

[Cite as *Aimiuwu v. Central State Univ.*, 2008-Ohio-4795.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

DR. VICTOR O. AIMIUWU

Plaintiff

v.

CENTRAL STATE UNIVERSITY

Defendant

Case No. 2006-01718

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiff brought this action alleging discrimination on the basis of national origin, misrepresentation, and violation of public policy. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Plaintiff was born in Nigeria. From 1971 to 1976, plaintiff studied at Kent State University and obtained both a master's degree and a Ph.D. in physics. Thereafter, plaintiff returned to Nigeria to teach at the university level. In 1995, plaintiff left Nigeria for the United States and taught in New Jersey and New York.

{¶ 3} In April 1999, plaintiff saw a classified advertisement for a position as associate professor of physics at defendant's university. Plaintiff applied for the position and received an interview. On August 25, 1999, defendant sent plaintiff an employment offer via facsimile. Plaintiff testified that when he received the written offer, he discovered that it differed from the position that he had applied for, inasmuch as the job posting was for a position as "associate professor" and the offer was for a position as "assistant professor." According to plaintiff, he telephoned the committee chair and told him that he would not accept the position; that it was later communicated to him that if he came to the university his appointment would be changed to an associate professor position; and that the situation would be "straightened out." On August 31, 1999, plaintiff accepted defendant's offer of appointment as an assistant professor of physics. On September 30, 1999, plaintiff signed a faculty contract of employment with defendant for the position of assistant professor of physics in the fall, winter, and spring quarters of academic year 1999-2000.

{¶ 4} On October 29, 1999, plaintiff sent Dr. Terrence Glass, Dean of Arts and Sciences, a letter requesting an “upgrade” of his appointment from an assistant professor of physics to an associate professor of physics and science education. In his letter, plaintiff cited an advertisement that had been posted in the April 2, 1999 edition of “The Chronicle of Higher Education,” wherein defendant solicited candidates for the faculty position of associate professor of physics and science education. Plaintiff asserted in the letter that during his interview, no one informed him that the position was for anything other than associate professor. In addition, plaintiff urged Dean Glass “to review my appointment as an Assistant Professor and correct the injustice of the Search Committee by upgrading my appointment to an Associate Professor which was the position advertised, the rank for which I was interviewed, and the position for which I am more than qualified.” (Defendant’s Exhibit E.)

{¶ 5} In a letter dated November 23, 1999, Dean Glass responded to plaintiff’s letter by stating that the “search committee did consider your request at the time of making the offer, and reiterated its position that the appointment should be at the rank of Assistant Professor.” Dean Glass went on to state that the promotion and tenure process provided the way in which plaintiff’s concerns could be addressed. (Defendant’s Exhibit F.)

{¶ 6} On March 6, 2000, plaintiff sent a letter to Dr. Bonita T. Ewers, Vice President for Academic Affairs, wherein he again requested an “upgrade” of his appointment from assistant to associate professor. Plaintiff did not present evidence of any response to this letter; however, he testified that he was promoted to associate professor in 2001, after he had gone through the promotional process as set forth in the collective bargaining agreement.

{¶ 7} On September 3, 2004, plaintiff filed a grievance wherein he asserted that on July 22, 2004, defendant had violated Article 31.1 of the collective bargaining agreement. In his statement regarding the grievance, plaintiff alleged that the recruitment process leading up to his initial appointment as an assistant professor in

1999 was “grossly flawed and discriminatory” on the basis of his national origin. Plaintiff went on to state that his appointment was “downgraded” to assistant professor even though he responded to an ad seeking an associate professor; that it was downgraded because he did not have enough “American experience”; and that he decided to accept the appointment to assistant professor only after Dr. Ewers had promised him that she would “rectify the situation.” Plaintiff also stated that another faculty member, Dr. Suzanne Seleem, had recently been hired as an assistant professor of chemistry at a starting salary that was higher than his. (Defendant’s Exhibit N.)

{¶ 8} Defendant asserts that plaintiff’s claims are both time-barred and without merit. At the close of plaintiff’s case, defendant moved the court for dismissal of plaintiff’s claims pursuant to Civ.R. 41(B)(2) for the following reasons:

{¶ 9} “1) plaintiff’s claims regarding his initial appointment arose in 1999 and are now barred by the two-year statute of limitations;

{¶ 10} “2) plaintiff failed to present any evidence that he received a lower salary than other similarly situated employees due to his national origin; and,

{¶ 11} “3) plaintiff’s claim for violation of public policy must fail because he was not an at-will employee.

{¶ 12} The court held defendant’s motion in abeyance and allowed defendant to proceed with its case. The court will now rule upon the motion.

{¶ 13} Civ.R. 41(B)(2) provides: “(2) Dismissal; non-jury action. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff’s evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Civ. R. 52 if requested to do so by any party.”

{¶ 14} R.C. 2743.16(A) states, in relevant part: “civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.”

{¶ 15} The Tenth District Court of Appeals has held that R.C. 2743.16(A) applies to cases of employment discrimination filed in the Court of Claims. *McCoy v. Toledo Correctional Institution*, Franklin App. No. 04AP-1098, 2005-Ohio-1848. The court finds that plaintiff’s claim accrued at the latest on March 6, 2000, after he had sent Dr. Ewers a letter requesting an upgrade of his appointment. Pursuant to R.C. 2743.16(A), plaintiff was required to file his complaint in this court on or before March 6, 2002. Plaintiff filed his complaint on February 2, 2006, clearly beyond the two-year limitation period. Therefore, plaintiff’s claims regarding his appointment as assistant professor in 1999, including discrimination and misrepresentation (which the court construes as a claim for promissory estoppel) are time-barred.

{¶ 16} Plaintiff also asserts a claim for “public policy violation,” which the court construes as a claim for wrongful termination in violation of public policy, in accordance with the holding of the Supreme Court of Ohio in *Greeley v. Miami Valley Maintenance Contractors, Inc.* (1990), 49 Ohio St.3d 228. However, in order for an employee to bring a cause of action pursuant to *Greeley*, supra, that employee must have been an employee-at-will. *Haynes v. Zoological Society of Cincinnati* (1995), 73 Ohio St.3d 254, syllabus. Plaintiff’s employment was governed by a series of one-year contracts. Therefore, plaintiff was not an employee-at-will. Accordingly, plaintiff’s claim for “public policy violation” fails as a matter of law.

{¶ 17} Plaintiff next alleges “wage disparity/ discrimination.” According to plaintiff, Dr. Seleem was “inferior” to him but she was hired in 2004 at \$48,000 per year while he was making \$43,900 per year. Plaintiff testified that he filed a grievance with the Equal Employment Opportunity Commission (EEOC) over the pay differential but that his union did nothing about it.

{¶ 18} Even though plaintiff claims to have some cause of action that relates to the 2004 hiring of Dr. Seleem, the court is unable to conceive of a legal theory upon which relief may be granted under the facts of this case. To the extent that plaintiff is attempting to show that defendant's hiring decision in 2004 proves that he suffered discrimination in 1999, as stated above, any employment discrimination claim that plaintiff could have brought should have been filed by March 6, 2002.

{¶ 19} For the foregoing reasons, the court finds that upon the facts and the law that plaintiff has shown no right to relief. Accordingly, defendant's motion to dismiss plaintiff's claims pursuant to Civ.R. 41(B)(2) shall be granted, and judgment shall be rendered in favor of defendant.



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DECISION

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Judge Joseph T. Clark

JUDGMENT ENTRY

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This case was tried to the court on the issue of liability. At the close of plaintiff's case, defendant moved for dismissal of plaintiff's case pursuant to Civ.R. 41(B)(2). The court finds that plaintiff failed to produce sufficient evidence to support his claims and that upon the facts and the law plaintiff has shown no right to relief. Accordingly, the court GRANTS defendant's motion.

Judgment is hereby rendered in favor of defendant pursuant to Civ.R. 41(B)(2). Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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