NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 29, 2022*
Decided August 10, 2022

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-3247

PETER DAZA,
Plaintiff-Appellant,

v.

STATE OF INDIANA, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 21-cv-00615-SEB-DML

Sarah Evans Barker, *Judge.*

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* After examining the briefs and record, we have concluded that oral argument is not necessary. Thus, this appeal is submitted on the briefs and record. *See* FED. R. APP. P. 34(a)(2).

ORDER

This employment discrimination case comes to this court for the third time. Because the plaintiff's claims are precluded, we affirm the district court's dismissal of this case with prejudice.

Background

Peter Daza, a former geologist with the Indiana Department of Transportation ("State" or "Department"), sued the State and various Department officials alleging discrimination as well as retaliation for exercising his right to free speech. The district court granted summary judgment to the defendants, 331 F. Supp. 3d 810 (S.D. Ind. 2019). We concluded that Daza failed to show any protected activity or political affiliation motivated his firing, so we affirmed. 941 F.3d 303 (7th Cir. 2019) (*Daza I*).

Shortly after the district court dismissed his first case, but before the appeal of his first case was decided, Daza filed a second case. The second case was identical to the first, except in the second he also complained about the Department's decision to hire someone else for the geologist position and not to rehire him. The district court granted summary judgment to the defendants in this second case on claim preclusion grounds, 432 F. Supp. 3d 860 (S.D. Ind. 2020), and this court again affirmed. 2 F.4th 681 (7th Cir. 2021), *cert. denied*, 142 S. Ct. 763 (2022) (*Daza II*).

The person hired to replace Daza left the geologist position in the fall of 2019, and the State again posted that position for competitive hire. Daza applied three times, but he was not interviewed or hired. Daza then filed this third case. Daza's third complaint mostly mirrors his first and second complaints, although he adds the factual allegations about the person hired for the geologist position stepping down, the reposting of that position, Daza's three applications for the position, and his not being interviewed or rehired.

Daza brings his discrimination claims under 42 U.S.C. §§ 1981 and 1983, 29 U.S.C. § 621, and the First and Fourteenth Amendments to the U.S. Constitution. He brings his retaliation claims under the same authorities plus 42 U.S.C. §§ 2000e-3, 2003e5, 12112, and 12203. In each of his three complaints, Daza seeks the same relief: lost back pay and benefits, lost front pay and benefits, lost future earnings, loss of reputation, lost job opportunities, various emotional damages, and attorneys' fees and costs.

The district court granted with prejudice defendants' motion to dismiss Daza's third complaint as barred by claim preclusion. The court ruled, "Daza has not identified any new or discrete act of discrimination or retaliation that would justify this third bite at the apple." In his third complaint, Daza claimed that in failing to interview or rehire him in 2020, defendants "failed to correct the discrimination and retaliation against Daza" litigated in *Daza I* and *Daza II*. In dismissing that complaint, the district court noted that

Daza I and *Daza II* did not end in findings of discrimination and retaliation in need of "correction."

In its dismissal order, the district court concluded by reminding Daza and his counsel of the court's prior warning that "any claims Mr. Daza had against Defendants related to his termination or his efforts to be reinstated have been fully and fairly litigated," 432 F. Supp. 3d at 875, and that this court had issued a similar warning. 2 F.4th at 682.

Daza now appeals the district court's order granting the defendants' motion to dismiss his third case. "We review the district court's dismissal of a lawsuit on res judicata grounds de novo." *Johnson v. Cypress Hill*, 641 F.3d 867, 874 (7th Cir. 2011) (citation omitted).

Analysis

Res judicata, or claim preclusion, is the doctrine under which "a final judgment on the merits bars further claims by parties or their privies based on the same cause of action." *Daza II*, 2 F.4th at 683 (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)). "[T]wo claims are one for purposes of res judicata if they are based on the same, or nearly the same, factual allegations." *Bernstein v. Bankert*, 733 F.3d 190, 227 (7th Cir. 2013) (cleaned up). "[W]e have held that courts should consider the totality of the claims, including the nature of the claims, the legal basis for recovery, the law involved, and the respective factual backgrounds." *Id.* (cleaned up).

A subsequent claim is precluded "when three criteria are met: (1) identity of parties, (2) identity of claims, and (3) a prior final judgment on the merits." *Daza II*, 2 F.4th at 683. "Federal courts apply the federal common law of claim preclusion when the earlier decision was rendered by a federal court." *Id.* The parties agree here that the first and third elements of claim preclusion are satisfied. They dispute the second element, identity of claims—Daza argues his claims differ from his previous complaints, and the Department submits they are the same. In discerning the breadth of a claim to determine what is precluded, "we must decide if the two claims 'arise from the same transaction . . . or involve a common nucleus of operative facts.'" *Id.* at 684 (quoting *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1595 (2020)).

Daza first argues that "the facts and transactions in [his] failure to rehire in 2020 are not identical" to those in his previous cases. His allegations in *Daza II* and this case differ, he submits, so his third complaint should be allowed to go forward. As an example, Daza points to the new allegations in his third complaint about the now-vacant geologist position, his serial applications, and the Department not interviewing or hiring him.

But Daza alleging additional facts in his third complaint does not render his claim in this case different from his claim in his previous cases. The question is whether the claims in each case arise from the same transaction or involve a common nucleus of operative

facts. *Lucky Brand*, 140 S. Ct. at 1595; *United States ex rel. Conner v. Mahajan*, 877 F.3d 264, 271 (7th Cir. 2017). We conclude that they do. Many, if not most of the paragraphs in Daza's second and third complaints are identical. In each complaint, Daza alleges the Department discriminated against him based on his political affiliations and retaliated against him for his political views. And in each complaint, Daza continues to contest the Department terminating him and not rehiring him. As the district court correctly pointed out, Daza has not alleged a new discriminatory or retaliatory act. Rather, each complaint brings the same claims.

Causes of action are identical if each claim is supported by the same factual allegations, *Conner*, 877 F.3d at 271, that support a remedy. *Matrix IV, Inc. v. Am. Nat. Bank & Tr. Co. of Chicago*, 649 F.3d 539, 547-48 (7th Cir. 2011). Here, nearly all of them are. Adding "a few" additional facts does not "suffice to destroy the essential factual commonality of these claims." *Matrix IV*, 649 F.3d at 548. This principle applies to employment discrimination cases. When a later lawsuit concerns decisions made by an employer after the first lawsuit but is otherwise identical to the first suit, the second suit is barred by claim preclusion. *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014). Causes of action are also identical if the judgment in each case would be based on the same evidence, *Conner*, 877 F.3d at 272. That is also true here. Simply alleging a few additional facts does not establish a new claim.

This is not a case where the theories of liability or requested relief have changed. Daza brings the same discrimination and retaliation claims and employs identical language in each of his three complaints. He also seeks precisely the same relief in each complaint, again using identical language. That is another consideration in deciding whether causes of action are identical. *Id.; see also Matrix IV*, 649 F.3d at 547.

Daza alleges the Department has failed to "provide corrective action" notwithstanding that, as the district court pointed out, neither *Daza I* nor *Daza II* ended in findings of discrimination or retaliation. Yet claim preclusion bars a cause of action which asserts that wrongful conduct from a first action continued unabated. *See*, *e.g.*, *Matrix IV*, 649 F.3d at 548-49; *Salvati v. Fireman's Fund. Ins. Co.*, 368 F. Supp. 3d 85, 91, 92 (D. Mass 2019).

"[A] common-sense comparison" of the claims Daza makes in each of these three cases "supports the conclusion that [Daza] should not be permitted to repeat his demand[s]" for back pay, front pay, compensatory damages, and the like. *Conner*, 877 F. 3d at 272. A party is precluded from relitigating a claim that shares the core facts of a claim that has already been adjudicated. This court previously ruled that the Department's decision not to rehire Daza, the subject of his second complaint, was part of the same transaction. 2 F.4th at 684. Daza's termination and the Department not rehiring him are claims that have already been decided twice, as the district court ruled here.

Daza's second argument is that the additional facts alleged in his third complaint arose when he did not have an open court case, so they could not be included in his claim. Because his second complaint was decided in the district court in January 2020, 432 F. Supp. 3d 860 (S.D. Ind. 2020), and was then on appeal to this court until June 23, 2021, 2 F.4th 681 (7th Cir. 2021), Daza claims there was no district court case pending in March 2021 in which he could have included his allegations about the 2020 failure to rehire.

This contention misses the mark. Daza's failure here is not a matter of timely amendment of his complaints. Rather, he has continued to bring the same claim, which is precluded after its resolution in his first (and second) cases. Hence, this case differs from the decision on which Daza relies, *Horia v. Nationwide Credit & Collection, Inc.*, 944 F.3d 970, 974 (7th Cir. 2019), which involved two transactions, and thus separate claims.

Finally, we note that the district court "restate[d] the warning" to Daza at the end of its dismissal order that "claim preclusion bars Mr. Daza's claims here and requires their dismissal. Hopefully, the third time will be the charm." Rather than considering sanctions, we note our full agreement with the district court on this point. We trust that Daza and his counsel understand that these claims have now been resolved and are at an end.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

[SEAL]

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FINAL JUDGMENT

August 10, 2022

Before

ILANA DIAMOND ROVNER, *Circuit Judge*
DIANE P. WOOD, *Circuit Judge*
MICHAEL B. BRENNAN, *Circuit Judge*

No. 21-3247	PETER DAZA, Plaintiff - Appellant v. STATE OF INDIANA, et al.,, Defendants - Appellees
Originating Case Information:	
District Court No: 1:21-cv-00615-SEB-DML Southern District of Indiana, Indianapolis Division District Judge Sarah Evans Barker	

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

/s/ [Illegible]
Clerk of Court

form name: **c7_FinalJudgment** (form ID: **132**)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PETER DAZA, Plaintiff, v. STATE OF INDIANA, RUSSELL FOWLER Dist. Deputy Commissioner, NINA DANIEL District HR Manager, in their official and individual capacities, Defendants.	)	No. 1:21-cv-00615-SEB-DML

ORDER DENYING DEFENDANTS' MOTION TO TRANSFER AND GRANTING DEFENDANTS' MOTION TO DISMISS

(Filed Nov. 4, 2021)

This cause of action commenced on March 15, 2021, with the filing of a Complaint by Plaintiff Peter Daza against Defendants State of Indiana, District Deputy Commissioner Russell Fowler, and District HR Manager Nina Daniel. Plaintiff, a former State employee, sued these Defendants alleging that they failed to rehire him because of his race, color, age, and political affiliation, and retaliated against him for complaining of such alleged discrimination, all in violation of Title VII of the Civil Rights Act of 1964.

Now before the Court are Defendants' Motion to Transfer and Motion to Dismiss. Defendants seek to have this case transferred to our colleague, the Honorable Jane Magnus-Stinson, pursuant to Local Rule 40-1, on grounds that it is related to *Daza v. State of Indiana*, 1:17-cv-316-JMS-MPB ("*Daza I*") and *Daza v. State of Indiana*, 1:18-cv-2951-JMS-MPB ("*Daza II*"), two other employment discrimination cases previously filed here by Plaintiff, involving the same parties,[1] similar claims, and overlapping facts. Defendants also seek the dismissal of this case on *res judicata* grounds. For the following reasons, we DENY Defendants' Motion to Transfer [Dkt. 9] and GRANT Defendants' Motion to Dismiss [Dkt. 7].

Factual Background

Plaintiff filed his first lawsuit against Defendants in our court on January 31, 2017. *Daza v. State*, 331 F.Supp.3d 810, 836 (S.D. Ind. 2018) ("*Daza I*"). In *Daza I*, he alleged that Defendants had engaged in employment discrimination based on his race, color, age, and political affiliation, resulting in his wrongful termination in retaliation for complaining about discrimination. *Id.* at 816. On August 31, 2018, Judge Magnus-Stinson entered summary judgment in favor of Defendants in *Daza I*, concluding that "[t]he undisputed evidence establish[ed] that Mr. Daza was terminated

[1] Although not named as a defendant in this lawsuit, the State's Technology Services Director, Valerie Cockrum, was named as a defendant in *Daza I* and *Daza II*. All other parties are the same.

for exhibiting insubordinate behavior on repeated occasions," not for any discriminatory or retaliatory reason. *Id.* at 851.

A month later, on September 25, 2018, Plaintiff filed a second lawsuit again against Defendants, alleging that Defendants had improperly failed to rehire Plaintiff. This claim was based on the same allegations of employment discrimination and retaliation raised in *Daza I*. *Daza v. State*, 432 F.Supp.3d 860, 862 (S.D. Ind. 2020) ("*Daza II*"). Three days thereafter, on September 28, 2018, Plaintiff appealed to the Seventh Circuit Court of Appeals the ruling in *Daza I* as to two issues: discrimination and retaliation based on his political activities and affiliation. *Id.*

Another of our colleagues, the Honorable James R. Sweeney II, was originally assigned Plaintiffs *Daza II* case. On December 6, 2018, Defendants filed a Motion to Transfer *Daza II* to Judge Magnus-Stinson, pursuant Local Rule 40-1(d) and (e). [*Daza II* Dkt. 7.] On May 15, 2019, Judge Sweeney granted Defendants' Motion to Transfer, [*Daza II* Dkt. 29], but noted that it was "not entirely clear" that L.R. 40-1(e) was applicable to *Daza II*, given that *Daza I* was then a closed case (though at the time on appeal). Id. Noting that "Plaintiff [had] raised the underlying facts of [*Daza II*] . . . as evidence in [*Daza I*]," Judge Sweeney concluded, in the interest of precluding a potentially "impermissible collateral attack on [*Daza I*"]," that "the principles of judicial efficiency and comity at the heart of L.R. 40-1(e) weigh[ed] in favor of transfer." *Id.*

After *Daza II's* transfer to Judge Magnus-Stinson, Magistrate Judge Matthew P. Brookman issued a stay in the case on May 17, 2019, pending a decision in the *Daza I* appeal, noting that *Daza II* appeared to be materially identical to *Daza I*. *Daza II*, 432 F.Supp.3d at 862. On October 24, 2019, the Seventh Circuit affirmed the district court's grant of summary judgment in *Daza I* (*Daza v. Indiana*, 941 F.3d 303 (7th Cir. 2019)). Subsequently, *Daza II* was reopened on the District Court docket, and on January 10, 2020, Judge Magnus-Stinson again granted summary judgment in Defendants' favor. In her order, Judge Magnus-Stinson found that Plaintiff's claims were barred both by the doctrine of *res judicata* as well as a failure to exhaust administrative remedies, given that Plaintiff had not formally reapplied for his job before filing his second lawsuit. *Daza II*, 432 F.Supp.3d at 869, 872. Judge Magnus-Stinson specifically noted as follows: "Mr. Daza and his counsel are strongly cautioned that they should now consider any claims Mr. Daza had against Defendants related to his termination or his efforts to be reinstated to have been fully and fairly litigated." *Id.* at 875. On February 7, 2020, Plaintiff appealed the district court's summary judgment ruling in *Daza II* to the Seventh Circuit of Appeals. [*Daza II* Dkt. 41.]

On March 25, 2021, Plaintiff filed yet another lawsuit against Defendants—the one before us here—alleging that, Plaintiff formally reapplied for his prior job with the State on three separate occasions in February 2020, March 2020, and "the Fall of 2020," and that Defendants each time unlawfully refused to interview

or rehire him for that position, despite Mr. Daza's "former supervisor" at some point having "stated that he wanted to rehire Daza in order to get Daza's good work performance for the benefit of the State." (Compl. at 5.) Plaintiff alleges that by failing to interview and rehire him, Defendants "failed to correct the discrimination and retaliation against Daza" previously litigated in *Daza I* and *Daza II*. *Id.* On May 14, 2021, Defendants filed their pending Motion to Dismiss [Dkt. 7], and on May 26, 2021 their pending Motion to Transfer [Dkt. 9] this matter to Judge Magnus-Stinson and Magistrate Judge Brookman.

On June 23, 2021, the Seventh Circuit Court of Appeals affirmed the district court's grant of summary judgment in *Daza II* on *res judicata* grounds. *Daza v. Indiana*, No. 20-1209, 2021 WL 2562308 (7th Cir. June 23, 2021).

Legal Analysis

Defendants' motions are based on Local Rule 40-1(e) and Federal Civil Rule of Procedure 12(b)(6), which we address and resolve below.

I. Motion to Transfer

Local Rule 40-1(e) provides that "[w]hen the court determines that two cases are related, the case filed later may, in the court's discretion, be transferred to the judicial officer handling the earlier-filed case." The determination of whether two cases are related is

governed by Local Rule 40-1(d), which defines a related action as one in which a "party's case and another *pending* case . . . arise out of the same transaction or occurrence . . . " (emphasis added). The decision to reassign a case "is within the Court's discretion and is not automatic even when the cases are related." *Rock v. Nat'l Collegiate Athletic Ass'n*, No. 1:12-cv-1019-JMS-DKL, 2014 WL 4722527 at *3 (S.D. Ind. Sept. 23, 2014).

In analyzing whether a case is appropriate for transfer, we look to determine whether it "arise[s] out of the same transaction or occurrence" as another pending case. L.R. 40-1(d)(2)(A). Because both *Daza I* and *Daza II* are closed matters on this court's docket based on the rulings of the Seventh Circuit's opinions affirming Judge Magnus-Stinson's summary judgments, it is clear that there currently is no related case pending on the docket of our court. Accordingly, Defendants' Motion to Transfer is DENIED.

II. Motion to Dismiss

Defendants seek the dismissal of Mr. Daza's claims based on the affirmative defense of *res judicata* grounds. Fed. R. Civ. Pro. 8 and 12(b)(6); *see Muhammad v. Oliver*, 547 F.3d 874, 878 (7th Cir. 2008) (noting that *res judicata* is an affirmative defense and a proper basis for a motion to dismiss). *Res judicata*, or claim preclusion, prohibits parties from "relitigating issues that were or could have been raised" in a previous action that was resolved on its merits. *See Highway J*

Citizens Grp. v. U.S. Dep't of Transp., 456 F.3d 734, 741 (7th Cir. 2006). An affirmative defense of *res judicata* has three elements: "(1) an identity of the parties or their privies; (2) an identity of the cause of action; and (3) a final judgment on the merits in the earlier action." *Johnson v. Cypress Hill*, 641 F.3d 867, 874 (7th Cir. 2011) (quoting *Prochotsky v. Baker & McKenzie*, 966 F.2d 333, 334 (7th Cir. 1992). "A cause of action means a single core of operative facts which give rise to a remedy." *Id.* (internal quotations omitted).

In comparing the claims advanced in the complaint before us with the prior claims, the first element of *res judicata* is clearly satisfied since both Mr. Daza and Defendants were the same parties involved in *Daza I* and *Daza II*. The third element is also met, given that *Daza I* and *Daza II* culminated in summary judgments in favor of Defendants on the employment discrimination issues, which rulings were upheld on appeal.

Regarding the second *res judicata* element, despite Mr. Daza's attempt to carve out as separate the facts relating to his reapplication for his old job, this claim is also identical to those raised in *Daza I* and *Daza II*, since it is based on the same exact same facts of discrimination and retaliation adjudicated in *Daza I* and *Daza II*. (Compl. ¶ 6-18.) Mr. Daza's demand for relief is also identical: he seeks "back pay and benefits . . . [and] reinstatement." No entitlement to such relief arises beyond the factual basis underlying *Daza I* and *Daza II*.

Mr. Daza apparently believes that this claim is not foreclosed by the prior adjudications since he maintains that he was discriminated against when he formally reapplied for his prior job. His position, however, is premised on a misreading of the court's decision in *Daza II*. It is true that the court held that, due to his failure to exhaust administrative remedies, "Mr. Daza's discrimination and retaliation fail as a matter of law for the . . . independent reason that he has not presented any evidence that he applied for the . . . position," the court also expressly ruled that his claims *additionally* were "barred by the doctrine of res judicata . . . " *Daza II*, 432 F. Supp. 3d. at 873. Mr. Daza's belated exhaustion of his administrative remedies did not resuscitate his otherwise precluded claims.

The only new fact that Mr. Daza alleges in the case at bar that was not specifically covered in *Daza I* or *Daza II* is that Defendants failed to rehire him after he formally reapplied for his prior position. [Compl. ¶ 35-38.] But the Seventh Circuit has explained that "the fact that an employee continues to argue an employment decision does not make the [discharge] any less final. . . . Any other holding would mean that a plaintiff could always resuscitate a stale claim [of discrimination] by asking for reconsideration." *Dugan v. Ball State Univ.*, 815 F.2d 1132, 1135 (7th Cir. 1987). Mr. Daza's gambit in advancing this Title VII claim is unavailing where "a failure to rehire subsequent to an allegedly discriminatory firing, absent a *new and discrete act of discrimination* in the refusal to rehire itself, cannot resurrect the old discriminatory act." *Kao v.*

Sara Lee Corp., No. 92 C 7311, 1995 WL 453025 at *4 (N.D. Ill. July 28, 1995) (quoting *Burnam v. Amoco Container Co.*, 755 F.2d 893, 894 (11 Cir. 1985)) (internal quotations omitted).

Mr. Daza has not identified any new or discrete act of discrimination or retaliation that would justify this third bite at the apple. Rather, he alleges only that in failing to interview or rehire him on any of the occasions in 2020, "Defendants failed to correct the discrimination and retaliation against [him]" that was litigated in *Daza I* and *Daza II*. Compl. at 5. The decisions in *Dava I* and *Daza II* did not conclude with findings of discrimination and retaliation in need of "correction." In any event, as the Seventh Circuit has recognized "[a]n employer's refusal to undo a discriminatory decision is not a fresh act of discrimination." *Lewer v. Nw. Univ.*, 979 F.2d 552, 556 (7th Cir. 1992). To the extent that any of his allegations of discrimination or retaliation can be construed as separate from the core operative facts of *Daza I* and *Daza II*, they reflect only "'labels and conclusions'" and a "'formulaic recitation of the elements of a cause of action'" that do not meet the pleading standards of Federal Rule of Civil Procedure 8(a)(2). *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Mr. Daza and his counsel were previously cautioned by the District Court in *Daza II* that they should regard "any claims Mr. Daza had against Defendants related to his termination or his efforts to be reinstated to have been fully and fairly litigated." *Daza II*, 432 F. Supp. 3d at 875. The Seventh Circuit, in its opinion

affirming the District Court judgment, also wrote: "That should have been the end of things, but it was not." *Daza*, 2021 WL 2562308 at *1. We share this view and restate the warnings: claim preclusion bars Mr. Daza's claims here and requires their dismissal. Hopefully, the third time will be the charm.

Conclusion

For the foregoing reasons, Defendants' Motion to Transfer [Dkt. 9] is DENIED and Defendants' Motion to Dismiss [Dkt. 7] is GRANTED WITH PREJUDICE. Final judgment shall be issued accordingly.

IT IS SO ORDERED.

Date: 11/4/2021 /s/ Sarah Evans Barker
SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PETER DAZA, Plaintiff, v. STATE OF INDIANA, RUSSELL FOWLER Dist. Deputy Commissioner, NINA DANIEL District HR Manager, in their official and individual capacities, Defendants.	)	No. 1:21-cv-00615-SEB-DML

JUDGMENT

(Filed Nov. 4, 2021)

The Court having this day made its Order directing the entry of final judgment, this action is dismissed with prejudice.

Date: 11/4/2021 /s/ Sarah Evans Barker
SARAH EVANS BARKER, JUDGE
United States District Court
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PETER DAZA, Plaintiff, v. STATE OF INDIANA, RUSSELL FOWLER, Dist. Deputy Commissioner, and NINA DANIEL, District HR Manager in their official and individual capacities, Defendants.	)	Case No. 1:21-cv-615

COMPLAINT AND DEMAND FOR JURY TRIAL

(Filed Mar. 15, 2021)

Nature of the Case

1. This case is brought by Plaintiff for race, color, age, and political discrimination and retaliation pursuant to the Civil Rights Act of 1964 as amended, Title 42, United States Code, Section 2000e and related sections; pursuant to the Civil Rights Act of 1991, Title 42, United States Code, Section 1981a and related sections; pursuant to the Civil Rights Act of 1866, United States Code, Section 1981 and related sections, pursuant to the Civil Rights Act of 1871 as amended, Title 42, United States Code, Section 1983 and related sections; pursuant to the Age Discrimination in Employment Act of 1967 as amended, Title 29, United

States Code, Section 621 and related sections; and pursuant to the First and Fourteenth Amendments to the Constitution of the United States of America.

Jurisdiction and Venue

2. This court has jurisdiction over the case pursuant to the Civil Rights Act, Title 42, United States Code, Section 2000e-5, pursuant to federal question jurisdiction, Title 28, United States Code, Section 1331, and pursuant to civil rights jurisdiction, Title 28, United States Code, Section 1343 (3) and (4).

3. Venue for this case lies with this court pursuant to Title 28, United States Code, Section 1391 for the reason that the Southern District of Indiana is the judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

Parties

4. Plaintiff Peter Daza at all times mentioned in this complaint was of the Hispanic and Native American races, over forty years of age, associated with the Democrat political party, a citizen of the United States of America, and a resident of the Southern District of Indiana.

5. Defendant State of Indiana is a governmental organization doing business in the Southern District of Indiana through the Indiana Department of Transportation and other agencies. Defendant Russell Fowler is the District Deputy

Commissioner of the Indiana Department of Transportation. Defendant Nina Daniel is the District Human Resources ("HR") Manager of the Indiana Department of Transportation. The individuals are sued in their official and individual capacities.

Facts

6. Peter Daza started working for the State of Indiana Department of Transportation in June 1993 as a Geologist.

7. Daza had good work performance and received performance reviews of meets expectations or above.

8. The Defendants discriminated against employees based on their political affiliations.

9. Daza complained about discrimination based on the political affiliation of the employees.

10. Daza spoke about his political views.

11. On December 10, 2015, the Defendants gave Daza a letter of termination for reasons that were false and discriminatory.

12. On December 17, 2015, Daza filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC").

13. On January 31, 2017, Daza filed a complaint in court against the State for discrimination based on race, color, age, disability, and political discrimination and retaliation.

14. The State claimed in its answer to the complaint that it was immune from some relief when Daza had not included in his court complaint the individuals involved in his termination.

15. On September 6, 2017, Daza filed an Amended Complaint of discrimination and retaliation adding as Defendants the individuals involved, including Fowler and Daniel, to a complaint that had been filed against the State for discrimination.

16. The individual Defendants refused to waive service of summons for the Amended Complaint of discrimination and retaliation.

17. On about October 11, 2017 the Defendants posted the position that Daza had held for approximately 22 years, in which he had had been rated by the Defendants as having very good work performance, and that the Defendants had held open before Daza filed the Amended Complaint adding the individual defendants.

18. By letter dated October 13, 2017, Daza served the individual Defendants with a Summons and Amended Complaint and Demand for Jury Trial.

19. On October 13, 2017, Daza requested to be rehired.

20. The Defendants failed to hire Daza for the position in which he had been rated as having very good work performance for approximately 22 years.

21. On about November 1, 2017, the Defendants again posted the position that Daza had held for approximately 22 years.

22. The Defendants again failed to hire Daza for the position.

23. Instead, on December 28, 2017, the Defendants told Daza that they had hired a person named Logan Mort-Jones for the position that was previously held by Daza, and that the first day of work of Mort-Jones was December 18, 2017.

24. Logan Mort-Jones is a white non-Hispanic, who was more than twenty years younger than Daza, who had no job experience as a geologist, and who had not complained about discrimination.

25. The Defendants argued that Daza's 2015 EEOC charge did not include his 2017 failure to rehire claim.

26. On June 12, 2018, Daza filed a Charge of Discrimination with the EEOC for the December 2017 failure to rehire.

27. The Defendants still did not provide corrective action for Daza.

28. Daza received a Notice of Right to Sue on his December 2017 failure to rehire claim, and on September 25, 2018, he filed a second court complaint.

29. The Defendants argued that Daza had not made a reapplication for the job that he had held for years and for which he had received very good performance reviews.

30. The district court agreed with the Defendants that Daza should have made a reapplication for the job that he had held for many years.

31. In the Fall of 2019, the non-Hispanic, non-Native American, white person who is twenty years younger than Daza resigned from the Geologist position.

32. In the Fall of 2019, the Defendants posted the vacancy announcement for the Geologist job that Daza had held for years and for which the Defendants had argued that he should have made a reapplication.

33. The Defendants have admitted that Daza is a gifted geologist.

34. Daza's former supervisor has stated that he wanted to rehire Daza in order to get Daza's good work performance for the benefit of the State.

35. Daza made a reapplication for his former job, which the Defendants had argued that he should do.

36. However, on about February 11, 2020, the Defendants failed to correct the discrimination and retaliation against Daza and refused to interview him or rehire him.

37. In about March 2020, the Defendants again posted the vacancy announcement for the Geologist job that Daza had held for years, and he made application for the job, but the Defendants failed to rehire Daza for the job and continued to seek applicants for the job.

38. In the Fall of 2020, the Defendants again posted the vacancy announcement for the Geologist job that Daza had held for years, and he made application for the job, but the Defendants failed to

rehire Daza for the job and continued to seek applicants for the job.

39. As a result of the actions of the Defendants, Plaintiff Peter Daza has suffered lost back pay and benefits, lost front pay and benefits, lost future earnings, loss of reputation, lost job opportunities, humiliation, embarrassment, inconvenience, mental anguish, emotional distress, loss of enjoyment of life, attorney fees and costs, and other damages.

40. By Notice dated December 17, 2020, the EEOC mailed to Daza a Notice of Right to Sue within 90 days of receipt of the notice.

41. Daza has satisfied the preconditions to his lawsuit, and he has timely filed his complaint in court.

Count 1 – Discrimination

42. Plaintiff Peter Daza incorporates paragraphs 1 through 40 of this complaint.

43. The Defendants intentionally, with malice, and with deliberate indifference, discriminated against Plaintiff with respect to his terms, conditions, and privileges of employment because of his race, color, age, and political speech and association, by discrimination and retaliation, which are violations of Title 42, United States Code, Sections 1981, 1983, 2000e-2, Title 29, United States Code, Section 621, and related sections, and the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, Plaintiff, Peter Daza, demands back pay and benefits, front pay and benefits, lost

future earnings, compensatory damages as are reasonable in the premises, punitive damages, interest, reinstatement, injunctive relief, the costs of this action, including reasonable attorney fees, and all other just and proper relief.

Count 2 – Retaliation

44. Plaintiff Peter Daza incorporates paragraphs 1 through 40 of this complaint.

45. The Defendants knowingly and intentionally discriminated against Plaintiff because he opposed and complained about discrimination based on his race, color, age, political speech, and political association, which are violations of Title 42, United States Code, Sections 1981, 1983, 2000e-3, 2000e-5, 12112, 12203, Title 29, United States Code, Section 621, and related sections, and the First and Fourteenth Amendments to the Constitution of the United States of America.

WHEREFORE, Plaintiff Peter Daza demands back pay and benefits, front pay and benefits, lost future earnings, compensatory damages as are reasonable in the premises, punitive damages, interest, reinstatement, injunctive relief, the costs of this action, including reasonable attorney fees, and all other just and proper relief.

DEMAND FOR JURY TRIAL

Plaintiff Peter Daza, by counsel, demands a trial by jury for all issues in this case.

Respectfully submitted,

s/ Richard L. Darst
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