

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

BRUCE WHITTAKER,	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	3:03cv1619 (SRU)
	:	
ARAMARK UNIFORM AND CAREER	:	
APPAREL, INC.,	:	
Defendant.	:	

**RULING**

Bruce Whittaker sued Aramark Uniform and Career Apparel, Inc. (“Aramark”) in Connecticut Superior Court under the federal Age Discrimination in Employment Act (“ADEA”) and various state laws. On September 23, 2003, Aramark removed the case to federal court pursuant to 28 U.S.C. § 1441(b) on the ground that the complaint raised a federal question. Aramark then moved to dismiss all claims. One of the grounds for Aramark’s motion to dismiss was Whittaker’s failure to exhaust his ADEA claim. At oral argument on June 1, 2004, Whittaker’s attorney admitted she did not know if the ADEA claim was exhausted. I granted Whittaker 14 days to provide evidence of exhaustion. Seven days later, on June 8, Whittaker informed the court he would not provide evidence of exhaustion and asked the court to remand the case to state court.<sup>1</sup> I granted that motion on June 14.

Aramark asks me to reconsider my grant of Whittaker’s motion to remand. Aramark argues that, even without an ADEA claim, this court still has jurisdiction because the parties are diverse and the amount in controversy exceeds \$75,000. Aramark did not, in either its notice of removal or at oral

---

<sup>1</sup> An action I would, even absent a motion, have been required to take. See 28 U.S.C. 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).

argument, raise the possibility of diversity jurisdiction. Because when I granted Whittaker's motion to remand I had not considered the possibility that this court had diversity jurisdiction, I will grant Aramark's motion for reconsideration.

Nevertheless, on reconsideration I conclude that a remand was appropriate even if there is diversity of citizenship. Under 28 U.S.C. § 1446, Aramark was required to file a notice of removal within thirty days of receipt of Whittaker's complaint. This it did, but it raised only federal question jurisdiction as a ground for removal. There appears no reason why Aramark could not have also raised diversity of citizenship in its notice of removal, particularly given that its motion to dismiss indicates Aramark was aware of jurisdictional problems with Whittaker's ADEA claim.

Because Whittaker's complaint does not allege an amount in controversy in excess of \$75,000 and because Aramark failed in its notice of removal to assert any amount in controversy or even raise the issue of diversity jurisdiction, this court lacks subject matter jurisdiction over the present case.

Lupo v. Human Affairs International, Inc., 28 F.3d 269, 274 (2d Cir. 1994).

Aramark now seeks, in essence, to amend its notice of removal, outside the thirty-day time period set forth in 28 U.S.C. § 1446, in order to raise a diversity issue and so vest this court with subject matter jurisdiction. The Second Circuit is quite clear that this is not ordinarily permitted.

It would be contrary to any concept of sensible judicial administration to permit [the defendant] to amend its notice of removal at this juncture (well beyond the thirty days after [it] first received [the] complaint) . . . . Removal procedures seek a rapid determination of the proper forum for adjudicating an action. We are not inclined to countenance prolonged preliminary litigation over the removal issue simply because [the defendant] failed in the first instance to aver a proper jurisdictional basis for removal.

Id. There is no cause to stray from this sound rule of judicial administration.

For the aforementioned reasons, Aramark's Motion for Reconsideration (doc. # 20) is GRANTED, but, on reconsideration I will abide by my original order (doc. # 19).

It is so ordered.

Dated at Bridgeport, Connecticut, this 19<sup>th</sup> day of July 2004.

/s/ Stefan R. Underhill

Stefan R. Underhill  
United States District Judge