrimination claims.

v. N.Y.C. Dep't of Homeless No. (AKH) WL 12-14 Feb. 4, (dismissing gender discrimination claims because they were not reasonably related to the claims based on race, age, and religion); see also v. Constellation Brands. Inc,, 883 F. 2d 359, 369 (W.D.N.Y. (dismissing race, national origin, and color discrimination claims as not reasonably related to gender discrimination claim); Bedden-Hurley v.

Bd. of Educ., 385 F.

2d 274, 277 (dismissing gender discrimination claims as not reasonably related to age discrimination claims). However, the court need not decide at this stage Plaintiffs gender discrimination

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BOE.

ii Plaintiff "As

10/20/1993." Plaintiff

"constructive discharge," Plaintiff

BOE "create[d) involuntarily."

2003). 4 2013, Plaintiffs

Plaintiff

VII

Plaintiffs

Plaintiff BOE

U.S.C. 2000e-3(a) U.S.C. allege"(!)

Plaintiff's EEOC Plaintiffs Order.

iJ 1980, BOE, October 20, See 2014 3110019, •4 adverse employment actions supposedly undertaken by the In fact, there are no references to his gender or national origin in his statement of the facts, and only one mention of his age. (Comp!. 8, at p.8-9.) In the one instance where cites his age, it is in passing: I had reached 65 years I resigned on does not claim that he was forced to resign in 1993 because he was discriminated against based on his age. Even if his claim is one of

fails, as he must, to allege facts supporting an inference that the a work atmosphere so intolerable that he [wa)s forced to quit Terry v. Ashcroft, 336 F.3d 128, 151-52 (2d Cir. In any event, as explained previously, incidents occurring before May 29, are time barred, so any claim related to 1993 resignation has long grown stale. In short, does not provide even minimal support that any alleged

adverse employment actions were motivated by discriminatory intent as Title mandates, much Jess that any discriminatory intent was the but for cause as the ADEA requires.

gender, national origin, and age discrimination claims must be dismissed.

3. Claims for Retaliation also claims that the retaliated against him, but it is unclear for what. Both Title VII and the ADEA prohibits an employer from retaliating against an employee for protesting actions made unlawful by each respective statute. 42 § (Title VII); 29 § 623(d) (ADEA). To establish claim for retaliation, a plaintiff must participation in a protected activity; (2) that the defendant knew of the protected activity; (3)

claims are properly before the court, because submissions to the are not part of the record, and because gender discrimination claims are disposed of by other means in this 4 Plaintiff also does not allege that the incidents occurring prior to his resignation related to the time period leading up to his resignation such that they were relevant. (Comp I. 8 & 8 (describing events that occurred between when he began his employment with the and 1993, when he resigned, but without specifying when these incidents occurred).) Almontaser, WL at (disregarding numerous allegedly discriminatory acts because they occurred a year or more prior to plaintiff's retirement).

9 action." 2015 2010 2010))

See 370 206, 2010). "The

trait." 2015

"statement

relies." Patane, 508

Plaintiff

Plaintiffs Plaintiffs

Plaintiff "[w]hen

stated." Supp. "A

claims." York, Supp.

10 adverse employment action; and (4) a causal connection between her protected activity and the adverse employment Ingrassia, WL 5229444, at *9 (quoting Pocino v. Culkin, No. 09-CV-3447, WL

3516219, at *2 (E.D.N.Y. Aug. 31, (internal alteration marks omitted). Protected activity include both formal complaints of discrimination as well as informal protests to management. La Grande v. DeCrescente Distrib. Co., F. App'x 212 (2d Cir. employee's complaints must make clear to the employer that the employee believes she is being discriminated against on the basis of a protected Ingrassia, WL 5229444, at *9. While a plaintiff need not establish a prima facie case to survive a motion to dismiss, a retaliation claim must be dismissed ifthe of facts [is] so conclusory it fails to give notice of the basic events and circumstances on which a plaintiff Id. (quoting FJd at 115).

Nowhere in the Complaint does allege that he made any formal or informal protests about being discriminated against on the basis of a protected trait. The absence of any factual allegation regarding the very discrimination upon which claims are based is again fatal. retaliation claims must be dismissed.

C. Leave to Amend

has not requested leave to amend his Complaint. However, addressing a pro se complaint, a district court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be

Aguino v. Prudential Life & Cas. Ins. Co., 419 F. 2d 259, 278 (E.D.N.Y. 2005). court should only deny a pro se plaintiff leave to amend when it is beyond doubt that the plaintiff can provide no set of facts in support of his amended Harrison v. New

95 F. 3d 293, 331 (E.D.N.Y. 2015) (internal quotation marks omitted).

See JP 2012 2012).

"it claims." Supp. Plaintiff

"Do Call" Plaintiff

Plaintiff

2013, See CONCLUSION

BOE's Plaintiff

(60) Order Plaintiffs Plaintiffs

SO

York 2016

/NICHOLAS GARAUFIS l United States Nevertheless, leave to amend need not be granted if repleading would be futile. Id. Courts have found that amendments to time barred claims are futile. Apostolidis v. Morgan Chase & Co., No. 11-CV-5664 (JFB) (WDW), WL 5378305, at *9 (E.D.N.Y. Nov. 2,

Despite the paucity of allegations relating to any form of discrimination, the court cannot say that is beyond doubt that the plaintiff can provide no set of facts in support of his amended Harrison, 95 F. 3d at 331. has alleged, for example, that he received negative performance reviews that led to his placement on multiple schools' Not

lists. While fails to connect the dots and explain how these incidents are related to his discrimination claims, he may yet be able to do so if given a second chance. The court therefore grants leave to amend his Complaint to the extent he is able. Leave to replead, however, does not extend to claims that are time barred, i.e., incidents occurring before May 29, because such amendment would be futile. supra 111.B.1. IV.

For the foregoing reasons, Defendant DoED's motion to dismiss the Complaint is GRANTED, Defendant motion to dismiss the Complaint is GRANTED, and is GRANTED leave to amend the Complaint within sixty days from the date of entry of this

to include additional supporting allegations addressing the deficiencies raised herein.

failure to amend the Complaint in a timely fashion will result in the dismissal of case with prejudice for failure to prosecute. ORDERED.

Dated: Brooklyn, New

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G. District Judge

s/Nicholas G. Garaufis