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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
v.	)	Case No. 13-1240
STAR TRANSPORT, INC.,	)	
Defendant.	)	

O R D E R

Now before the Court is a Motion for Summary Judgment by Plaintiff, Equal Employment Opportunity Commission ("EEOC") and the Alternative Motion for Partial Summary Judgment on Punitive Damages by Defendant. For the reasons set forth below, the EEOC's Motion for Summary Judgment [38] is GRANTED IN PART and DENIED IN PART, and Defendant's Alternative Motion for Partial Summary Judgment [39] is also DENIED..

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 as the claims asserted in the Complaint present federal questions under Title VII, 42 U.S.C. § 2000e and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

BACKGROUND

In 2007, Star Transport carried 66,130 total loads, with no loads containing alcohol. In 2008, only one load out of a total of 61,138 loads contained alcohol. In 2009, Star Transport carried 15,636 loads, of which 474 contained alcohol. In December 2008 or January 2009, Edward Briggs became Star Transport's Human Resources Manager. He received no training on anti-discrimination laws, was not aware of any exceptions to the "at will" employment policy,

had never heard of Title VII, and had no understanding of the company's obligation to accommodate an employee's religious beliefs. Gene Ozella was Star Transport's Personnel Manager from 2008 to 2011; he also received no training on anti-discrimination laws .

Charging Party Mahad Abass Mohamed ("Mohamed") began working for Star Transport on April 28, 2009; he is a Muslim and studied the Koran at a madrassah in Kenya for seven years. Charging Party Abdikarim Hassen Bulshale ("Bulshale") started working for Star Transport on January 15, 2008; he is also a Muslim and studied the Koran at a madrassah in Somalia. As Muslims, their religious beliefs prohibit them from transporting alcohol. Mohamed informed Star Transport of his religious prohibition against transporting alcohol when he refused to transport a load containing beer on July 28, 2009; he continued to be assigned to loads from this date until his termination. Bulshale informed Star Transport of his religious prohibition against transporting alcohol when he refused to transport a load containing beer on August 8, 2009. Both drivers called their dispatcher as soon as they found out that they were assigned a load containing alcohol.

Star Transport understood that when Mohamed and Bulshale informed the company of their religious prohibition against transporting alcohol, they were communicating a need for a religious accommodation. It is undisputed that Star Transport's computer system allows it to attach notes to a driver's code that would alert the dispatcher to any restrictions or accommodations needed for the driver. No effort was made by the company to discuss accommodations for their religious beliefs or to inform them that they could be terminated for refusing the loads containing alcohol. Star Transport "was always swapping" loads between drivers, sometimes with no notice; it could have accommodated their request but stated that it

did not do so as a result of its "forced dispatch" policy, as "[a] driver's refusal to drive a load for a religious reason would present an undue hardship unless there were special circumstances."

Employees who violate the forced dispatch policy are subject to Star Transport's progressive discipline policy. This policy employs the following progression: first offense is a verbal reprimand; second offense is a written reprimand and possible suspension; and third offense is release from employment. Neither Mohamed nor Bulshale had been disciplined for any reason prior to their refusal to transport alcohol. Star Transport provides exceptions to the forced dispatch policy for family emergency, illness, sickness, illness or sickness in the family, and bereavement. Although there were occasions where employees violated the forced dispatch policy, no other drivers were terminated for violating the forced dispatch policy in the 12 months before the terminations in this case. However, Star Transport terminated Bulshale and Mohamed on August 11, 2009 on Ozella's recommendation. It is undisputed that previous job performance, attendance, and/or low production were not factors in the terminations and that Star Transport has not conducted any investigation into the cost associated with their refusal to transport alcohol. Miller Brewing Company was the only client that required the transportation of alcohol, and there is no evidence of any costs or fines levied against Star Transport by Miller Brewing Company for the delay in the beer loads. While it can sometimes take up to a day to find a replacement driver, it took only 2.25 hours for a replacement driver to pick up Mohamed's load and 3.25 hours for a replacement driver to pick up the load that had been assigned to Bulshale.

Bulshale and Mohamed both found employment approximately one month after their terminations. On May 29, 2013, the EEOC brought this action seeking to correct allegedly

unlawful employment practices on the basis fo religion and to provide appropriate relief to the Charging Parties. The EEOC has now moved for summary judgment, and this Order follows.

STANDARD OF REVIEW

A motion for summary judgment will be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A material fact is one that might affect the outcome of the suit. *Insolia v. Philip Morris, Inc.*, 216 F.3d 596, 598-99 (7th Cir. 2000). The moving party may meet its burden of showing an absence of material facts by demonstrating "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party meets its burden, the non-moving party then has the burden of presenting specific facts to show there is a genuine issue of material fact. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986).

On summary judgment, the inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co., Ltd.*, 475 U.S. at 588. Any disputed issues of fact are resolved against the moving party. *GE v. Joiner*, 552 U.S. 136, 143 (1997). The moving party has the responsibility of informing the Court of portions of the record or affidavits that demonstrate the absence of a triable issue. *Celotex Corp.*, 477 U.S. at 323. Federal Rule of Civil Procedure 56(e) requires the non-moving party to go beyond the pleadings and produce evidence of a genuine issue for trial. *Id*. at 324. Where a proposed statement of fact is supported by the record and not adequately rebutted, a court will accept that statement as true for purposes of summary judgment; an adequate rebuttal requires a citation to specific support in the record. *Drake v. Minnesota Mining & Mfg. Co.*, 134 F.3d 878, 887 (7th Cir. 1998). This Court must then determine whether there is a need for trial --

whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may be reasonably resolved in favor of either party. A*nderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

DISCUSSION

Title VII prohibits employers from discriminating "against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(l); *Meritor Savings Bank. FSB v . Vinson,* 477 U.S. 57, 106 S.Ct. 2399, 2404 (1986). To prove a claim for failure to accommodate religion, an employee must establish:

> the observance or practice conflicting with an employment requirement is religious in nature; (2) the employee called the religious observance or practice to the employers attention; and (3) the religious observance or practice was the basis for the employee's discharge or other discriminatory treatment.

Adeyeye v. Heartland Sweeteners, LLC, 721 F.3d 444, 449 (7th Cir. 2013), *citing Porter v. City of Chicago*, 700 F.3d 944, 951 (7th Cir. 2012). If the employee satisfies these elements, the burden shifts to the employer to show that "it could not accommodate the employee's religious belief or practice without causing the employer undue hardship." *Id., citing Baz v. Walters*, 782 F.2d 701, 706 (7th Cir. 1986).

Here, the EEOC's claim is straightforward. Upon learning that they had been assigned loads containing alcohol, Mohamed and Bulshale both contacted their dispatchers and advised that they could not transport alcohol as a result of their religious beliefs. Star Transport admits that it understood these communications to be expressing a need for religious accommodation. Although the issue of whether the religious practice was the basis for the discharge and the undue hardship inquiry may have posed questions of material fact,

Star Transport has ended the inquiry by admitting liability both as to liability for compensatory damages as specified in paragraphs D and E of the EEOC's prayer for relief (namely, past and future pecuniary losses resulting from the unlawful employment practices including medical expenses and job search expenses and past and future non-pecuniary losses including emotional pain, suffering, loss of enjoyment of life, humiliation, and inconvenience), as well as a finding against Star Transport on the affirmative defense of failure to mitigate such damages. However, Star Transport does not concede liability on the question of equitable relief or punitive damages and affirmatively seeks summary judgment in its favor on the issue of punitive damages.

Punitive damages require a demonstration that Star Transport engaged in intentional discrimination "with malice or with reckless indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. § 1981a(b)(1).

> First, the plaintiff must show that the employer acted with "malice" or "reckless indifference" toward the employee's rights under federal law. A plaintiff "may satisfy this element by demonstrating that the relevant individuals knew of or were familiar with the anti-discrimination laws" but nonetheless ignored them or lied about their discriminatory activities. The plaintiff has the burden of proving "malice" or "reckless indifference" by a preponderance of the evidence. Second, the plaintiff must establish a basis for imputing liability to the employer based on agency principles. Employers can be liable for the acts of their agents when the employer authorizes or ratifies a discriminatory act, the employer recklessly employs an unfit agent, or the agent commits a discriminatory act while "employed in a managerial capacity and ... acting in the scope of employment." Third, when a plaintiff imputes liability to the employer through an agent working in a "managerial capacity ... in the scope of employment," the employer has the opportunity to avoid liability for punitive damages by showing that it engaged in good-faith efforts to implement an anti-discrimination policy.

EEOC v. Autozone, Inc., 707 F.3d 824, 835 (7th Cir. 2013), *citing Kolstad v. American Dental Ass'n.*, 527 U.S. 526, 533-46 (1999). Negligence is insufficient to support an award for punitive damages. *Id.*, *citing Gile v. United Airlines, Inc.*, 213 F.3d 365, 368-70 (7th Cir. 2000).

Here, there does not appear to be any dispute that the managerial agents who failed to accommodate the Charging Parties were acting within the scope of their employment, and there is no evidence of any good-faith efforts to implement an anti-discrimination policy. The issue is the first element – whether Star Transport acted with "malice" or "reckless indifference" toward Mohamed and Bulshale's rights under federal law.

It is undisputed that neither Briggs (the Human Resources Manager) nor Ozella (the Personnel Manager) received any training from Star Transport on anti-discrimination laws. Briggs states that he "didn't have an understanding" of the company's obligation to accommodate an employee's religious beliefs and was unaware of any exception to the company's at will employment policy; Ozella's understanding of the obligation to make religious accommodations is unclear on the current record. However, it is also undisputed that Star Transport understood that Bulshale and Mohamed were communicating their need for a religious accommodation when they informed the company of their prohibition against transporting alcohol and that their request could have been accommodated. This suggests that the company itself had some awareness of federal law. While these facts may not be sufficient to support a finding of deliberate malice, they present a genuine issue of material fact as to whether Star Transport was recklessly indifferent to the Charging Parties' rights under federal law or acted "in the face of a perceived risk that its actions will violate federal

law." *May v. Chrysler Group, LLC*, 716 F.3d 963, 974 (7th Cir. 2013). As such, Star Transport's request for summary judgment on the issue of punitive damages must be denied.

CONCLUSION

For the reasons set forth above, the EEOC's Motion for Summary Judgment [38] is GRANTED IN PART and DENIED IN PART, and Defendant's Alternative Motion for Partial Summary Judgment on Punitive Damages [39] is also DENIED. This matter remains set for final pretrial conference at 2:30pm on April 16, 2015.

ENTERED this 16th day of March, 2015.

s/ James E. Shadid
James E. Shadid
Chief United States District Judge