

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMES DORSEY,)
)
 Plaintiff)
)
 v.) Civil No. 04-116-P-C
)
 GREYHOUND BUS LINES,)
)
 Defendant)

**DECISION RECOMMENDING DISMISSAL OF
42 U.S.C. § 1983 COMPLAINT**

James Dorsey has filed this action against Greyhound Bus Lines complaining of his treatment by two Greyhound Bus ticket agents on December 30, 2003. For the following reasons I recommend that the Court **DISMISS** this action pursuant to 42 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim.

Complaint allegations

On December 30, 2003, Dorsey presented to the ticket agents at Greyhound a Maine Social Service voucher for bus transport. The voucher was yellow and the agents, who Dorsey describes as black, told Dorsey that they had never seen a yellow colored voucher and, therefore, would not accept it. Dorsey pleaded with them to call the Department of Social Services and explained he did not have a place to stay. One of the agents replied: "I don't care. You have to go tomorrow and change colors." Dorsey submits that the only thing that was wrong was that his skin color was white.

Dorsey then went out of the terminal and then came back into to make a phone call to the Department of Social Services. When he did so one of the black ticket agents

rushed him and blocked his movements. The agent pointed his finger in his face and told Dorsey to watch his mouth. Dorsey responded by telling the agent to get out of his face and, after the second such warning and the second such poke, Dorsey struck the agent in the face to ward off the agent's "attack."

Once again Dorsey left the terminal and "waited for the cops to show up." An officer responded to the call and Dorsey told him that he wanted to press assault charges against the ticket agent. The officer told Dorsey that he should have backed up, to which Dorsey responded that he had twice told the agent to get out of his face. Nonetheless, the officer refused to investigate Dorsey's claim of assault. In the aftermath of the 9-11 attacks Dorsey finds it hard to believe that there is not a video showing the black ticket agent attacking and assaulting Dorsey.

Dorsey has no idea what the ticket agent was referring to when he told Dorsey to watch his language because Dorsey uttered no cuss words to or in the vicinity of the ticket agent or any Greyhound employee. If Dorsey had so spoken all the agent would have had to have done was to say, "Sir, could you watch your language!" Finally, Dorsey alleges, "The Black Male ticket agent is from some black African nation like Sudan."

With respect to his claims for relief, Dorsey states that he has a right to petition the government for assistance and that a corporation's denial of that right based on Dorsey's race or skin color violates the equal protection clause of the United States Constitution and deprived him of his right to engage in interstate travel. He alleges that when the two black ticket agents passed the yellow voucher between them and described it as yellow they, by these actions, conspired to deprive Dorsey of his equal protection rights. Dorsey seeks to hold Greyhound accountable for failing to train and control its

foreign employees vis-à-vis federal civil rights law. He seeks damages for assault, civil rights violations, conspiracy, false arrest, intentional infliction of emotional distress, and, in his proposed amended complaint (Docket No. 5), punitive damages.

Discussion

Within the last year he has filed four other lawsuits with this court, three of which have been dismissed by this court on recommendation of the magistrate judge: Dorsey v. Alliance Abroad, Civil No.3-158, Dorsey v. Little, Civil No. 03 -300, and Dorsey v. Cumberland County, Civil No. 04-115, and Dorsey v. City of Portland, Civil No. 04-152. In an order denying Dorsey leave to proceed in forma pauperis in 04-152, I noted that Dorsey had a pattern of filing lawsuits involving the same events dressed in different guises and naming different defendants and that this pattern has become vexatious to the process. I also ordered that:

If Dorsey wants to maintain the separate lawsuit, he shall pay the \$150.00 filing fee by August 16, 2004. Service has not been made yet in the Greyhound Bus Lines case, and if Dorsey wanted to amend that complaint to include all the claims he is asserting in connection with what happened at the bus terminal the day he attempted to use the city voucher and claims he was subject to racial discrimination because he is white, he could raise all of those claims in a properly drafted amended complaint in that action.

(Civ. No. 04-152, Docket No. 5.) Dorsey did not pay the fee in that case and I have recommended the case be dismissed for want of prosecution. Nor has Dorsey filed an amended complaint in this, in forma pauperis, action.

Section 1915 of title 28 contains the following provision concerning in forma pauperis actions:

Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

- (A) the allegation of poverty is untrue; or
- (B) the action or appeal—
 - (i) is frivolous or malicious;
 - (ii) fails to state a claim on which relief may be granted; or
 - (iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2).

Based on the allegations recited above, this complaint, fails to state a 42 U.S.C. § 1983 claim. "To state a claim for relief in an action brought under § 1983," Dorsey must establish that he was "deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999). The "under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." Id. at 50 (omitting internal quotations to Blum v. Yaretsky, 457 U.S. 991, 1002 (1982) and Shelley v. Kraemer, 334 U.S. 1, 13 (1948)).

Also pertinent, 42 U.S.C. § 1985(3) does confer a private right of action for injuries occasioned when "two or more persons... conspire ... for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." With respect to a claim under 42 U.S.C. § 1985(3), the First Circuit Court of Appeals has summarized:

An actionable section 1985(3) claim must allege that (i) the alleged conspirators possessed "some racial, or perhaps otherwise class-based, invidiously discriminatory animus," Griffin v. Breckenridge, 403 U.S. 88, 102 (1971), and (ii) their alleged conspiracy was "aimed at interfering with rights ... protected against private, as well as official, encroachment."

United Bhd. of Carpenters & Joiners of America v. Scott, 463 U.S. 825, 833 (1983). See also Libertad v. Welch, 53 F.3d 428, 446 (1st Cir.1995) (citing Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68 (1993)). The conspiracy allegation must identify an overt act. See Griffin, 403 U.S. at 93; Libertad, 53 F.3d at 450 n.18. If no racial animus is charged, a discriminatory class-based animus must be alleged. See Harrison v. Brooks, 519 F.2d 1358, 1359 (1st Cir.1975) (citing Griffin, 403 U.S. at 102, 91 S.Ct. at 1798). "The requirement that the discrimination be 'class-based' is not satisfied by an allegation that there was a conspiracy which affected the interests of a class of persons similarly situated with the plaintiffs. Rather, the complaint must allege facts showing that the defendants conspired against the plaintiffs because of their membership in a class and that the criteria defining the class were invidious." Id. at 1359-60.

Romero-Barcelo v. Hernandez-Agosto, 75 F.3d 23, 34 (1st Cir. 1996).

First I note that the allegations for the most part pertain to an interaction between Dorsey and one of the agents. And, despite Dorsey's contention that the passing of the voucher between this agent and a second was sufficient to establish an act of conspiracy, it does not, in fact, allege a "conspiracy" within the meaning of 42 U.S.C. § 1985(3). The only allegations that Dorsey provides are that his bus travel voucher was yellow and that the two agents told Dorsey that they had never seen a yellow colored voucher as grounds for not accepting it. They would not call the Department of Social Services and did not care that Dorsey did not have a place to stay. The fact that one of the agents told Dorsey that he would have "to go tomorrow and change colors" may support a conclusion that the agent was directing him to go to the agency and get a different color voucher; however without more to the conversation between Dorsey and the agents (or between the agents themselves) I do not believe this ambiguous fact is probative of whether the agents conspired against Dorsey because he was white. There is nothing in the description of the physical confrontation between Dorsey and one of the agents that

evinces an invidious motivation that distinguishes the confrontation as more than a flaring of tempers.

In light of the above, I conclude that Dorsey has not stated an actionable § 1985(3) conspiracy claim under Federal Rules of Civil Procedure 8 and 12. See Educadores Puertorriquenos en Accion v. Hernandez 367 F.3d 61, 66 -67 (1st Cir. 2004) (no heightened pleading standard in civil rights actions). As the United States Supreme Court concluded in Griffin v. Breckenridge a § 1985(3) plaintiff must allege facts that evince that the defendant's conduct was something more than tortious conduct:

It is thus evident that all indicators--text, companion provisions, and legislative history--point unwaveringly to s 1985(3)'s coverage of private conspiracies. That the statute was meant to reach private action does not, however, mean that it was intended to apply to all tortious, conspiratorial interferences with the rights of others. For, though the supporters of the legislation insisted on coverage of private conspiracies, they were equally emphatic that they did not believe, in the words of Representative Cook, 'that Congress has a right to punish an assault and battery when committed by two or more persons within a State.' The constitutional shoals that would lie in the path of interpreting s 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose--by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendment.

403 U.S. 88, 101-02 (1971) (citation omitted, emphasis added); see also Romero-Barcelo, 75 F.3d at 35 (concluding that the plaintiff failed to state a § 1985(3) claim, stating that, faithful to Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993), "we do not view the failure to allege essential elements of a section 1985(3) claim as any mere failure to comply with a 'heightened pleading requirement.'").

Conclusion

For the reasons stated above I recommend that the Court dismiss this complaint pursuant to 42 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Dated August 20, 2004

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

DORSEY v. GREYHOUND BUS LINES
Assigned to: JUDGE GENE CARTER
Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 42:1983 Civil Rights Act

Date Filed: 06/07/04
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights:
Other
Jurisdiction: Federal Question

Plaintiff

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V.

Defendant

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