

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ALVA HANSON,	:	
Plaintiff,	:	
	:	
v.	:	Case No. 3:99 CV 86 (CFD)
	:	
CYTEC INDUSTRIES,	:	
Defendant.	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Alva Hanson, brings this action against the defendant, Cytec Industries, alleging that the defendant discriminated against him and created a hostile work environment because of his race and national origin in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, as amended by the Civil Rights Act of 1991 (“Title VII”), and 42 U.S.C. § 1981, retaliated against him in violation of Title VII, and intentionally inflicted emotional distress in violation of Connecticut law.¹ The defendant has moved for summary judgment [Doc. #40]. For the following reasons, the motion for summary judgment is GRANTED.

I. Background²

Alva Hanson (“Hanson”), a man of West Indian descent and African-American race has been employed by the defendant, Cytec Industries (“Cytec”), as a “material handler” from 1979 to the present date. Hanson alleges that, in 1997, his supervisor, Carl Zemke (“Zemke”), engaged in

¹In his complaint, Hanson also alleged that such actions constituted violations of the Connecticut Fair Employment Practices Act and Connecticut Constitution, as well as negligent infliction of emotional distress. On February 14, 2000, however, this Court granted the defendant’s motion to dismiss those causes of action. Accordingly, only Hanson’s Title VII, Section 1981, and intentional infliction of emotional distress claims remain.

²The relevant facts are based on the parties Rule 9(c) statements and summary judgment papers and are undisputed unless otherwise indicated.

the following actions, viewing the evidence presented in a light most favorable to Hanson.

On May 5, 1997, Zemke spoke to Hanson about picking up an assignment sheet. Later that day, Zemke again reminded Hanson about the assignment sheet, and Hanson responded that he was aware of his duties and would get the assignment sheet. Thereafter, Zemke began yelling at Hanson, and when Hanson told Zemke not to talk to him that way, Zemke responded: “I will talk to you any fucking way I want to, I’m your supervisor.” Zemke later apologized to Hanson for using foul language, reported the issue to Cytec management, and was counseled regarding the incident. On May 6, 1997, Hanson filed a union grievance³ reporting this incident—grievance # 4254.

On July 2, 1997, Zemke called Hanson at home to see if he could work an overtime assignment that day. Hanson was not home when Zemke called, and thus, was not scheduled for the overtime. Zemke did not attempt to schedule Hanson in advance for the overtime assignment, as Hanson testified was Zemke’s practice for white employees. Cytec provided Hanson with a “make-up” overtime day as a means of settling this dispute. On July 2, 1997, Hanson filed a union grievance reporting this incident—grievance #4452.

In July 1997, Zemke requested that Hanson sweep up a section of the work floor while Hanson was working overtime. The sweeping assignment was not appropriate for an employee in Hanson’s job classification. Thus, after Zemke’s request, Hanson went to his union representative, Gary Silva (“Silva”), and spoke with him about the sweeping assignment. Silva then met with Hanson and Zemke and told Zemke that the sweeping assignment was outside of

³Hanson does not indicate the nature of his union membership in his complaint or summary judgment papers.

Hanson's job classification. Zemke did not subsequently ask Hanson to perform the sweeping assignment. Hanson did not file a union grievance concerning this incident.

On August 21, 1997, Zemke asked Hanson to take an early lunch break. According to Hanson, it was not Zemke's practice to schedule break times for white employees. Hanson went to Silva regarding Zemke's request and Silva told him to go on his lunch break. On the same day, Zemke handed Hanson an assignment while Hanson was eating his lunch in the break room, though it was common practice for supervisors to leave work assignments in the office. Zemke had never previously given an assignment sheet to Hanson in the lunchroom. Later that day, David Gymrek, a Production Superintendent, met with Hanson, Zemke, and Silva and told Zemke and Hanson that they needed "to respect each other" and resolve their differences. That night, Zemke assigned Hanson to a different overtime assignment than his daytime assignment, though it was common practice to assign employees the same job duties for overtime as they had worked in their regular shift. Zemke assigned the overtime assignment for the position that Hanson had been working on during the day—extruder operator—to a white male, Vernon Eldred, who was not designated as overtime personnel for that day. Hanson filed a union grievance concerning the incidents of August 21, 1997 on that day—grievance #4257.

On August 22, 1997, Hanson filed a complaint with the Commission on Human Rights and Opportunities ("CHRO"), alleging race and national origin discrimination. After Cytec answered the complaint and submitted a position statement, the CHRO conducted a fact-finding hearing. On October 20, 1998, the CHRO dismissed the complaint, ruling that there was no reasonable cause to believe that discriminatory acts had occurred. Hanson then filed a complaint with the Equal Employment Opportunity Commission ("EEOC") in August 1997, and obtained a

“Notice of Right to Sue” from the EEOC on November 2, 1998. He filed the present action on January 15, 1999. As noted above, on February 14, 2000, this Court granted the defendant’s motion to dismiss Hanson’s Connecticut Fair Employment Practices Act, Connecticut Constitution, and negligent infliction of emotional distress claims. Accordingly, only Hanson’s Title VII, Section 1981, and intentional infliction of emotional distress claims remain.

II. Discussion

A. Title VII and Section 1981 Disparate Treatment Claims

Under the burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973), a plaintiff alleging disparate treatment based on race and national origin in violation of Title VII and Section 1981⁴ must first establish a prima facie case of discrimination.⁵ The burden then shifts to the defendant to offer a legitimate, nondiscriminatory rationale for its actions, and the plaintiff must then show that the defendant’s stated reason is mere pretext for discrimination.

To establish a prima facie case of discrimination based on race and national origin, a plaintiff must show (1) membership in a protected class, (2) qualification for continued employment, (3) an adverse employment action, and (4) circumstances that give rise to an inference of discrimination. McDonnell Douglas, 411 U.S. at 802.

⁴No cause of action exists under section 1981 for national origin discrimination. See Anderson v. Conboy, 156 F.3d 167, 170 (2d Cir. 1998). Accordingly, to the extent Hanson is claiming such, summary judgment shall enter to Hanson’s § 1981 national origin discrimination claim.

⁵The Second Circuit has held that the McDonnell Douglas burden-shifting framework applies to Section 1981 claims of race discrimination. See Hudson v. International Business Machines Corp., 620 F.2d 351, 354 (2d Cir.1980), cert. denied 449 U.S. 1066 (1980).

The parties do not dispute whether Hanson has established the first two factors of his prima facie case. The defendant maintains, however, that Hanson has not demonstrated that he suffered any adverse employment action and even assuming he had established such action, that the action occurred under circumstances giving rise to an inference of discrimination.⁶

Viewing the evidence presented in a light most favorable to Hanson, Hanson has set forth the following—which are set forth above in more detail—as his claims of “adverse employment action”:

- 1) On May 5, 1997, Zemke used profanity with Hanson and had also done so on a previous occasion with another man of Jamaican descent and African-American race.
- 2) On July 2, 1997, Zemke called Hanson at home to see if he could work an overtime assignment that day, rather than scheduling him in advance as Hanson testified was his practice for white employees.
- 3) In July 1997, Zemke assigned a sweeping duty to Hanson, which was not within Hanson’s job classification.
- 4) On August 21, 1997, Zemke assigned a white person as overtime extruder operator when normal practice is to schedule the employee who had worked regular shift as extruder operator for that overtime (in this case, Hanson).
- 5) Also on August 21, 1997, Zemke scheduled a break for Hanson, while, Hanson testified, it was not his practice to schedule breaks for white employees.
- 6) Also on August 21, 1997, Zemke left an assignment sheet for Hanson in the lunchroom, rather than the usual place—the third floor office.⁷

⁶As noted at the hearing on the motion for summary judgment, the defendant has withdrawn its alternate means of attacking this claim on the basis of res judicata based on the CHRO’s dismissal of the plaintiff’s claims of race and national origin discrimination.

⁷In his complaint, Hanson specifies only one of these occasions and refers to “other instances of harassment, discrimination and disparate treatment” without further description. His deposition testimony and opposition to the defendant’s motion for summary judgment, however, set forth these incidents as the relevant instances of adverse employment action.

The Second Circuit has defined an “adverse employment action” for purposes of a Title VII disparate treatment claim as a “materially adverse change in the terms and conditions of employment.” Galabya v. New York City Bd. of Educ., 202 F.3d 636, 640 (2d Cir. 2000) (internal quotation marks omitted). To be “materially adverse, a change in working conditions must be more disruptive than a mere inconvenience or an alteration of job responsibilities.” Id. (internal quotation marks omitted). “Such a change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices . . . unique to a particular situation.” Weeks v. New York State (Division of Parole), 273 F.3d 76, 84 (2d Cir. 2001) (internal quotation marks omitted).

The Court concludes that the evidence presented by Hanson regarding the above-described actions fails to establish as a matter of law that Hanson suffered “adverse employment action.” First, the defendant’s actions do not fall within the classic examples of “adverse employment action,” that is, Hanson has not presented evidence that he has been terminated, transferred or reassigned from his position, or turned down for a promotion. Nor does the evidence suggest that Hanson’s duties, responsibilities, or benefits have been significantly changed in any way. When considered individually, or as a whole, the incidents do not appear to have materially adversely affected Hanson’s employment, but rather appear to be mere “alteration[s] of job responsibilities,” Galabya, 202 F.3d at 640, or with regard to Zemke’s use of profanity, an isolated, albeit upsetting, incident. See Browne v. New York State Office of Mental Health, No. 00-9124, 2001 WL 533609, at * *1 (2d Cir. May 17, 2001) (upholding district court finding that plaintiff had failed to establish adverse employment action in spite of her claims that (1) she was

improperly directed to prepare an assignment after the time by which such assignment should have been prepared, (2) her employer improperly discussed her past performance record at an administrative hearing, and (3) her employer improperly prepared her employee evaluation); Henriquez v. Times Herald Record, No. 97-9637, 1998 WL 781781, at **1 (2d Cir. Nov. 6, 1998) (holding that plaintiff’s allegations that the defendants (1) increased her workload, (2) shortened her deadlines, (3) required her to work on weekends, (4) disciplined her for making minor errors, (5) requested medical information from her when she was on a medical leave of absence, and (6) demanded that she meet her deadlines after learning that she allegedly suffered from carpal tunnel syndrome, failed to state materially adverse changes in the terms and conditions of her employment). As the Court concludes that Hanson has failed to establish “adverse employment action,” he has not set forth a prima facie case of discrimination. Accordingly, his Title VII and § 1981 disparate treatment claims must fail.

B. Title VII Retaliation Claim

The order and allocation of burdens of proof in retaliation cases follow that of general disparate treatment analysis as set forth in McDonnell Douglas and Burdine. See Davis v. SUNY, 802 F.2d 638, 642 (2d Cir. 1986). Hanson bears the burden of establishing a prima facie case of retaliation based on protected activity. Hanson must show that he engaged in protected participation or opposition under Title VII, that the employer was aware of this activity, that the employer took adverse employment action against him, and that a causal connection exists between the protected activity and the adverse action. Grant v. Bethlehem Steel Corp., 622 F.2d 43, 46 (2d Cir. 1980). However, Hanson has also failed to establish that he was subjected to “adverse employment action” by the defendant for purposes of his Title VII retaliation claim for

the same reasons set forth in the preceding section. See Weeks, 273 F.3d at 84-87 (applying the same “adverse employment action” standard for Title VII disparate treatment and retaliation claims); cf. Hicks v. Rubin, No. 00-6079, 2001 WL 273831, at **3 (2d Cir. March 20, 2001) (holding that supervisor’s concealment from the plaintiff of a memorandum critical of the plaintiff, giving the plaintiff short notice before performing a workload review, and transferring her from one training group to another, did not constitute “adverse employment action” sufficient to support a claim of retaliation under Title VII).⁸ Accordingly, Hanson has failed to establish a prima facie case of retaliation under Title VII.⁹

C. Title VII and Section 1981 Hostile Work Environment Claims

In order to prevail on a hostile work environment claim brought pursuant to Title VII or Section 1981, Hanson “must produce evidence that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim’s employment.” Cruz v. Coach Stores, Inc., 202 F.3d 560, 570 (2d Cir. 2000) (internal quotations omitted). To withstand summary judgment, Hanson “must demonstrate either that a single incident was extraordinarily severe, or that a series of incidents

⁸While in Phillips v. Bowen, 278 F.3d 102, 109-111 (2d Cir. 2002), the Second Circuit held that a plaintiff may prove “adverse employment action” for purposes of First Amendment retaliation claims either by presenting evidence of the classic examples of discharge, refusal to hire, refusal to promote, demotion, reduction in pay, and reprimand, see Morris v. Lindau, 196 F.3d 102, 110 (2d Cir. 1999), or by showing that “(1) using an objective standard; (2) the total circumstances of her working environment changed to become unreasonably inferior and adverse when compared to a typical or normal, not ideal or model, workplace.” Phillips, 278 F.3d at 109, the Second Circuit has not indicated that the second, more expansive standard also applies to Title VII retaliation claims.

⁹As the Court finds that Hanson’s claim of retaliation under Title VII fails on the merits, it need not reach the defendant’s alternate means of attacking this claim on the basis of Hanson’s alleged failure to raise this claim with the CHRO or EEOC.

were sufficiently continuous and concerted to have altered the conditions of h[is] working environment.” Id. at 570 (internal quotations omitted). “Isolated incidents, unless extremely serious, will not amount to discriminatory changes in the terms and conditions of employment.” Edwards v. State of Connecticut Dep’t. Transportation, 18 F. Supp. 2d 168, 175 (D. Conn. 1998). Hanson must also show “the conduct creating that atmosphere actually constituted discrimination because of race.” Hicks, 2001 WL 273831, at **3 (internal quotations, alterations omitted). The Court concludes that Hanson has failed to present evidence of a hostile work environment to withstand summary judgment. The actions he was subjected to, while admittedly embarrassing or frustrating to Hanson, do not rise to the level of discriminatory intimidation, ridicule, or insult that was sufficiently severe or pervasive to alter the terms and conditions of his working environment. His supervisor’s use of profanity on one occasion, failure to call him in advance for an available overtime assignment, assignment of a one-time duty outside his job classification, failure to assign him to an overtime assignment to which he may have been entitled, scheduling of a work break on one occasion, and leaving him an assignment in a different location than usual, even assuming a trier of fact could find that they were racially motivated, are simply insufficient as a matter of law to constitute a hostile work environment under Title VII. Compare Williams v. County of Westchester, 171 F.3d 98, 101-02 (2d Cir. 1999) (holding that plaintiff’s evidence that a file containing racist material was found near his office and that plaintiff was consistently given menial tasks and was told by some of his fellow criminal investigators to “go wash and gas the boss’s car” did establish a hostile work environment for the purposes of Title VII claim), with Whidbee v. Garzarelli Food Specialities, Inc., 223 F.3d 62, 68, 70-72 (2d. Cir. 2000) (finding a hostile work environment where plaintiffs were subjected to “a stream of racially

offensive comments over the span of two to three months,” including statement that supervisor “should go out and buy a truck and drag someone by the truck who is black”), and Schwapp v. Town of Avon, 118 F.3d 106, 110-12 (2d Cir. 1997) (holding that question of material fact existed as to hostile work environment claim where plaintiff was subjected to at least ten “racially-hostile incidents” and two incidents reflecting racial bigotry during his 20 months employment by the defendants). Accordingly, Hanson’s hostile work environment claim also fails as a matter of law.

D. Intentional Infliction of Emotional Distress Claim

The Court also concludes that no genuine issue of material fact exists as to Hanson’s claim for intentional infliction of emotional distress under Connecticut law.

In order for the plaintiff to prevail in a case for . . . intentional infliction of emotional distress, four elements must be established. It must be shown: (1) that the actor intended to inflict emotional distress or that he knew or should have known that emotional distress was the likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant’s conduct was the cause of the plaintiff’s distress; and (4) that the emotional distress sustained by the plaintiff was severe.

Appleton v. Board of Educ. of Town of Stonington, 757 A.2d 1059, 1063 (Conn. 2000) (internal quotation marks and alterations omitted). “Whether a defendant’s conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question of law.” Id.

Liability for intentional infliction of emotional distress requires conduct that exceeds all bounds usually tolerated by decent society. Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Id. (internal citations, quotation marks, and alterations omitted).

The Court concludes that the incidents alleged by Hanson, individually or as a whole, are

insufficient to create a genuine issue of material fact as to whether the defendant's conduct was extreme and outrageous. As a matter of law, these incidents are not so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and be regarded as atrocious. Again, while the incidents may have been distressing and hurtful to Hanson, they are not matters which can be considered utterly intolerable in a civilized community. See Appleton, 757 A.2d at 1063; Emanuele v. Baccaccio & Susanin, No. CV900379667S, 1994 WL 702923, at *2 (Conn. Super. Ct. Dec. 1, 1994) (allegations that employer made false statements regarding plaintiff's work performance, and used coercion, threats, and intimidation to force her to sign a document against her will, all for the purpose of depriving her of benefits and compensation did not constitute "extreme and outrageous conduct"); Lucuk v. Cook, No. CV950050210S, 1998 WL 67412, at *5 (Conn. Super. Ct. Feb. 11, 1998) ("[C]ourts appear to agree that mere insults or verbal taunts do not rise to the level of extreme and outrageous conduct even when they include obnoxious activity like threats, insults, or taunts."). Consequently, Hanson's claim for intentional infliction of emotional distress also fails as a matter of law.¹⁰

III. Conclusion

For the foregoing reasons, the defendant's motion for summary judgment [Doc.# 40] is GRANTED. The Clerk is directed to close the case.

SO ORDERED this ____ day of March 2002, at Hartford, Connecticut.

¹⁰As the Court finds that Hanson's claim of intentional infliction of emotional distress fails on the merits, it need not reach the defendant's alternate means of attacking this claim on the basis that it is pre-empted by Section 301 the Labor Relations Management Act, and on the basis that claims of intentional infliction of emotional distress in the employment context are only viable when they arise out of the termination process.

CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE