

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUDOLPH A. KARLO)	
)	Civil Action No. 2:10-cv-01283
)	
Plaintiff,)	Honorable Terrence F. McVerry
)	
v.)	
)	ELECTRONIC FILING
PITTSBURGH GLASS WORKS, LLC,)	
)	
Defendant.)	

DEFENDANT’S INITIAL PRETRIAL SUBMISSION

Defendant Pittsburgh Glass Works, LLC (“PGW”) submits the following Initial Pretrial Submission in accordance with this Court’s Orders (Dkt. 469 and 478) including Defendant Pretrial Narrative Statement and Witness List. Defendant notes that, in accordance with the Trial Scheduling Order, it is separately submitting its motions *in limine*.

A. Pretrial Narrative Statement

On or about September 17, 2009, Plaintiff Rudolph Karlo (“Plaintiff”) became an employee of Belcan Corporation (“Belcan”), a company that provides temporary staffing for a wide variety of companies throughout the world. Belcan had a written agreement with PGW establishing a relationship where Belcan provided PGW with “temporary personnel for the performance of certain services at/for certain of [PGW’s] facilities.” Plaintiff was, pursuant to the agreement, assigned by Belcan to work at PGW’s Creighton, Pennsylvania, manufacturing plant. Plaintiff admits that his work at Creighton was temporary in nature and that he was originally working in the maintenance department as a contract maintenance supervisor.

Before his employment with Belcan, Plaintiff had previously worked for PGW. While he was originally employed by PGW, he was not employed at any of PGW's manufacturing facilities and had not been involved in supervising production. Instead, he had been part of PGW's manufacturing technology group and provided support to the company's engineers while they ran tests and other projects relating to PGW's manufacturing facilities. Aside from the customer relationship with PGW, Belcan is unaffiliated with PGW. During the time he was working as Belcan's employee, Plaintiff was not employed by PGW.

During Plaintiff's employment with Belcan at PGW, Plaintiff sent time sheets to Belcan. He received payment directly from Belcan for his work. Plaintiff's income taxes were then withheld by Belcan, pursuant to W-4 forms.

After performing his temporary contract work through Belcan and for PGW as a maintenance supervisor for several months, on or about January 22, 2010, Plaintiff filed a charge with the EEOC relating to the termination of his prior employment with PGW. Plaintiff does not claim any immediate retaliation after filing this charge. Nor does he allege any retaliation in that EEOC charge. As discussed, below, Plaintiff's temporary work assignment with Belcan for PGW continued on for five-and-a-half months *after* Plaintiff filed that EEOC charge.

Separately, near the start of 2010, PGW put in place a new plant manager at PGW's Creighton facility – Mark Soderberg. With help from John Felker, H.R. Manager at the facility, Mr. Soderberg had responsibility for the employment decisions at the Creighton plant. Moreover, Mr. Soderberg was in charge of deciding how staffing at the plant would be handled, including the use of temporary contract workers. One step Mr. Soderberg took early in his time at Creighton was to change the way supervisors were staffed. In this regard, Mr. Soderberg set up supervision in the plant so that there would no longer be maintenance supervisors. Instead, all

supervisors would be production supervisors. As part of this change, on February 1, 2010 (a week *after* Plaintiff filed his EEOC charge) Plaintiff's temporary assignment changed from a maintenance supervisory role to a production supervisory role. At the same time, two other temporary contract-workers, Hal Reader and Ed Watson, took on production supervisor tasks like that of Plaintiff. For Plaintiff, Mr. Reader and Mr. Watson, the change from temporary contract work in maintenance to temporary contract work in production brought with it more job responsibilities. During his time in these temporary positions at PGW, Plaintiff did not complain of any antagonism by PGW. Rather, Plaintiff remained happy in his work and wanted to be directly hired by PGW as an employee for a non-contract, permanent position.

Plaintiff claims that while he was a temporary contract worker, certain production managers, Thomas Showers and Robert Pinchok, made representations to him regarding the prospect of whether or not he would be hired directly by PGW as an employee. Plaintiff admits that he never spoke with these managers about his EEOC Charge, but nonetheless claims that they knew about it. Mr. Pinchok and Mr. Showers state that they did not know about Plaintiff's EEOC Charge until *after* Plaintiff's temporary assignment through Belcan for PGW ended. Importantly, neither Mr. Showers nor Mr. Pinchok were involved in any decision about whether Plaintiff would be directly hired by PGW. Additionally, neither Mr. Pinchok nor Mr. Showers, was involved in decision-making regarding the end of Plaintiff's temporary contract worker position.

Mr. Soderberg made the decision to end Plaintiff's (and others') temporary contract assignment and not to hire him for a non-contract position, but he also discussed that decision with Mr. Felker and PGW's Vice President of Human Resources, Bob McCullough. Mr. Soderberg, as plant manager, had a preference for utilizing full-time, non-contract experienced

production supervisors in the Creighton plant. Thus, during the spring of 2010, Mr. Soderberg and Mr. Felker undertook a search for permanent, non-contract production supervisors for the Creighton plant. In late May or June 2010, Mr. Soderberg and Mr. Felker identified promising candidates for these positions. Plaintiff was initially considered for one of these positions, but Mr. Soderberg ultimately decided not to hire Plaintiff because Plaintiff lacked production supervisor experience. In fact, in the hiring search one of the requirements for candidates was that they have at least three years of manufacturing supervisory experience. Plaintiff did not have the required experience.

Once Mr. Soderberg and Mr. Felker finalized the individuals that they were interested in hiring, Mr. Soderberg discussed with Mr. McCullough eliminating the three temporary contract supervisor positions that existed at that time, including Plaintiff's position, and planned instead to hire non-contract employees. Plaintiff was informed that his temporary assignment at PGW through Belcan would end. Plaintiff's temporary work assignment ended on July 9, 2010. Plaintiff does not claim that PGW did anything to terminate or otherwise impact Plaintiff's relationship with Belcan as to potential temporary placements for other Belcan customers. After Plaintiff's temporary assignment at PGW ended, he received over \$10,000 in unemployment benefits from Belcan, not PGW, from August to December 2010. Beginning on July 12, 2010, PGW-Creighton brought on three production supervisors on a temporary-to-permanent ("temp-to-perm") basis. The three new production supervisors were Tracy Schaeffer, Raymond Dillard, and Wayne Foley. All three had many years of experience as production supervisors in manufacturing facilities and other qualifications that Plaintiff did not possess. After the trial employment period, two of these three temp-to-perm production supervisors were offered permanent positions at PGW. The third position was re-listed on the Pittsburgh Post-Gazette and

again indicated that “[c]andidates must have a minimum of three years of manufacturing supervisory experience.”

When Mr. Soderberg made the decision to end Plaintiff’s (and others’) temporary contract assignment and not to hire him for a non-contract position, Mr. Soderberg was *not* aware of Plaintiff’s EEOC Charge. Months after Plaintiff’s temporary work had ended, Mr. Soderberg did learn that Plaintiff instituted a lawsuit against PGW. Mr. Soderberg learned that from an article on the website GlassBytes. Plaintiff’s complaint initiating that lawsuit was filed on September 29, 2010 and the GlassBytes article was published on October 1, 2010. Like Mr. Soderberg, Mr. Showers and Mr. Pinchok both learned of Plaintiff’s lawsuit through that same article.

B. Witness List

PGW intends to call the following witnesses at the time of trial:

Witnesses	Will Call/May Call
Rudolph Karlo, Plaintiff	Will Call
Mark Soderberg, former PGW, Plant Manager, Creighton	Will Call
John Felker, PGW, H.R. Manager, Creighton	Will Call
Robert McCullough, PGW, Vice President of Human Resources	Will Call
Thomas Showers, PGW, Line 1 Value Stream Manager, Creighton	May Call
Robert Pinchok, PGW, Line 2 Value Stream Manager, Creighton	May Call
Jeffrey Belack, Damages Expert, MDD	Will Call

Defendant reserves the right to call any witnesses identified in Plaintiff's witness list, to amend this list before trial, and to call persons not named herein for purposes of impeachment or rebuttal.

Dated: December 7, 2015

Respectfully Submitted,

PITTSBURGH GLASS WORKS, LLC

By: /s/ David S. Becker

One of its Attorneys

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Counsel for Defendant Pittsburgh Glass Works, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon counsel of record by the Court's ECF system, this 7th day of December, 2015, addressed as follows:

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/s/ David S. Becker _____