

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JON McEWAN, :
 :
 :
 Plaintiff, :
 :
 V. : CASE NO. 3:03CV1966 (RNC)
 :
 TOWN OF NEW CANAAN, et al., :
 :
 Defendant. :

RULING AND ORDER

Jon McEwan, an employee of the Town of New Canaan, brings this action against the Town; his immediate supervisor, Hiram Peck; and the Town's First Selectman, Richard Bond. He alleges violations of the First Amendment, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., and Connecticut statutes and common law. Defendants Peck and Bond have filed two motions to dismiss. The more recent of the two [doc. # 40] is granted; the other [doc. # 23] is denied as moot.

Facts

Plaintiff alleges the following facts, which are assumed to be true for now. Plaintiff has been employed by the Town in its Planning and Zoning Office since 1987, and has often expressed his religious views in the workplace. In May 2002, Bond sent him a letter directing him never to express his religious views at work. In February 2003, the Town's Board of Selectmen held a meeting to

review an employee's complaint that plaintiff had sexually harassed her. During the meeting, Peck asserted that plaintiff had improperly taken money from developers. At a subsequent hearing before the Board, Peck repeated the allegation. The Board found no evidence that would justify terminating plaintiff's employment. Bond and Peck subsequently gave plaintiff a minimal salary increase. Plaintiff asserts that defendants' actions were motivated by hostility to his religious views.

Discussion

In the second count of his second amended complaint, plaintiff alleges that the Town, Bond and Peck are liable to him under Conn. Gen. Stat. § 31-51q, which provides:

Any employer, including the state and any instrumentality or subdivision thereof, who subjects any employee to discipline or discharge on account of the exercise by such employee of rights guaranteed by the first amendment to the United States Constitution or section 3, 4, or 14 of article first of the Constitution of the state ... shall be liable to such employee for damages caused by such discipline or discharge....

Defendants contend that plaintiff may not bring this count against Bond and Peck because the statute creates liability only for employers, and does not apply to supervisory employees. I agree.

The Connecticut Supreme Court has not decided whether the word "employer" in § 31-51q covers supervisors. As defendants correctly point out, however, the Court has established, in another context, that when the legislature uses the word "employer" and does not

define it, the word does not refer to supervisory personnel.

Perodeau v. City of Hartford, 259 Conn. 729, 734-44 (2002).

Plaintiff's complaint alleges that his employer is the Town, not Bond and Peck. (Comp. ¶¶ 2-5.) Thus, the second count must be dismissed as to them.¹

III. Conclusion

Accordingly, the motion to dismiss count two of the second amended complaint as applied to the individual defendants [doc. # 40] is hereby granted. The other motion to dismiss [doc. # 23] is hereby denied as moot.

So ordered.

Dated at Hartford, Connecticut this 20th day of August 2004.

Robert N. Chatigny
United States District Judge

¹ Bond and Peck have also moved to dismiss counts six, nine and ten of the second amended complaint, but plaintiff has made it clear that those counts are brought against the Town only.