

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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:
TIMOTHY MESENBOURG, :
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Plaintiff, :
:
v. : Civ. No. 3:97CV02291(AWT)
:
DUN & BRADSTREET SOFTWARE :
SERVICES, INC. now known as :
GEAC COMPUTER SYSTEMS, INC., :
:
Defendant. :
:
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MEMORANDUM OPINION

Plaintiff Timothy Mesenbourg ("Mesenbourg") claims that the defendant, Dun & Bradstreet Software Services, Inc. ("D&B Software"), unlawfully failed to pay him severance benefits when his employment with the defendant came to an end. Mesenbourg filed suit in Connecticut Superior Court against D&B Software alleging breach of contract and wrongful termination by means of constructive discharge and seeking monetary damages. The defendants removed the case to the District of Connecticut pursuant to 28 U.S.C. § 1331 because the first count of the complaint constitutes a claim for benefits under an employee benefit plan as defined by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002, and therefore the federal courts have original jurisdiction over the action.

The plaintiff's first claim is that the defendant breached

the contract created between Mesenbourg and D&B Software by a "Career Transition Plan". The plaintiff's second claim is that D&B Software changed his work conditions to such an extent that he was constructively discharged, and this constituted a wrongful termination.

After a bench trial, the court makes the following findings of fact and conclusions of law, and finds for the defendant on both claims.

I. FACTS

In 1986, the plaintiff commenced his employment with a company that was a predecessor of D&B Software. Over several years, he worked his way up to a management position. In the summer of 1995, Mesenbourg was employed by D&B Software, a subsidiary of The Dun & Bradstreet Corporation, as a Consulting Services Project Manager ("CSPM"). At that time, Mesenbourg's annual salary was \$82,000. In addition, Mesenbourg had a "bonus plan" pursuant to which he could earn an annual bonus of up to \$20,000. Mesenbourg did not have an employment contract with D&B Software and was an at-will employee.

As a CSPM in the summer of 1995, Mesenbourg worked directly with clients to develop unique solutions for their business needs. He supervised ten to twelve employees, such as software engineers, who actually customized software for the clients. He basically ran his own business unit, with his own

clients. In Mesenbourg's prior position, as a support manager, he had been responsible for taking calls from clients when they had questions about the functioning of software and for fixing any problems. When he originally took the job as support manager, he had had no staff, but over time he had hired, trained, and developed one.

In the summer of 1995, Mesenbourg was based in the company's facility in Hamden, Connecticut and worked mostly out of that office. Mesenbourg reported to D&B Software's Meriden, Connecticut office, and traveled to the company's Atlanta, Georgia headquarters for training or meetings once or twice a month.

In or about the summer of 1995, D&B Software began a company-wide reorganization, during and after which Mesenbourg was asked by D&B Software to remain in its employ. The reorganization was necessitated by changes in the software industry and the fact that D&B Software's parent company did not feel that the software division was sufficiently profitable.

The Hamden office was downsized significantly, from approximately 70 to approximately 15 employees, and Mesenbourg's group was cut to only 3 or 4 people. Mesenbourg began reporting directly to the Atlanta headquarters. In addition, instead of reporting to him, the remaining members of what had been Mesenbourg's group also began reporting directly

to Atlanta.

By October, Mesenbourg had no direct supervisory authority over any other employee. However, he had retained the same job title, salary, bonus structure and benefits. At that time, Mesenbourg was asked to work with a client based in White Plains, New York. This assignment required Mesenbourg to travel to White Plains two or three days each week, and to occasionally stay overnight.

In or about December 1995, Mesenbourg and the other remaining employees in the Hamden office were directed to report to a new supervisor. Mesenbourg informed this new supervisor that he wanted his duties to be those of a consulting manager. Mesenbourg was told that there were no openings for such positions within the company, and that the job he had was a project management role. In January 1996, Mesenbourg's annual salary was raised to \$86,510 plus a bonus.

In early spring in 1996, Mesenbourg was reassigned to a group that was based in Paramus, New Jersey. He continued to work in an office in Meriden, Connecticut, but he reported to a supervisor in Paramus. Mesenbourg's job title was changed to "Client Services Manager", but his job was still a project management role. Mesenbourg continued to earn the same annual salary of \$86,510, but because he was only a senior project manager, his maximum annual bonus dropped from \$20,000 to \$6,000. The biggest change for Mesenbourg was that he was

focused on different products. Whereas Mesenbourg had originally focused on software for manufacturing systems and order management, he now worked with financial or human resources products, because the products on which he had previously focused had been phased out. Also, in Mesenbourg's new position, there was an emphasis on sales support. When a salesperson was trying to sell a client the base product package, Mesenbourg would also visit the potential client and explain the services which D&B Software would provide to help the client put the package in place. Mesenbourg was required to travel on average three days a week to Hartford, Boston, and White Plains to work with clients, and he stayed out of town overnight approximately once a week. Although Mesenbourg supervised certain activities by other employees on particular projects, he was not their manager. In his new position, he acted as a "manager" only with respect to the project plan; he had no subordinates.

Mesenbourg had been discussing with a number of people to whom he reported the possibility of leaving D&B Software and receiving severance pay under the company's "Career Transition Plan". His supervisors indicated that he was a valuable employee and that they wanted to keep him working for the company. Thus they never offered him the option of leaving under that plan. In April 1996, Mesenbourg took his questions about whether he was eligible for severance benefits under the

"Career Transition Plan" to the company's human resources department and to upper management. He was informed that the company desired to keep him as an employee and that since he had a job, he would not receive severance benefits. Mesenbourg decided he would quit.

In August 1996, Mesenbourg voluntarily resigned his job at D&B Software without the written agreement of D&B Software because he was unhappy with his position. He resigned only after he had secured a new job with another company. The compensation for the new job was substantially higher than what Mesenbourg had ever earned in any position at D&B Software.

Throughout Mesenbourg's employment at D&B Software, The Dun & Bradstreet Corporation had a "Career Transition Plan" (the "Plan") covering certain employees. D&B Software was a "Participating Company" in the Plan, and Mesenbourg was an "Eligible Employee". The Plan provided in relevant part as follows:

Severance benefits are only payable if an Eligible Employee incurs an "Eligible Termination." An "Eligible Termination" means:

(a) An involuntary termination of an Eligible Employee's employment by reason of a reduction in force program, job elimination or unsatisfactory performance; or

(b) A resignation by the Eligible Employee which is mutually agreed to in writing by the Participating Company and the employee.

An Eligible Termination does not include (1) a unilateral resignation (that is, one not agreed to in

writing by the Participating Company), (2) an involuntary termination by the Participating Company for "cause," (3) a termination as a result of a sale (whether in whole or in part, of stock or assets), merger or other combination, spin-off, reorganization, liquidation, dissolution, winding up or other similar transaction involving a Participating Company, or (4) any termination where an offer of employment is concurrently made to the Eligible Employee of a comparable position at a Participating Company.

II. DISCUSSION

Both counts of Mesenbourg's complaint hinge on the same legal claim, namely that he was constructively discharged by D&B Software. The claim in the second count is, of course, that the plaintiff's employment was wrongfully terminated because he was constructively discharged. The claim in the first count is for breach of contract because the defendant refused to pay him severance benefits under the Plan. The Plan applies only to "involuntary terminations". The Plan specifically states that a "unilateral resignation" does not give rise to a right to severance benefits. Although Mesenbourg voluntarily resigned his position without the written agreement of D&B Software, he claims that he was constructively discharged and therefore was subjected to an "involuntary termination". Thus Mesenbourg also has to show that he was constructively discharged in order to recover on the claim in the first count. However, Mesenbourg has failed to establish the elements of a claim for constructive discharge.

"A constructive discharge occurs when the employer, rather

than acting directly, deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation. To find that an employee's resignation amounted to a constructive discharge, the trier of fact must be satisfied that the working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign." Larkin v. West Hartford, 891 F. Supp. 719, 728 (D. Conn. 1995) (internal quotation marks and citations omitted). "A claim of constructive discharge must be supported by more than the employee's subjective opinion that the job conditions have become so intolerable that he or she was forced to resign." Seery v. Yale-New Haven Hosp., 17 Conn. App. 532, 540 (1989).

The plaintiff contends that the working conditions of his final position at D&B Software were intolerable because he was required to travel more, because he no longer had managerial responsibility for subordinates, because he no longer had profit and loss responsibility, and because his home office was in Paramus, New Jersey, even though the company gave him office space in Meriden, Connecticut. These contentions amount to nothing more than Mesenbourg's subjective opinion that the working conditions had become intolerable. Travel is an ordinary and customary requirement for many jobs. Nor is it unusual for an employee in one state to have his or her home office in another state, particularly following an internal

reorganization where the employee's former office has been closed and most of the other individuals formerly based there have been discharged. As to the fact that the plaintiff had less in the way of managerial responsibilities, most employees have none, and, in fact, Mesenbourg had held such positions with the predecessor of the defendant and had not found such situations intolerable. The plaintiff's contention is in substance that this new job was one that he did not prefer. However, that falls well short of the standard of conditions so intolerable that the employee was forced to resign. Courts finding that a constructive discharge has occurred have required much more. See, e.g., Chertkova v. Conn. Gen. Life Ins. Co., 92 F.3d 81, 89 (2d Cir. 1996) (finding female employee had been constructively discharged when she quit after her boss repeatedly "yelled at her in insulting terms" in front of others, "mocked her", "treated [her] arbitrarily and severely criticized [her] despite her strong performance", and "engaged in a pattern of baseless criticisms").

Moreover, the plaintiff has not demonstrated that the defendant "intentionally" and "deliberately" made the conditions of his work intolerable in order to force him to resign. Such a showing is required to establish a constructive discharge. See Whidbee v. Garzarelli Food Specialties, Inc., 223 F.3d 62, 74 (2d Cir. 2000) ("[C]onstructive discharge also requires deliberate action on the part of the employer.") To

the contrary, the plaintiff concedes that D&B Software told him that he was a valued employee and encouraged him to stay. Where the defendant employer has been shown to have "demonstrated an interest in retaining the plaintiff[]", as opposed to intending to force the plaintiff out, a claim of constructive discharge can not succeed. Id.. See also Peña v. Brattleboro Retreat, 702 F.2d 322, 325 (2d Cir. 1983) (noting, in upholding a finding that there was no constructive discharge, that the plaintiff employee acknowledged that "her own understanding was that [the defendant employer] wished her to remain" in his employ).

D&B Software was attempting to increase its profitability by means of a layoff and internal reorganization, and consequently, there was a change in the plaintiff's duties. There was no intention or effort on the part of the defendant to force the plaintiff to resign. The plaintiff was fortunate enough to have another option, and he voluntarily chose to pursue it.

The plaintiff has failed to establish that the defendant "intentionally create[d] an intolerable work atmosphere that force[d] [him] to quit involuntarily." Whidbee, 223 F.3d at 73. A plaintiff's "overreaction to a reasonable business decision of [his] employer" is insufficient to establish that the plaintiff was constructively discharged. Peña, 702 F.2d at 326.

Because Mesenbourg has failed to show that he was constructively discharged, he can not establish that he left D&B Software as the result of an "involuntary termination", and that D&B Software breached its contractual obligation under the Plan by refusing to pay Mesenbourg severance benefits, as he claims in the first count of the complaint. Nor can he show, as he claims in the second count, that his employment was wrongfully terminated because he was constructively discharged.

III. CONCLUSION

For the reasons set forth above, the court finds for the defendant, Dun & Bradstreet Software Services, Inc., as to all claims. Accordingly, judgment shall enter in favor of the defendant.

It is so ordered.

Dated this 8th day of March, 2001, at Hartford,
Connecticut.

Alvin W. Thompson
United States District Judge