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E-FILED on 1/24/05

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL HOLMES,

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION,

Defendant.

No. C-03-03385 RMW

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

[Re Docket No. 39]

Defendants National Railroad Passenger Corporation ("National") and Peninsula Corridor Joint Powers Board ("Peninsula") filed this motion seeking summary judgment on plaintiff's employment discrimination claims. Plaintiff Michael Holmes ("Holmes") opposes the motion. For the reasons discussed below, defendants' motion for summary judgment is GRANTED.

I. BACKGROUND

Defendant Peninsula Corridor Joint Powers Board ("JPB") is a transportation agency consisting of the City and County of San Francisco, San Mateo County Transit District and the Santa Clara Valley Transportation Authority. The JPB owns the commuter rail service Caltrain, which operates from San Francisco to Gilroy, California. Amtrak is under contract with the JPB to operate Caltrain. Miller Decl. ¶

2.

1 Plaintiff was hired by Amtrak in 1989, performing onboard services for Amtrak based in Los
2 Angeles. Erlewine Decl. Ex. B ("Holmes Depo.") at 14:1-7. In 1994, plaintiff switched to the train and
3 engineer service ("TNE"), and in 1996 he moved to San Jose. After five years in the TNE as an assistant
4 conductor, plaintiff was elevated to conductor in 1999. *See id* at 14-15.

5 The relevant facts surrounding plaintiff's dismissal are not in dispute. On November 5, 2002
6 plaintiff was the conductor on a train bound for San Jose. The three person crew consisted of the
7 Locomotive Engineer, Robert Orantes, the Assistant Conductor, Sukie Stagno, and Holmes. All three
8 crew members were aware that they were transporting a Person Needing Assistance ("PNA"), Robert
9 Sandoval, in this case a passenger who was confined to a wheelchair. Robinson Decl. Ex. A at 2 (Public
10 Law Board No. 6478, Case No. 63) ("Board Decision"). Sandoval, who had boarded in Redwood City
11 with the assistance of Assistant Conductor Stagno, was set to detrain at the San Jose Diridon Station. *See*
12 *id*; Holmes Depo. at 66:7-9; 68:4-7.

13 About a minute and a half prior to arriving in San Jose, Holmes and Stagno had a discussion over
14 the radio about who would be assisting the PNA to detrain, as Stagno had to retrieve paperwork from the
15 office at the station in San Jose. They agreed that Holmes would help him detrain. About 20 seconds later,
16 Holmes radioed Stagno three or four times to inform her that he would be "protecting" car five (manually
17 informing the passengers of the station, as the speaker system was not working in car five). After failing to
18 receive an acknowledgment, he requested that Orantes relay the message that he was protecting car five to
19 Stagno. Holmes did not inform Orantes or Stagno that he could not help the PNA detrain. Holmes Depo.
20 at 73:3-10.

21 After arriving at the San Jose Diridon Station, plaintiff began walking through the cars to clean up
22 and make sure all the passengers were detraining. Stagno, who was in the same car as the PNA when the
23 train stopped, told Sandoval that "she had to go get something out of the office, but someone was going to
24 come get [him,]" then headed to the office. Board Decision at 3.

25 After everyone in the train had departed and other passengers began boarding, Sandoval threw a
26 book out to get someone's attention. After more time passed without any help, and fearing that he would
27 be taken to the next station, Sandoval describes what he did next:
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1 I put the lock. I flipped out of the chair. Threw the chair out, and I dragged
2 myself across. I didn't crawl. I dragged myself because I have no use of my
3 lower extremities. I can't feel them. I have two open wounds on my foot that
4 have been there for months that I'm trying to heal up. And I'm slamming them
5 around because I have no control because they are dead weight. Crawled
6 down the steps.

Gallagher Decl. Ex. B. at 16 (Tr. of 11/15/02 Hearings).

7 Approximately five minutes after arriving at the station, Orantes asked plaintiff, "is the PNA off?"
8 Plaintiff replied "yeah," but then forty-five seconds later told Orantes that the PNA might not be off, and to
9 hold the train. Board Decision at 4; Holmes Depo. at 79:25-80:2. Holmes, who had seen Sandoval by
10 that point, walked from the fifth to the second car. Holmes walked through the vestibule doors to the
11 second car, and reached Sandoval at the same time as Stagno, who had arrived from the platform side.
12 Sandoval at this point was on the second step of the train lowering himself down. See Holmes Depo. at
13 80:7:-25.

14 Stagno apologized, retrieved Sandoval's chair and helped him back in, despite protests from
15 Sandoval that he did not need any help. Stagno then walked with Sandoval and tried to calm him down as
16 Sandoval moved towards the office to file a complaint. Plaintiff did not attempt to aid Sandoval, nor did he
17 say anything. In his opposition briefing, plaintiff claims that this was because he thought he might further
18 agitate Sandoval if he attempted to intercede. Opp. at 5. Sandoval subsequently lodged a complaint only
19 against Holmes.

20 Upon receiving the complaint Charles Miller, Amtrak's Director of Operations, took both Stagno
21 and Holmes out of service. Based on statements from Orantes that plaintiff had told Stagno that he would
22 assist the PNA and Stagno should go the station to get paperwork, and Sandoval's statements that Stagno
23 had offered assistance while Holmes had done nothing to assist him, Miller determined that plaintiff had
24 agreed to assist Sandoval but failed to do so, and was therefore responsible for the incident. Miller Decl. ¶
25 6. Miller reinstated Stagno, advised plaintiff to see his union representative, Ed Adams, and instructed that
26 plaintiff be charged for rules violations relating to the incident. *Id.* ¶ 7.

27 On November, 12, 2002 Amtrak gave plaintiff written notice that he was being charged with rules
28 violations relating to the November 5th incident, and another incident that had occurred 4 days prior on

1 November 1,¹ and further that disciplinary hearings would be conducted on November 15. At the
2 hearings, plaintiff was represented by his union representative, who had an opportunity to cross-examine
3 Sandoval and Stagno. Amtrak attempted to call plaintiff as a witness, and the Hearing Officer also invited
4 him to testify, but plaintiff refused.

5 On November 27, 2002 the Hearing Officer issued separate written decisions finding Holmes in
6 violation of Amtrak rules and policies related to both the November 1 and November 5 incidents.
7 Gallagher Decl. Ex.'s C, D. Based on the seriousness of the November 5 incident, and given a prior history
8 of earlier suspensions for rule violations, Amtrak's General Manager George Erickson terminated plaintiff's
9 employment. Erickson also suspended Holmes for his actions related to the November 1 incident.
10 Erickson Decl. ¶¶ 5-6, Ex.'s A, B.

11 Pursuant to the Collective Bargaining Agreement ("CBA") with Amtrak, plaintiff appealed his
12 termination to the Public Law Board ("Board"). The Board consisted of an Amtrak-appointed member, a
13 union appointed member and a neutral arbitrator. Robinson Decl. ¶ 3. On April 5, 2004, the Board held
14 that Amtrak presented sufficient evidence to prove the charges against Holmes, but that the discipline was
15 excessive:

16 [H]aving carefully reviewed the Claimant's past discipline and his years of
17 service, along with the time line of the events and the full record, the Board
18 will permit the Claimant to return to service. While not denigrating guilt, the
Claimant is to be returned to service without back pay. He is to be given one
last chance to prove his worth to the Carrier.

19 Board Decision at 4.

20 **II. ANALYSIS**

21 **A. Discrimination claims**

22 Plaintiff's second and third claims for relief allege race and gender discrimination in violation of Title
23 VII and the California Fair Employment and Housing Act ("FEHA"). 42 U.S.C. §§ 2000 et seq.; CAL.
24 GOV'T CODE §§ 12940 et seq. Plaintiff alleges that "defendants allowed a white female conductor to get
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27 ¹ On November 1, 2002 plaintiff was operating the doors on a train stopped at the California
28 Avenue station, when the doors closed on a passenger, causing a possible knee injury to the passenger and
a 20 minute delay in train service. Holmes Depo. at 210:10-211:7.

1 away with failing to properly assist a disabled passenger to disembark the train, whilst blaming plaintiff
2 because he is black and male and the only black conductor on CALTRAIN." SAC ¶ 15.

3 "Because of the similarity between state and federal employment discrimination laws, California
4 courts look to pertinent federal precedent when applying our own statutes." *Guz v. Bechtel Nat'l, Inc.*, 24
5 Cal. 4th 317, 354 (2000) (citation omitted). "In particular, California has adopted the three-stage burden-
6 shifting test established by the United States Supreme Court for trying claims of discrimination. . . based on
7 a theory of disparate treatment." *Id.* (citations omitted). Generally, to establish a *prima facie* case a
8 plaintiff must show that:

9 (1) he was a member of a protected class, (2) he was qualified for the position
10 he sought or was performing competently in the position he held, (3) he
11 suffered an adverse employment action, such as termination, demotion, or
denial of an available job, and (4) some other circumstance suggests
discriminatory motive.

12 *Id.* at 355 (citing *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981) (other
13 citations omitted)).

14 It is undisputed that plaintiff is a member of a protected class and that he suffered an adverse
15 employment action. Defendants contend that plaintiff has failed to carry his burden of establishing a *prima*
16 *facie* case because Holmes was not performing satisfactorily on the job, and no circumstances suggest
17 discriminatory motive. In support, defendants point to an absence of any testimony by plaintiff that anyone
18 at Amtrak ever made a racially derogatory comment against blacks, or that anyone at Amtrak made a
19 negative comment based on plaintiff's gender.²

20 In addition, defendants argue that even assuming plaintiff establishes a *prima facie* case, defendants
21 have a legitimate, non-discriminatory business reason for terminating plaintiff, namely his failure to assist
22 Sandoval on November 5, 2002, combined with a history of prior rules violations. *See Reeves v.*
23 *Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 142 (2000). Plaintiff counters that the Board's
24 reversal of his termination is evidence that his employment termination for the November 5 incident was
25 excessive, and therefore raises a triable issue of fact as to whether the termination was based on race or
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27 ² The only racial incident plaintiff testified to was hearing that several years prior to the
28 November 5 incident a co-worker had nicknamed him "Lippy." Mot. Summ. J. at 14 (citing *Holmes Depo.*
at 190-192).

1 gender. In addition, plaintiff notes that prior to reinstatement he is being subjected to a medical screening as
2 if he were a new employee. Neither of these facts support a *prima facie* case for discrimination. The fact
3 that plaintiff was reinstated by the Board without back pay, and the subsequent medical screening of
4 Holmes, are insufficient to raise an issue of fact as to his discrimination claims. Plaintiff has failed to
5 establish a *prima facie* case of discrimination, and defendants have also established a legitimate non-
6 discriminatory reason for terminating his employment.³

7 **B. Claims under the RLA and FELA**

8 As plaintiff's claim centers on his wrongful discharge, it is properly considered a minor dispute
9 which must be arbitrated following the procedures of the Railway Labor Act. *See Edelman v. Western*
10 *Airlines, Inc.*, 892 F.2d 839, 843 (9th Cir. 1989) (citations omitted). Judicial review of minor disputes is
11 "among the narrowest known to the law." *Atchison, Topeka & Santa Fe Railway Co. v. Buell*, 480 U.S.
12 557, 563 (1987) (citing *Union Pacific R. Co. v. Sheehan*, 439 U.S. 89, 91 (1978)). Although plaintiff
13 alleges he "was denied a fair or substantive hearing before being fired without just cause[.]" and that he was
14 fired because he is African-American, SAC ¶¶ 10-11, he presents no evidence indicating any violation of
15 the RLA. In addition, plaintiff does not dispute that his claims are based on intentional acts rather than
16 negligence. As plaintiff also does not dispute that FELA was enacted "to provide a federal remedy for
17 railroad workers who suffer personal injuries as a result of the negligence of their employer or their fellow
18 employees[.]" *Atchison*, 480 U.S. at 561, defendants' motion for summary judgment on plaintiff's FELA
19 claim is granted.

20 **C. Claims against the JPB**

21 Plaintiff presents no evidence that links the JPB to any decision made by Amtrak. Defendants'
22 motion for summary judgment as to the JPB is granted on this independent basis.

23 **D. Objections to evidence**

24 Defendant's objections to the declaration of Michael Holmes offered in support of plaintiff's
25 opposition are sustained as to paragraphs: ¶ 2 (lack of foundation); ¶ 11 at 3:24-28 (hearsay, lack of
26 foundation); ¶ 11 at 3:28 (lack of foundation, personal knowledge); ¶ 13 at 4:6 (lack of foundation); ¶ 13 at

27 ³ To the extent plaintiff also attempts to add age and disability discrimination claims, they are
28 dismissed.

1 4:8 (lack of foundation); ¶ 13 at 4:12-14 (lack of foundation); ¶ 13 at 4:14-15 (lack of foundation, personal
2 knowledge); ¶ 15 at 4:23-24 (lack of foundation); ¶ 15 at 4:24-27 (lack of foundation, hearsay, personal
3 knowledge, best evidence); ¶ 16 at 4:28-5:3 (lack of foundation); ¶ 16 at 5:3 (personal knowledge); ¶ 16
4 at 5:5 (lack of foundation, personal knowledge); ¶ 16 at 5:6-10 (lack of foundation, hearsay, personal
5 knowledge); ¶ 16 at 5:10-13 (lack of foundation, personal knowledge); ¶ 17 at 5:15-19 (lack of
6 foundation, hearsay, personal knowledge); ¶ 17 at 5:19-21 (lack of foundation, hearsay, personal
7 knowledge); ¶ 18 at 5:23 (lack of foundation, personal knowledge); ¶ 18 at 5:23-27 (lack of foundation,
8 hearsay, personal knowledge); ¶ 19 at 5:28-6:3 (lack of foundation).

9 **III. ORDER**

10 For the foregoing reasons, defendants' motion for summary judgment is GRANTED. Judgment is
11 entered accordingly.

12
13 DATED: 1/24/05

/s/ Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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Dated:

1/24/05

/s/ TNL

Chambers of Judge Whyte

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