APPENDIX 1A

APPENDIX

A. Denied, for Rehearing and Rehearing EN Banc, United States Court of Appeals for the Fifth Circuit, February 23, 2023.
B. Judgement, United States Court of Appeals for the Fifth Circuit IS AFFIRMED, granting Union Pacific Summary Judgement January 25, 2023.
C. Judgement issued as mandate a court's opinion, March 03, 2023
D. U.S. District Court, Southern District of Texas, Conclusion Aisha Wright will take nothing from Union Pacific Railroad company, May 31, 2022.
E. U.S. District Court, Southern District of Texas, Conclusion, Aisha Wright case will be dismissed, June 1, 2020.
F. Conclusion, AFFIRMED in part, REVERSED in part, and REMANDED, United States Court of appeals for the Fifth Circuit, March 5, 2021.

G. TRANSCRIPT MOTION HEARING, 4:19-CV-00203, Houston, TX, August 5, 2019.
H. TRANSCRIPT OF PROCEEDINGS, H-19-CV-203, Houston, TX June 28, 2021.
I. ORDER SETTINGS CONFERNECE & MEMORANDUM OF CLIENT OF "**P WRIGHT**", August 5, 2019.
J. ORDER RESETTING CONFRENCE & MEMORANDUM OF CLIENT "**P WRIGHT**, June 28, 2021.
K. DOCKET TEXT: NO HEARING HELD IN THIS CASE AND NO TRANSCRIP, Docket Number: None, DKT 13, Phone record,
L. AGREED PROTECTIVE ORDER WITHOUT MY CONSENT.
M. FORM 9 Standard Protective Order, from the Southern District Texas of Texas, Rules and Procedures, **Consent in presence of Attorney**.
N. **Clarification Order,** "this Court Does not and not has not owned stock in Union Pacific Corporation".
O. CLERK LETTER (DOC #18), OF STOCKS.
P. Judge Lynn Hughes FINANANCIAL DISCLOSRE FINANCIAL.
Q. Judge Lynn Hughes reported VII. INVESMENT and TRUSTS FUND, WITH FT TEMPLETON GROWTH C.
R. The Policy and Procedures of Maps Union Pacific Railroad.
S. Constitutional BYLAWS.
T. Internal EEO Complaints Document

U. Government EEOC Documents
V. Documents of Reported On Duty Injury and All Medical Records
W. Evidence of Recordings and Internal Emails.
X. Police Report and Union Pacific Police Report.
Y. Guadalupe Ramirez, wanting Union Representative help, harassed by Respondent.
Z. Attendance Alert during my Internal Complaints.
AA. The Lower District Court resided on other UPRR cases.
BB. Emails to the CEO Lance Fritz of termination.
CC. Petitioner off Medical Leave of Absence and Fired at the same time.
DD. Panic Attack Recording.
EE. Respondent Supervisor were out to get rid of the Petitioner.
FF. Termination of Insurance.
GG. Complaint to the National Labor Relation Board.
HH. Email of restricting the Petitioner Seniority.

A

United States Court of Appeals for the Fifth Circuit

No. 22-20322

AISHA WRIGHT,

Plaintiff—Appellant,

versus

UNION PACIFIC RAILROAD COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-203

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 23, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 22-20322 Wright v. Union Pacific Railroad
USDC No. 4:19-CV-203

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Shawn D. Henderson, Deputy Clerk
504-310-7668

Ms. Jacquelyn V. Clark
Ms. Reha Dallon
Ms. Sydney Erica Richards
Ms. Aisha Wright

B

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 25, 2023
Lyle W. Cayce
Clerk

No. 22-20322
Summary Calendar

AISHA WRIGHT,

Plaintiff—Appellant,

versus

UNION PACIFIC RAILROAD COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-203

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Aisha Wright appeals the District Court's order granting summary judgment in favor of her former employer, Union Pacific Railroad, on her employment discrimination claim.

We review that summary judgment ruling *de novo*, applying the same standard as the district court in the first instance. *Davis v. Fort Bend Cty.*, 765

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

F.3d 480, 484 (5th Cir.2014). We interpret all facts and draw all reasonable inferences in favor of the nonmovant. *Ion v. Chevron USA, Inc.*, 731 F.3d 379, 389 (5th Cir.2013). Summary judgment is appropriate only when the record reveals "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED.R.CIV.P. 56(a).

Upon review of the parties' briefs and the record, we find no reversible error in the district court's determination that Wright failed to establish that Union Pacific's legitimate, nondiscriminatory reason for her termination was a pretext for discrimination. Wright's remaining arguments and requests are not properly before this court. We therefore affirm the district court's order granting summary judgment to Union Pacific. The judgment of the district court is AFFIRMED.

C

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 25, 2023
Lyle W. Cayce
Clerk

No. 22-20322
Summary Calendar

AISHA WRIGHT,

Plaintiff—Appellant,

versus

UNION PACIFIC RAILROAD COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-203

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

IT IS FURTHER ORDERED that Appellant pay to Appellee the costs on appeal to be taxed by the Clerk of this Court.

Certified as a true copy and issued
as the mandate on Mar 03, 2023

Attest: Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

March 03, 2023

Mr. Nathan Ochsner
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 22-20322 Wright v. Union Pacific Railroad
USDC No. 4:19-CV-203

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Christina Rachal

By: _____
Christina C. Rachal, Deputy Clerk
504-310-7651

cc:
Ms. Jacquelyn V. Clark
Ms. Reha Dallon
Ms. Sydney Erica Richards
Ms. Aisha Wright

D

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

Aisha Wright, §
§
Plaintiff, §
§
versus § Civil Action H-19-203
§
Union Pacific Railroad Company, §
§
Defendant. §

Opinion on Summary Judgment

1. *Background.*

In the 1990s, Union Pacific Railroad Company hired Aisha Wright. In 2016, Wright transferred to the Houston warehouse to be a material handler. Duane Merchant was her supervisor. Merchant coached Wright at various times in her first two years in Houston in response to Wright's mistakes, but was not formally disciplined.

On July 10, 2018, Merchant talked with Wright about merchandise that had not been properly received.

On July 19, after reviewing the videotape, Merchant told Wright that a coaching was needed to address the missing merchandise. Wright requested a union representative. Merchant tried to contact the local union chairman, Dennis Williams, but could not reach him or another representative.

The next day, Merchant attempted to coach Wright, but she again requested a union representative. Merchant placed Wright on another administerial project. They contacted Montellingo, a California-based union employee, who said that she was unable to participate. Later that day, Wright filed an internal EEO complaint through the Company's internal line for gender discrimination and hostile work environment.

On July 23 – the next work day – Merchant again attempted to coach, and Wright requested a union representative. Merchant told her if she did not engage in the coaching, even without a representative, formal discipline would follow. Wright refused the coaching, so Merchant removed her from service and charged her with insubordination.

On August 15, 2018, after receiving a notice of investigation, an investigative, disciplinary hearing was held with the union representing her. A neutral manager, Craig Mitchell, reviewed the charge, hearing transcript, and supporting documents and held discharge was appropriate.

On August 23, Union Pacific fired Wright for insubordination. On August 28, an internal EEO worker interviewed Wright about her complaint.

On October 11, 2018, Wright filed a complaint with the EEOC – who issued a right-to-sue letter within a week.

On January 17, 2019, Wright sued Union Pacific for retaliation. Union Pacific has moved for summary judgment. It will prevail.

2. *Exhausting Administrative Remedies.*

A pre-condition of this lawsuit is that Wright must have exhausted her administrative remedies.[1] A charge properly exhausts a claim if it directly addresses it or is reasonably expected to grow from the charge.[2] This analysis depends on the facts of the situation and the charge.[3]

While it may be peculiar that Wright did not mention her July 2018 internal complaint in her charge, the conduct that she does complain about in the charge – essentially hostile treatment by Merchant – is similar to the conduct mentioned in her internal complaint. The court does understand Union Pacific's argument that Wright only explicitly addressed the 2016 lawsuit as the basis for her retaliation. Her complaints having similar subjects is adequate to be "reasonably expected to grow" and survive an exhaustion challenge.

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[1] *Castro v. Tex. Dep't of Crim. Justice*, 541 Fed. Appx. 374, 379 (5th Cir. 2013).

[2] *Richardson v. Porter Hedges, L.L.C.*, 22 F. Supp. 3d 611, 665 (S.D.T.X. 2014); *see also Fine v. GAF Chem. Corp.*, 995 F.2d 576, 578 (5th Cir. 1993).

[3] *Pancheco v. Mineta*, 448 F.3d 783, 789 (5th Cir. 2006).

3. *Retaliation.*

To succeed on a retaliation claim, Wright must first make a prima facie showing that: (a) she engaged in a protected activity, (b) an adverse employment action occurred, and (c) there was a causal link between them.[4] At this stage, a causal link can be shown "simply by showing a close enough timing between [her] protected activity and [her] adverse employment action."[5]

It is clear that the July 2018 internal complaint is a protected activity. Wright says she was essentially suspended when moved to an administerial project and then fired – both qualifying as an adverse employment action. The roughly one month period between her internal complaint and firing is sufficient for a prima facie causal link.

The burden then shifts to Union Pacific to give a legitimate, non-retaliatory reason for her firing.[6]

After an investigative disciplinary hearing, Union Pacific fired Wright for insubordination for refusing a coaching after improperly receiving goods that led to those goods being lost. This reason is more than adequate to be legitimate and non-retaliatory considering the importance of structural respect and Wright's history of mistakes.

The burden shifts back to Wright to show that this given reason is pretextual.[7] She must show that her internal complaint was the "but-for" cause of her suspension and firing.[8] Mere close temporal proximity alone is insufficient.[9] Wright must show – with more than speculative theories – that the decision-makers had actual knowledge of her 2018 internal complaint.[10]

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[4] *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 425-27 (5th Cir. 2000).

[5] *Garcia v. Prof'l Cont. Servs., Inc.*, 938 F.3d 236, 242 (5th Cir. 2019).

[6] *Patrick v. Ridge*, 394 F.3d 311, 315 (5th Cir. 2004).

[7] *Septimus v. Univ. of Houston*, 399 F.3d 601, 608 (5th Cir. 2005).

[8] *Univ. of Tex. Sw. Med. Ctr. v. Nasser*, 570 U.S. 338, 360 (2013).

[9] *Strong v. Univ. Health Care Sys., L.L.C.*, 482 F.3d 802, 807 (5th Cir. 2007).

[10] *E.E.O.C. v. EmCare, Inc.*, 857 F.3d 678, 683 (5th Cir. 2017).

Wright argues causation with the short length of time between her complaint and firing. She calls Merchant and Jim Eisele the decision-makers. Wright also insists that Eisele had a pre-meditated, retaliatory motive to fire her.

Wright largely attacks Eisele's testimony as contradictory but offers no evidence to suggest that Eisele knew about her *2018 complaint* before her firing. Continuing to re-argue her 2016 lawsuit is empty. The evidence only shows that Eisele may have known in September 2018 – a month after she was fired. Her speculating that "Eisele's suggested discipline ... was influenced with knowledge of her internal ... complaint" is inadequate at this stage. Speculation is not evidence or a genuine dispute of fact.

Underlying this entire analysis is still the fact that Eisele was not even a decision-maker. His advice may have been sought, but he had no determinative say over the firing. The decision-makers were Merchant and Mitchell. Wright admits that she told neither of them, nor anyone else at Union Pacific, about her internal complaint before she was fired. She offers no evidence to show that they knew about her 2018 internal complaint in any capacity. Wright also tries to use the cat's-paw theory to impute retaliatory motive to Merchant and Mitchell. She over-extrapolates from the evidence to argue this influence. Her speculative theories are again inadequate.

The sole thing that Wright relies on is temporal proximity. This is wholly insufficient alone. The Court of Appeals has listed examples of what – along with temporal proximity – is adequate to defeat summary judgment: (a) disparate treatment, (b) harassment, (c) the stated reason being known for years, (d) a financial burden on the employer if the conduct is discovered, (e) unfounded performance concerns, (f) prior glowing reviews, (g) interference with an investigation, (h) disingenuous explanations, and (i) warnings from others to not engage in the protected activity.[11] Her firing may have occurred after her internal complaint, but, without *evidence* of anything more, she cannot show causation. What Wright characterizes as a suspension began before her internal complaint, so it does not even have temporal proximity to stand on for causation.

Wright's retaliation claim fails.

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[11] *Brown v. Wal-Mart Stores, East, L.P.*, 969 F.3d 571, 581 (5th Cir. 2020).

4. *Conclusion.*

Aisha Wright will take nothing from Union Pacific Railroad Company.

Signed on May 31, 2022, at Houston, Texas.

Lynn N. Hughes
United States District Judge

E

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS

Aisha Wright,	§	
	§	
Plaintiff,	§	
	§	
versus	§	Civil Action H-19-203
	§	
Union Pacific Railroad Company,	§	
	§	
	§	
Defendant.	§	

Opinion on Dismissal

1. *Introduction.*

Aisha Wright's case is dismissed for failure to state a claim.

2. *Background.*

Wright worked for Union Pacific Railroad Company at its warehouse in Houston. On July 19, 2018, Wright's supervisor, Duane Merchant, told Wright to come to her office for coaching. Wright requested that a union representative attend. The next day she filed an internal complaint against Merchant for having a work environment that was hostile.

On July 23, 2018, after multiple attempts to accommodate Wright's representation request, Merchant demanded that Wright complete the coaching, which was non-disciplinary. Wright refused and was then suspended pending investigation.

After a hearing on August 15, 2018, Union Pacific Railroad terminated Wright for failure to comply and insubordination. Wright brought this action seeking damages for retaliation against her under the Railway Labor Act, the

Texas Labor Code, and Title VII of the Civil Rights Act of 1964. Union Pacific moved to dismiss for failure to state a claim upon which relief can be granted.

3. *Retaliation.*

Wright did not establish a claim for retaliation. A case may be dismissed for failure to state a claim upon which relief can be granted. To survive, a plaintiff must assert a plausible claim supported by useful facts. Abstract conclusions are not facts. The facts must be relevant and specific enough so that the right to relief is more than speculative.[1]

A. *The Railway Labor Act.*

Wright's claim that Merchant retaliated against her for requesting representation is not part of the Railway Labor Act. While the Act allows employees to organize and join unions, it does not say that an employee has a right to representation during coaching. Wright does not have a claim under the Act. The proper remedy in this case is arbitration.[2]

Even if the Act offered relief, Wright's complaint shows no retaliation. Although cooperation by Union Pacific was not required, Merchant attempted to accommodate Wright's representation request; therefore, the facts support no retaliation.

B. *The Texas Labor Code.*

Similarly, the Texas Labor Code does not guarantee the right to union representation. Wright's complaint indicates that she refused to complete the coaching because a union representative was "unavailable" to attend. The Texas Labor Code does not protect Wright's refusal to obey Merchant's order. On the pleaded facts, Wright simply does not have a law from this code that applies.[3]

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[1] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554 (2007).

[2] *Johnson v. Express One Intern. Inc.*, 944 F.2d 247, 252 (5th Cir. 1991).

[3] *City of Roundrock v. Rodriguez*, 399 S.W.3d 130, 132 (Tex. 2013).

C. *Title VII of the Civil Rights Act of 1964.*

Wright claims that Union Pacific violated Title VII by retaliating against her for her earlier lawsuit against the company and for filing an internal complaint against Merchant. Her claim shows no connection between her termination and her 2016 lawsuit, which was settled in February 2018. No evidence supports that Merchant retaliated against Wright after she complained. Merchant removed Wright from service because she refused to complete the coaching.

While Wright makes fleeting references to a discrimination claim, her complaint contains no facts to support it.

4. *Conclusion.*

Aisha Wright's case will be dismissed.

Signed on June 1, 2020, at Houston, Texas.

Lynn N. Hughes
United States District Judge

F

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 5, 2021
Lyle W. Cayce
Clerk

No. 20-20334

AISHA WRIGHT,

Plaintiff—Appellant,

versus

UNION PACIFIC RAILROAD COMPANY,

Defendant—Appellee.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:19-CV-203

Before STEWART, HIGGINSON, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

Aisha Wright sued her former employer, Union Pacific Railroad Company, alleging that Union Pacific violated Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e, by suspending her, and later terminating her, in retaliation for her 2016 lawsuit against the company and her 2018 internal complaint. Wright also alleged that Union Pacific violated the Railway Labor Act ("RLA"), 45 U.S.C. § 152, and the Texas Labor Code ("TLC"), TEX. LAB. CODE §§ 101.001 and 101.301, by retaliating against her because of her requests for union representation. The district court granted Union Pacific's motion to dismiss, and Wright appeals. We

AFFIRM in part, REVERSE in part, and REMAND for further proceedings.

BACKGROUND

Wright worked for Union Pacific Railroad Company from 1996 to 2018. Relevant to this case, in 2013, Wright began working as a claims representative at Union Pacific's Palestine, Texas location. In 2015, Wright lodged complaints of discrimination and retaliation both internally at Union Pacific and with the Equal Employment Opportunity Commission.

Union Pacific terminated Wright from the claims-representative position in March 2016. But as a union member, Wright had "bumping" rights that allowed her to seek another position with Union Pacific. Exercising those rights, in April 2016, Wright began working as a materials handler at Union Pacific's Houston warehouse. The same month, Wright's new supervisor, Duane Merchant, asked Wright about her employment discrimination claims. During that discussion, Merchant told Wright that her husband had also filed a complaint against Union Pacific and actually referred Wright to two attorneys.

In August 2016, Wright sued Union Pacific for the discrimination and retaliation she allegedly experienced at the Palestine location. The parties settled that case in January 2018. Five months later, in June 2018, Wright disagreed with Merchant about her pay during some time off and appealed to Merchant's supervisor. Wright alleges that Merchant's behavior changed after this pay dispute, with Merchant trying to find ways to damage Wright's employment record.

On July 10, 2018, Merchant called Wright to review video of Wright receiving merchandise. Apparently, some fuel injectors were missing from a delivery of supplies. Wright maintained that she did nothing wrong.

On July 19, 2018, Merchant informed Wright that she was writing Wright up and instructed Wright to undergo coaching after work. When Wright requested union representation for the coaching session, Merchant called local union chairman Dennis Williams but was unable to reach him. Merchant advised Wright that she should nonetheless proceed with coaching. Wright agreed to coaching but again requested representation. Wright then called a national union representative, Jeff Egnoske. During the call, Wright experienced labored breathing, so much that Egnoske urged her to seek medical attention. Wright went to the emergency room, where she learned that she was having a panic attack.

Wright returned to work the next day, Friday, July 20, 2018. Again, Merchant instructed Wright to undergo coaching. And again, Wright requested union representation during the coaching session. In response, Merchant placed Wright on a different assignment. After speaking with a union representative, Wright asked Merchant to postpone the coaching session until a union representative was available. Merchant responded that Wright would work on another assignment until she completed coaching.

The same day, Wright called Union Pacific's internal Equal Employment Opportunity ("EEO") line. Wright complained that Merchant had created a hostile work environment and discriminated against her. Wright also complained that Merchant seemed to mock her for requesting union representation before she would participate in the coaching session.

On Monday, July 23, the first business day after Wright's internal complaint, Merchant again instructed Wright to complete the coaching session. Merchant informed Wright that failure to undergo coaching could trigger discipline. When Wright requested union representation again, Merchant suspended her for insubordination.

On July 24, union representatives called Wright and instructed her to come to work the next day for coaching with Merchant. Dennis Williams was set to participate as Wright's union representative. But when Wright arrived at work on July 25, Merchant was not there. A supervisor tried calling Merchant but could not reach her. Williams then instructed Wright to go home.

The same day, Union Pacific notified Wright of a disciplinary hearing against her. At the hearing on August 15, 2018, Wright testified that she never refused coaching but simply requested to have a union representative present. Wright also testified that she had received union representation for earlier coaching sessions at Union Pacific. On August 23, 2018, a month after Wright's internal EEO complaint, Union Pacific terminated Wright for insubordination.

Wright subsequently filed this action against Union Pacific. In her complaint, Wright alleged that Union Pacific violated Title VII by suspending her and then terminating her in retaliation for her 2016 lawsuit against the company and her 2018 internal EEO complaint. Wright also alleged that Union Pacific violated the RLA, 45 U.S.C. § 152, and the TLC, TEX. LAB. CODE §§ 101.001 and 101.301, by retaliating against her for requesting union representation during the coaching session Merchant required.

After Wright filed her Second Amended Complaint, Union Pacific moved to dismiss Wright's suit for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and for failure to state a claim upon which relief can be granted under Rule 12(b)(6). The district court granted Union Pacific's motion. The court dismissed Wright's Title VII claim for failure to state a claim, holding that Wright did not show a causal connection between her termination and her earlier lawsuit and internal complaint. The

court also dismissed Wright's RLA claim for lack of jurisdiction and, alternatively, for failure to state a claim, reasoning that arbitration was the exclusive remedy instead. The court similarly dismissed Wright's TLC claim for failure to state a claim.

Wright now appeals. She contends that she plausibly alleged causation to support her Title VII retaliation claim, properly brought her RLA retaliation claim in federal court, and plausibly alleged retaliation under TLC §§ 101.001 and 101.301. We review each of these contentions in turn.

STANDARD OF REVIEW

We review both dismissals for failure to state a claim and dismissals for lack of jurisdiction de novo. *Equal Access for El Paso, Inc. v. Hawkins*, 509 F.3d 697, 701–02 (5th Cir. 2007); *Ramming v. United* States, 281 F.3d 158, 161 (5th Cir. 2001). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A 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 alleged." *Id.*

DISCUSSION

A.

First, Wright asserts that Union Pacific violated Title VII by terminating her in retaliation for her 2016 lawsuit and her 2018 internal EEO complaint. To establish Title VII retaliation, Wright must show that 1) she engaged in protected activity, 2) she suffered an adverse employment action, and 3) a causal link exists between the protected activity and the adverse

employment action. *Long v. Eastfield College*, 88 F.3d 300, 304 (5th Cir. 1996).

Finding "no evidence . . . that Merchant retaliated against Wright after she complained," the district court dismissed Wright's Title VII claim because she failed to show causation. But a plaintiff does "not have to submit evidence to establish a prima facie case . . . at [the pleading] stage." *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 470 (5th Cir. 2016); *see also Raj v. La. State Univ.*, 714 F.3d 322, 331 (5th Cir. 2013) ("[A] plaintiff need not make out a prima facie case . . . to survive a Rule 12(b)(6) motion to dismiss for failure to state a claim."). Rather, Wright only needed "plausibly [to] allege facts going to the ultimate elements of the claim to survive a motion to dismiss." *Cicalese v. Univ. of Tex. Med. Branch*, 924 F.3d 762, 768 (5th Cir. 2019) (vacating Rule 12(b)(6) dismissal of a Title VII claim, despite lack of evidence, because plaintiffs plausibly alleged disparate treatment). Thus, the district court erred to the extent it required Wright to substantiate her Title VII retaliation claim with evidence at the pleading stage.

Beyond that, the parties dispute whether Wright plausibly alleged the ultimate element of causation. To do so, Wright had to plead facts permitting a reasonable inference that Union Pacific terminated her because of her 2016 lawsuit or her 2018 internal EEO complaint. *See Iqbal*, 556 U.S. at 678. First, Union Pacific contends that Wright's 2016 lawsuit was too remote to have caused retaliation. We agree.

By Wright's own account, Merchant knew about the claims underlying Wright's 2016 lawsuit in April 2016. Yet Wright was not suspended until July 2018, or terminated until August 2018, more than two years later. Even given Merchant's awareness of Wright's 2016 lawsuit, this two-year lapse is indeed too remote to permit a reasonable inference of causation. *See Clark Cty. Sch. Dist. v. Breeden*, 532 U.S. 268, 273–74 (2001)

(holding that an adverse action taken twenty months after employer became aware of protected activity "suggests, by itself, no causality at all"); *Leal v. McHugh*, 731 F.3d 405, 417 (5th Cir. 2013) (affirming dismissal of retaliation claim because "a three-year lapse, at best, between the protected activity and the adverse employment action is too attenuated temporally to state a claim for relief, even if [plaintiff's supervisor] was aware of the activity").

But Wright's 2018 internal complaint is a different matter. That call to Union Pacific's EEO line is fairly contemporaneous with Union Pacific's adverse actions. Merchant suspended Wright just one business day after Wright complained internally. And about a month later, Union Pacific terminated Wright. This close timing permits an inference of causation. *See, e.g.*, *Outley v. Luke & Assocs., Inc.*, 840 F.3d 212, 219 (5th Cir. 2016) (finding that "the close timing between [plaintiff's] protected activity and the denial of a raise—about two months—is sufficient to show causal connection").

Union Pacific counters that Wright did not allege that Merchant or any other decision-maker knew about the 2018 internal EEO complaint when the adverse employment actions were taken. "We have determined that, in order to establish the causation prong of a retaliation claim, the employee should demonstrate that the employer knew about the employee's protected activity." *Manning v. Chevron Chem. Co., LLC*, 332 F.3d 874, 883 (5th Cir. 2003) (citing *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 684 (5th Cir. 2001); *Chaney v. New Orleans Pub. Facility Mgmt., Inc.*, 179 F.3d 164, 168 (5th Cir. 1999)). Quite logically, "[i]f an employer is unaware of an employee's protected conduct at the time of the adverse employment action, the employer plainly could not have retaliated against the employee based on that conduct." *Chaney*, 179 F.3d at 168. At the pleading stage, this means that Wright was required to allege facts permitting at least an inference of her employer's knowledge of her protected conduct in order to establish the required causal link between her conduct and the alleged retaliation. *See*

Manning, 332 F.3d at 883 & n.6; *Chaney*, 179 F.3d at 168. We conclude that Wright sufficiently alleged such facts.

According to Wright's complaint, Merchant initially agreed to coach her with union representation present. But after Wright complained internally, Merchant suspended her for refusing to undergo coaching without union representation. Then, when union representatives scheduled a coaching session with Wright and Merchant, Merchant did not show. This alleged change in Merchant's behavior, coupled with the close timing of the adverse actions taken by Union Pacific, permits an inference that Merchant knew about Wright's 2018 internal EEO complaint. *Cf. Robinson v. Jackson State Univ.*, 714 F. App'x 354, 361 (5th Cir. 2017) ("All the categories of evidence outlined above [including] temporal proximity [and] . . . changed decisionmaker behavior following complaints, . . . are among the prototypical circumstantial indicators of decisionmaker knowledge (and of causation in a broader sense)."). At least at the pleading stage, Wright plausibly alleged a causal link between her 2018 internal EEO complaint and her subsequent suspension and termination. We therefore reverse the district court's Rule 12(b)(6) dismissal of Wright's Title VII claim and remand for further proceedings.

B.

Next, Wright contends that Union Pacific violated the RLA by terminating her in retaliation for her requests for union representation. *See* 45 U.S.C. § 152, Third and Fourth. The provisions enumerated in RLA § 152 protect "employees' freedom to organize and to make choice of their representatives" without company interference or pressure. *Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants*, 489 U.S. 426, 440 (1989) (citation and internal quotation marks omitted). Generally, RLA claims are classed as either "major" disputes, which fall within district courts' narrow

jurisdiction, or "minor" disputes, which are subject to binding arbitration. *Consol. Rail Corp. v. Ry. Labor Execs. Ass'n*, 491 U.S. 299, 302–04 (1989) ("*Conrail*"). Concluding that arbitration was the proper remedy here, the district court dismissed Wright's RLA claim for lack of subject-matter jurisdiction and, alternatively, for failure to state a claim. We agree that dismissal was warranted.

Federal jurisdiction over an RLA claim turns on whether the dispute is categorized as "major" or "minor." *Id.* "Major" disputes concern "the formation of collective agreements or efforts to secure them . . . . They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past." *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 723 (1945). "Minor" disputes "contemplate[] the existence of a collective agreement already concluded." *Id.* They relate "to the meaning or proper application of a particular provision with reference to a specific situation." *Id.* In other words, "the claim is to rights accrued, not merely to have new ones created for the future." *Id.*

In major disputes, "district courts have subject-matter jurisdiction to enjoin a violation of the status quo pending completion of the required procedures, without the customary showing of irreparable injury." *Conrail*, 491 U.S. at 303. By contrast, district courts do not have jurisdiction over minor disputes, which are "subject to compulsory and binding arbitration before the National Railroad Adjustment Board, [45 U.S.C. § 153], or before an adjustment board established by the employer and the unions representing the employees." *Id.* "[I]f there is any doubt as to whether a dispute is major or minor a court will construe the dispute to be minor." *BNSF Ry. Co. v. Int'l Ass'n of Sheet Metal, Air, Rail & Transp. Workers – Transp. Div.*, 973 F.3d 326, 335 (5th Cir. 2020) (citation omitted).

Union Pacific bears a "relatively light burden . . . in establishing exclusive arbitral jurisdiction under the RLA." *Conrail*, 491 U.S. at 307. Wright's RLA claim is a minor dispute if her termination was "arguably justified by the terms of the parties' collective-bargaining agreement." *Id.*

Wright contends that her RLA retaliation claim is not a minor dispute because it is independent of the governing collective-bargaining agreement (the "CBA"). But this assertion fails because Wright's claim rests upon the CBA's implied terms. Wright alleges that Union Pacific previously provided union representation during coaching sessions but then terminated her for requesting such representation for her latest coaching session. Union Pacific's past practices regarding union representation involve the CBA's implied terms. *See Conrail*, 491 U.S. at 311. As a result, Wright's RLA claim is a minor dispute subject to arbitration. *See Brotherhood of Ry. Carmen (Div. of TCU) v. Atchison, Topeka & Santa Fe Ry. Co.*, 894 F.2d 1463, 1469 (5th Cir. 1990) (finding that "claims based on implied terms—specifically, the past practices of the parties . . .—do have some arguable basis sufficient to render this a minor dispute").

Fairly clearly, Union Pacific meets its "relatively light burden" here. Wright is not negotiating a new collective agreement for the future. Instead, Wright asserts that Union Pacific previously provided her, and other employees, union representation during coaching and discipline. That is, Wright alleges that Union Pacific violated a right that had "vested in the past." *Burley*, 325 U.S. at 723. It follows that Wright's RLA claim is a minor dispute and subject to the RLA's exclusive and compulsory arbitration provisions.

Moreover, Wright sued only Union Pacific. Her RLA claim is thus not bound up with a claim against her union. *See Trial v. Atchison, Topeka & Santa Fe Ry. Co.*, 896 F.2d 120, 123 (5th Cir. 1990) (noting that "[a]n

exception to the exclusive [arbitral] jurisdiction of the [National Railroad Adjustment] Board exists, however, when the employee has not only a dispute with the employer . . . but also a claim against the union"). This further demonstrates that Wright's RLA claim is a minor dispute subject to arbitration. The district court properly dismissed Wright's RLA claim for lack of jurisdiction.

Finally, Wright contends that Union Pacific violated TLC §§ 101.001 and 101.301 by terminating her in retaliation for her requests for union representation. But "[t]he RLA's arbitral remedy is mandatory and exclusive for minor disputes. State law claims that involve these disputes are pre-empted." *Anderson v. Am. Airlines, Inc.*, 2 F.3d 590, 594 (5th Cir. 1993) (citations omitted). Wright's TLC claim is identical to her RLA claim. Thus, the RLA preempts Wright's TLC claim. And the district court therefore properly dismissed it.

CONCLUSION

Based on the foregoing, we REVERSE the district court's dismissal of Wright's Title VII retaliation claim and REMAND for further proceedings. We AFFIRM the district court's dismissal of Wright's remaining claims.

AFFIRMED in part, REVERSED in part, and REMANDED.

Additional material from this filing is available in the Clerk's Office.