

SUPREME COURT OF UNITED STATES
OFFICE OF THE CLERK
WASHINGTON D.C. 20543-0001

ERNEST COLLINS

VS PETITIONER; PRO SE

CIVIL/CRIMINAL NO. 19-6982

BARNES/THORNBURG

WESTERN ELECTRIC

STATE OF INDIANA

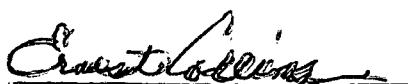
RESPONDENTS

PETITION FOR REHEARING

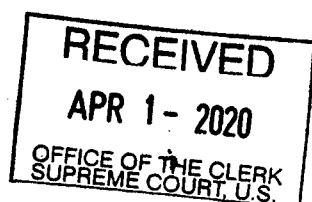
RULE 44 RULES OF THIS COURT. THE PETITION MUST BRIEFLY AND DISTINCTLY STATE IT'S GROUNDS AND MUST BE ACCCOMPANIED BY A CERTIFICATE STATING THAT THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING GROUNDS NOT PREVIOUSLY PRESENTED. I MUST ALSO CERTIFY THAT THE PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

RESPECTFULLY SUBMITTED

DATED March 26, 2020


ERNEST COLLINS PETITIONER

PRO SE



ERNEST COLLINS, JR.,
plaintiff,
vs- APPELLANT
PETITIONER
WESTERN ELECTRIC COMPANY,
INCORPORATED,
BAEVES / THORUBBLE Defendant.
STATE OF INDIANA RESPONDENT

CIVIL ACTION NO. 19-6982

Frances C. McIntyre (P28468)
Attorney for Plaintiff

Robert K. Bellamy
Attorney for Defendant

PETITION FOR HEARING
REQUEST COLLINS PRO SE
PETITIONER

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT AND AFFIDAVITS
AND BRIEF

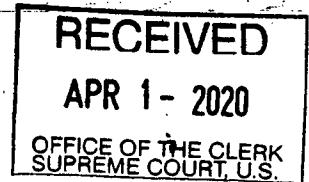
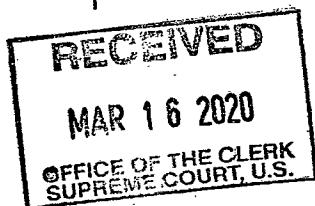
NOW COMES, ERNEST COLLINS, JR., Plaintiff in the above-entitled Cause, by and through his attorney Frances C. McIntyre, and moves this Honorable Court to deny the Motion for Summary Judgment, dismissing this action against Western Electric Company, Inc. for the following reasons:

ARGUMENT

A. Defendant's Affidavit by Francis X. Kenney does not rebut the fact that Plaintiff has made out a prima facie case, that he was subjected to disparate treatment by Western Electric Company, Inc., and has a prima facie case pursuant to 42 US Code § 1981 for racial discrimination with the intent of depriving him of a job and or promotion.

1. The issues Plaintiff raises are genuine issues of fact and not questions of law. (See Affidavits attached).
2. Defendant cannot selectively take statements from the Collins' Depositions and act as trier of fact regarding matters that are in dispute.

NOTE: Petition Petition for Rehearing
Rule 44
cc: BAEVES / THORUBBLE
cc: U.S. MARSHAL'S OFFICE



... and insubordinate.

- (c). Reviewing the personnel files does not reveal how many employees have been insubordinate and not written up, suspended or terminated.
- (d). Employee Arnold Hill, subject of Paragraph 11 of Mr. Kenny's Affidavit has been written up for insubordination, but Mr. Kenny does not recite nor probably even know, the facts of said incident in order to compare it with Plaintiff's alleged insubordination.
- (e). Mr. Kenny, in Paragraph 12 of his Affidavit, does not spell out the facts of the incidents regarding Ronald Crows write-ups for being away from his work station, nor does Mr. Kenny give the reasons why other white employees have been issued warnings.

Surely with the write-ups being presented against the various employees in Mr. Kenny's Affidavit, there could have been snide remarks or complaints made by these employees to their supervisors that could have been considered insubordination. Thus, Mr. Kenny's Affidavit is not good enough to warrant Summary Judgment for Defendant. The Employees involved should appear at trial to testify regarding their write-ups in order that the trier of fact can determine if the White employees were treated differently than the Black employees. Mr. Kenny cannot assume this from the employee's personnel records.

- (f). Again in Paragraph #13 of Mr. Kenny's Affidavit he must delineate instances proving Plaintiff had a record of insubordinate behavior "which was worse than any white employee ever employed by Western Electric. He cannot merely assume such a conclusion, unless he verifies it..

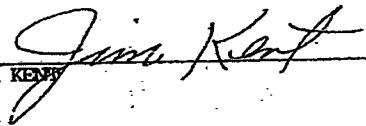
Tom Neut, a white employee who has worked for Defendant many years and is an ex-president of IBEW Local 1504, has stated in his Affidavit that a) he has never heard of anyone being fired for talking to anyone during the 25 years or more he has been employed by Defendant and, b) that while he was Union President a white man, Richard Akers, actually hit a supervisor and was never suspended, much less terminated and, c) that he has knowledge on information and belief that Artie Bishop has made derogatory remarks about Blacks.

2. Jessie Kennedy, a Black female employee, who has worked for Defendant some 20 years, and a current employee of Artie Bishop has stated in her Affidavit that, a) many people visit Mr. Bishop's shop and talk to his employee's without being reprimanded by Mr. Bishop and, b) that over the years she has seen Mr. Artie Bishop treat Blacks who visit his work area, differently from Whites who visit his work area.
3. Richard Akers, a white employee who has worked for Defendant some 28 years and has stated in his Affidavit, a) that he believes Plaintiff was treated differently when he was fired for insubordination and b) that he actually hit his supervisor with his fist and was never suspended or terminated for said action.
4. Shirley Jackson, a Black employee, who has worked for Defendant some 18 years and was the Union Coordinator who handled Plaintiff's grievance and recommended he should be reinstated and given full back pay, states in her affidavit that, a) in her request to Management to reinstate Plaintiff she had considered the charge of insubordination "nothing more than a mild disagreement between two people..." and, b) she had also stated in said request, she did not "feel another supervisor who is not the grieved employee's supervisor should have the authority to terminate an employee."

6. That while I was President of IBEW Local 1504, a Richard Akers, a White man, actually hit a supervisor and was never suspended for one day, much less terminated.

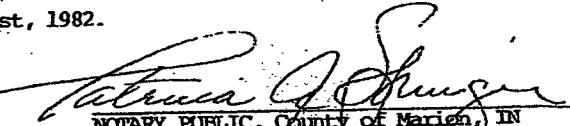
7. That he has knowledge on information and belief that Artie Bishop has made derogatory remarks about Blacks and said, in effect, "Blacks are lazy and don't deserve good jobs."

8. That I am willing to testify to the above statements in open Court, before a jury or the trier of fact.


JIM KENT

Subscribed and sworn to before me, A Notary Public, in and for said County and State this 12th day of August, 1982.

My commission expires January 30, 1984
My county of residence is Marion


NOTARY PUBLIC, County of Marion, IN
My Commission Expires

PATRICIA A. SPRINGER
NOTARY PUBLIC

obtain reinstatement for Ernest Collins, Jr.

In Paragraph 14, affiant Waggoner states that based on the same review that he had stated he had personally made in Paragraphs 4, 5, 8, 9 & 10 and determined that Defendant had sufficient cause to terminate Plaintiff.

It is to be noted that affiant Waggoner changed his mind about Plaintiff's reinstatement only after management had denied said reinstatement, not due to the fact that Waggoner for the first time made his own investigation as he states in Paragraph 14, as according to the other paragraphs aforementioned he had stated he had already made an independent investigation.

2. The Affidavit of Nathaniel Hardin, a Black male, who formerly worked for Defendant from September 31, 1974 to March, 1978 who was fired for lateness after being told that he could report to work late in order to attend school, and also for parking violations. Affiant Hardin stated in his Affidavit, dated September 9, 1978 that he believes he was fired by a Defendant because he was a Blackman. (See Exhibit A).
3. The Documents regarding the Decision of Appeals Referee, wherein on September 25, 1979 the Referee determined that Defendant did not present enough evidence to show that Plaintiff was insubordinate in his actions and that Plaintiff was discharged without just cause in connection with his work. (See Exhibit B).
4. Plaintiff's termination letter regarding reinstatement, which states in part, "I wish to point out that he has been insubordinate and thus finally terminated for cause for termination.

"There are instances where summary judgment is too blunt a weapon with which to win the day, particularly where many complicated issues of fact must be resolved in order to deal adequately with difficult questions of law remaining in the case." American Mfrs. Mut. Ins. Co. v American Broadcasting-Paramount Theatres, Inc., C.A. N.Y. 1967, 388 F 2d 272 on remand 45 R.F.D. 38.

Here, there are many complicated issues of fact, as cited above, that would not justify Summary Judgment.

Furthermore the Courts have stated:

"Summary judgment is improper where affidavits inject genuine issues as to any material fact, regardless of ultimate finding as to such genuine issues." De Pinto v Provident Sec. Life Ins. Co., C.A. Ariz. 1967, 374 F 2d 50.

Here, Plaintiff has submitted several affidavits showing that he received disparate treatment at the hands of Defendant.

Also, in U.S. v Various Articles of Drugs Consisting of Unknown Quantities of Prescription Drugs, C.A. N.J. 1963, 314 F 2d 850 the Court said:

"Summary judgment may properly be granted only if there is no genuine issue as to any material facts."

Here, Plaintiff alleges in his Complaint, in Paragraph #14, that he was suspended and fired "for action or inaction" which was indulged in by virtually all of his fellow employees who were never fired and he believes it was due to his race.

This is a genuine issue to be determined by the trier of fact, especially in light of the fact that on Appeal from a ruling by the Indiana

D. Plaintiff's Statute of Limitations Had Not Run On April 28, 1980 When He Filed His Complaint.

1. The Statute of Limitations in the State of Indiana for a 1981 Suit is 2 years.
2. Plaintiff maintains he did not know he was fired until April 28, 1978.
3. The Indiana Employment Security Division in its' Decision of Appeals Referee (See Exhibit) dated June 19, 1980 found that Defendant did not inform Plaintiff of his discharge from employment until April 28, 1978.

Therefore, the date from which Defendant claims the Statute of Limitation ran, i.e., April 12, 1978 is a matter of dispute and Summary Judgment should be denied as to this issue.

Wherefore, Plaintiff prays this Honorable Court to deny Defendant's Motion for Summary Judgment.

Respectfully submitted,


FRANCES C. MCINTYRE (P. 28468)
Attorney for Plaintiff
1650 B. Outer Drive
Detroit, MI 48234
(313) 368-7565

DATED: March 10, 2020


ERIC L. LERNER
PENNOUCH, PRO SE

ERNEST COLLINS, JR.,)
Plaintiff,)
-vs-)
WESTERN ELECTRIC COMPANY,)
INCORPORATED,)
Jessie Kennedy, Defendant)
STATE OF INDIANA)

CIVIL ACTION NO.

Frances C. McIntyre (P28468)
Attorney for Plaintiff

Robert K. Bellamy
Attorney for Defendant

AFFIDAVIT OF JESSIE KENNEDY

STATE OF INDIANA)
) ss.
COUNTY OF MARION)

JESSIE KENNEDY, being duly sworn deposes and says as follows:

1. That I have worked for Western Electric Company, Inc. for almost 20 years.
2. That I have knowledge on information and belief of the circumstances of termination, by Western Electric Company, Inc., of the employment of Ernie Collins, Jr. in April, 1978, for insubordination.
3. That I currently work under the supervision of Artie Bishop, the supervisor who reported Ernest Collins, Jr. to his supervisor, for insubordination.
4. That I am willing to testify that many people visit and talk to others in Artie Bishop's shop without being reprimanded.
5. That I am willing to testify that over the years I have seen Artie Bishop treat Blacks who visit his work area, differently from Whites who visit in his work area.

JESSIE KENNEDY

Subscribed and sworn to before me, a Notary Public in and for said County and
State this 14 day of August, 1982.

James H. D. Mann
NOTARY PUBLIC, Marion County, Indiana
My Commission Expires: 6/10/83

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ERNEST COLLINS,)
Plaintiff)
v.) No. 1:17-cv-3697 RLM-DLP
BARNES AND THORNBURG LAW FIRM,)
WESTERN ELECTRIC,)
STATE OF INDIANA,)
Defendants)

ORDER

On October 23, 2018, the Court received a filing from the plaintiff, which was docketed as a motion for reconsideration [Doc. No. 13]. Based on Mr. Collins representation that it was intended as a notice of appeal, the Clerk is directed to re-docket the motion [Doc. No. 13] as a notice of appeal, with a filed date of October 23, 2018, and to term the pending motion for reconsideration.

SO ORDERED:

ENTERED: November 1, 2018

/s/ Robert L. Miller, Jr.

Judge, United States District Court

Distribution:
Ernest Collins
3352 N. Euclid Avenue
Indianapolis, IN 46218

U.S. District Court
Southern District of Indiana (Indianapolis)
CIVIL DOCKET FOR CASE #: 1:17-cv-03697-RLM-DLP

COLLINS v. BARNES AND THORNBURG LAW FIRM et al
Assigned to: Judge Robert L. Miller, Jr
Referred to: Magistrate Judge Doris L. Pryor
Cause: 42:2000e Job Discrimination (Employment) Date Filed: 10/16/2017
Date Terminated: 09/24/2018
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff**ERNEST COLLINS**

represented by **ERNEST COLLINS**
3352 N. Euclid Avenue
Indianapolis, IN 46218
PRO SE

V.**Defendant****BARNES AND THORNBURG LAW FIRM**

represented by **BARNES AND THORNBURG LAW FIRM**
PRO SE

Defendant**WESTERN ELECTRIC**
any all other Defendants included

represented by **WESTERN ELECTRIC**
PRO SE

Defendant**STATE OF INDIANA**

represented by **STATE OF INDIANA**
PRO SE

Date Filed	#	Docket Text
10/16/2017	1	COMPLAINT against BARNES AND THORNBURG LAW FIRM, STATE OF INDIANA, WESTERN ELECTRIC, filed by ERNEST COLLINS. (Filing fee \$400, receipt number IP057602). (Attachments: # 1 Exhibit Indiana State Police Letter, # 2 Exhibit B&V Documents, # 3 Exhibit FAQ.)

		# <u>4</u> Exhibit Case Dockets, # <u>5</u> Exhibit Case Documents, # <u>6</u> Exhibit Letter to the President, # <u>7</u> Exhibit Trial Brief, # <u>8</u> Exhibit Additional Court Documents, # <u>9</u> Exhibit Additional Court Documents)(MAC) (Entered: 10/17/2017)
10/17/2017	<u>2</u>	MAGISTRATE JUDGE's NOTICE of Availability to Exercise Jurisdiction issued. (MAC) (Entered: 10/17/2017)
10/18/2017	<u>3</u>	ORDER OF RECUSAL. Clerk is directed to randomly reassign case and notify parties of newly assigned Judge. Signed by Magistrate Judge Mark J. Dinsmore on 10/18/2017. (GD) (Entered: 10/18/2017)
10/18/2017	<u>4</u>	NOTICE of Reassignment of Case to Magistrate Judge Debra McVicker Lynch. Magistrate Judge Mark J. Dinsmore no longer assigned to the case. Please include the new case number, 1:17-cv-3697-JMS-DML, on all future filings in this matter. (DJH) (Entered: 10/18/2017)
11/27/2017	<u>5</u>	MOTION for Demands for Relief, filed by Plaintiff ERNEST COLLINS. (APD) (Entered: 11/27/2017)
11/27/2017	<u>6</u>	MOTION re Fees and Arrest Warrants, filed by Plaintiff ERNEST COLLINS. (APD) (Entered: 11/27/2017)
12/07/2017	<u>7</u>	ORDER REASSIGNING CASE. Clerk is directed to reassign case to Judge Robert L. Miller, Jr. Signed by Judge Jane Magnus-Stinson on 12/7/2017. (JD) (Entered: 12/07/2017)
12/07/2017	<u>8</u>	NOTICE of Reassignment of Case to Judge Robert L. Miller, Jr. Judge Jane Magnus-Stinson no longer assigned to the case. Please include the new case number, 1:17-cv-03697-RLM-DML, on all future filings in this matter. Copy Mailed. (JD) (Entered: 12/07/2017)
01/08/2018	<u>9</u>	MOTION to Serve Defendants, filed by Plaintiff ERNEST COLLINS. (Attachments: # <u>1</u> Envelope)(APD) (Entered: 01/09/2018)
03/01/2018	<u>10</u>	Reassignment of Case to Magistrate Judge Doris L. Pryor. Magistrate Judge Debra McVicker Lynch is no longer assigned to this case. Please include the new case number (1:17-cv-03697-RLM-DLP), which includes the initials of the newly assigned judge, on all future filings in this matter. (DIST. MADE) (NLR) (Entered: 03/01/2018)
09/24/2018	<u>11</u>	ORDER DISMISSING COMPLAINT - Ernest Collins filed a pro se complaint challenging events that appear to have occurred 40 years ago - the termination of his employment by Western Electric in 1978 and the disposition of an employment discrimination lawsuit he filed against Western Electric in 1980 (Cause No. 1:80-cv-426) - and seeking \$1 million in damages for "each year [his] case was deprived from going to trial." His "Demands for Relief" and motions for "fees and arrest warrants" and to serve the defendants [Doc. Nos. <u>5</u> , <u>6</u> and <u>9</u>] pend. For the reasons stated herein, those motions are DENIED and the complaint is DISMISSED, with prejudice. (See Order). Copy to plaintiff via US Mail. Signed by Judge Robert L. Miller, Jr on 9/24/2018.(APD) (Entered: 09/24/2018) <i>LMB/lhg</i>

Plaintiff

VS

Civil Action No. IP 80-426-C

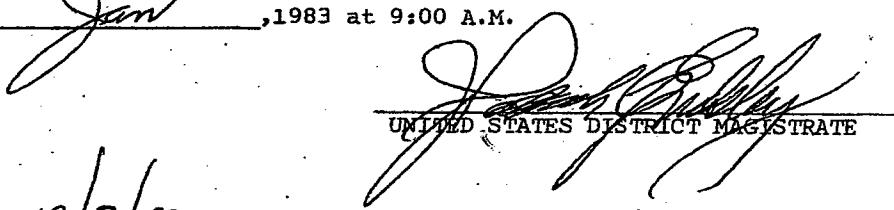
WESTERN ELECTRIC COMPANY, INC.,

Defendant

ORDER TO CONTINUE TRIAL DATE
AND SET PRETRIAL CONFERENCE

Comes now the Plaintiff, by counsel, and having filed his Motion for Continuance of Trial and Motion to set a Pretrial Conference, and the Court having examined that Motion, and being duly advised in the premises now hereby:

ORDERS that the trial of this cause, which is currently set for December 16, 1982, be continued to the 17 day of Jan, 1983 at 9:00 A.M.


UNITED STATES DISTRICT MAGISTRATE

12/2/82
Dated

Copies to:

Robert Bellamy
BARNES & THORNBURG
1313 Merchants Bank Building
Indianapolis, Indiana 46204

Dennis Courtland Hayes
Merchants Bank Plaza, Suite 1313
101 West Washington Street
Indianapolis, Indiana 46204