UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RODNEY M. PINKNEY,	:	
	:	
Plaintiff,	:	Civil Action No. 3:03CV1832 (AWT)
v.	:	
	:	
METRO-NORTH COMMUTER RAILROAD COMPANY,	:	
	:	
Defendant.	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The defendant has moved for summary judgment, and the plaintiff concedes that summary judgment is appropriate for all claims except his claim that he was discharged in retaliation for participating in protected activity. The court concludes that the defendant is entitled to summary judgment on that claim as well.

I. FACTUAL BACKGROUND

Rodney Pinkney (the "plaintiff") was hired by the Metro-North Commuter Railroad Company (the "defendant") in 1990 as a coach cleaner. In 1991, his job classification was changed from coach cleaner to inventory control clerk. As an inventory control clerk, he became a member of the Transportation Communications Union ("the "Union"). The plaintiff's responsibilities included providing other Metro-North employees

with parts and supplies from the storeroom and various tasks associated with management of the storeroom's inventory. As a member of the Union, the plaintiff was subject to the disciplinary procedures established in the Collective Bargaining Agreement (the "CBA") between the defendant and the Union.

In 1998, the defendant conducted an investigation of allegations that the plaintiff's supervisor, Earl Vaughn ("Vaughn"), had sexually harassed another employee. The plaintiff was interviewed as part of that investigation, and provided information relating to the allegations against Vaughn. Following the investigation, Vaughn was suspended by the defendant for sexually harassing another employee.

During the relevant period in 2002, the plaintiff worked the midnight to 8:00 a.m. shift. During his shift, he was the only inventory control clerk on duty. On May 24, 2002, Vaughn found the plaintiff sleeping on an air mattress in Vaughn's office while he was supposed to be on duty, in violation of the defendant's Safety Rule 9021(a)(1); the plaintiff admits that on May 24, 2002 he did indeed fall asleep on an air mattress in Vaughn's office during his shift. Vaughn reported the plaintiff's conduct, and a hearing was held pursuant to the procedures established in the CBA. Following the hearing, the plaintiff received a thirty (30) day deferred suspension. The Union appealed the suspension on the plaintiff's behalf, and the

disciplinary measure was upheld by the Deputy Director-Labor Relations.

On July 1, 2002, Vaughn again reported that he had found the plaintiff asleep while he was supposed to be on duty, in violation of Safety Rule 9021(a)(1). On August 6, 2002, a hearing was held pursuant to the procedures established in the CBA. Both the plaintiff and Vaughn offered testimony. After a review of the hearing transcript and the plaintiff's disciplinary record, Daniel Donahue ("Donahue"), Deputy Director of Metro-North's Procurement and Material Management Department, terminated the plaintiff's employment effective August 15, 2002. At the time Donahue decided to terminate the plaintiff's employment, he was unaware of the plaintiff's participation in the 1998 investigation of sexual harassment allegations against Vaughn. Additionally, as the plaintiff admits, Donahue made the decision to terminate the plaintiff's employment "on his own". (Def's Local Rule 56(a)1 Statement ¶ 11 (Doc. No. 31b).) The Union appealed the termination to the Deputy Director-Labor Relations, who upheld the dismissal. The Union then appealed to the Special Board of Adjustment 951, which also upheld the termination finding that:

> This is a credibility case. Absent any corroborating evidence of any kind to support the denials by the Claimant, other than palpable self-interest, forums such as this are in no position [to] put aside evidence about employees provided to it by supervision unless there are evidentiary grounds for doing so. A search

> of the full record in this case fails to provide such grounds. . . . The actions by the Carrier in the instant case were neither arbitrary nor capricious.

(Hryb Aff. Ex. 10.)

II. LEGAL STANDARD

A motion for summary judgment may not be granted unless the court determines that there is no genuine issue of material fact to be tried and that the facts as to which there is no such issue warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c). See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Gallo v. Prudential Residential Servs., 22 F.3d 1219, 1223 (2d Cir. 1994). Rule 56(c) "mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." See Celotex Corp., 477 U.S. at 322.

When ruling on a motion for summary judgment, the court must respect the province of the jury. The court, therefore, may not try issues of fact. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Donahue v. Windsor Locks Bd. of Fire Comm'rs, 834 F.2d 54, 58 (2d Cir. 1987); Heyman v. Commerce & Indus. Ins. Co., 524 F.2d 1317, 1319-20 (2d Cir. 1975). It is well-established that "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from

the facts are jury functions, not those of the judge." Anderson, 477 U.S. at 255. Thus, the trial court's task is "carefully limited to discerning whether there are any genuine issues of material fact to be tried, not to deciding them. Its duty, in short, is confined . . . to issue-finding; it does not extend to issue-resolution." Gallo, 22 F.3d at 1224.

Summary judgment is inappropriate only if the issue to be resolved is both genuine and related to a material fact. Therefore, the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment. An issue is "genuine . . . if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248 (internal quotation marks omitted). A material fact is one that would "affect the outcome of the suit under the governing law." Id. As the Court observed in Anderson: "[T]he materiality determination rests on the substantive law, [and] it is the substantive law's identification of which facts are critical and which facts are irrelevant that governs." Id. Thus, only those facts that must be decided in order to resolve a claim or defense will prevent summary judgment from being granted. When confronted with an asserted factual dispute, the court must examine the elements of the claims and defenses at issue on the motion to determine whether a resolution of that dispute could

affect the disposition of any of those claims or defenses. Immaterial or minor facts will not prevent summary judgment. See Howard v. Gleason Corp., 901 F.2d 1154, 1159 (2d Cir. 1990).

When reviewing the evidence on a motion for summary judgment, the court must "assess the record in the light most favorable to the non-movant and . . . draw all reasonable inferences in its favor." Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000) (quoting Del. & Hudson Ry. Co. v. Consol. Rail Corp., 902 F.2d 174, 177 (2d Cir. 1990)). Because credibility is not an issue on summary judgment, the nonmovant's evidence must be accepted as true for purposes of the motion. Nonetheless, the inferences drawn in favor of the nonmovant must be supported by the evidence. "[M]ere speculation and conjecture" is insufficient to defeat a motion for summary judgment. Stern v. Trustees of Columbia Univ., 131 F.3d 305, 315 (2d Cir. 1997) (quoting Western World Ins. Co. v. Stack Oil, Inc., 922 F.2d 118, 121 (2d. Cir. 1990)). Moreover, the "mere existence of a scintilla of evidence in support of the [nonmovant's] position" will be insufficient; there must be evidence on which a jury could "reasonably find" for the nonmovant. Anderson, 477 U.S. at 252.

Finally, the nonmoving party cannot simply rest on the allegations in its pleadings since the essence of summary judgment is to go beyond the pleadings to determine if a genuine

issue of material fact exists. See Celotex Corp., 477 U.S. at 324. "Although the moving party bears the initial burden of establishing that there are no genuine issues of material fact," Weinstock, 224 F.3d at 41, if the movant demonstrates an absence of such issues, a limited burden of production shifts to the nonmovant, which must "demonstrate more than some metaphysical doubt as to the material facts, . . . [and] must come forward with specific facts showing that there is a genuine issue for trial." Aslanidis v. United States Lines, Inc., 7 F.3d 1067, 1072 (2d Cir. 1993) (quotation marks, citations and emphasis omitted). Furthermore, "unsupported allegations do not create a material issue of fact." Weinstock, 224 F.3d at 41. If the nonmovant fails to meet this burden, summary judgment should be granted. The question then becomes: is there sufficient evidence to reasonably expect that a jury could return a verdict in favor of the nonmoving party. See Anderson, 477 U.S. at 248, 251.

III. DISCUSSION

To establish a *prima facie* case of retaliatory discharge, a plaintiff must establish that (i) he was engaged in protected activity; (ii) the employer was aware of that activity; (iii) he suffered an adverse employment action; and (iv) there was a causal connection between the protected activity and the adverse action. Collins v. New York City Transit Auth., 305 F.3d 113,

118 (2d Cir. 2002). The defendant concedes that the plaintiff has adduced sufficient evidence to satisfy the first and third elements of his retaliation claim. Specifically, the defendant does not dispute that the plaintiff engaged in protected activity when he participated in the 1998 investigation of sexual harassment allegations against Vaughn. Nor does the defendant dispute that the plaintiff's discharge constitutes an adverse employment action.[1]

However, the plaintiff has failed to create a genuine issue of material fact as to the fourth element, i.e., the existence of a causal nexus between his protected activity and his termination, and the facts as to which there is no such issue warrant judgment for the defendant. An employee may demonstrate proof of a causal connection between the protected activity and the employment decision "*indirectly* by showing that the protected activity was followed closely by discriminatory treatment, or through evidence such as disparate treatment of fellow employees engaged in similar conduct, ···, or *directly* through evidence of retaliatory animus directed against a plaintiff by the defendant." Decintio v. Westchester County Med. Ctr., 821 F.2d

[1] The court assumes that the plaintiff's employer (as opposed to Donahue) was aware of his protected activity. This fact, however, is not material to the disposition of this motion because the plaintiff has failed to establish the fourth element of the *prima facie* case, i.e., a causal nexus between the protected activity and the discharge.

111, 115 (2d. Cir 1987) (internal citations omitted).

First, the plaintiff has not established a causal nexus by showing that protected activity was followed closely by a retaliatory act because the plaintiff was discharged more than four years after he engaged in protected activity. See Reed v. State of Connecticut Dept. of Transp., 161 F. Supp. 2d 73, 83 (D. Conn. 2001) (holding that plaintiff failed to establish causal link between protected activity and adverse employment action where the two events were separated by almost four years).

Second, the plaintiff has not even alleged, much less produced evidence, that other similarly situated employees were treated differently.

Finally, the plaintiff has failed to present any evidence to suggest that Donahue acted with retaliatory animus. The plaintiff admits that Donahue was unaware of his participation in the 1998 investigation concerning Vaughn's sexual harassment of another employee. In his response to the defendant's Local Rule 56(a)1 Statement, the plaintiff admits that "Dan Donahue was unaware of Pinkney's interview in connection with Metro-North's 1998 investigation of a sexual harassment complaint against Earl Vaughn when he made the decision to terminate Pinkney's employment in August 2002." (Pl's. Local Rule 56(a)2 Statement, Part I ¶ 17.) If, as the plaintiff concedes, Donahue was unaware of the plaintiff's participation in the very activity which he

claims was the impetus for a retaliatory discharge, then he cannot establish that Donahue based his decision on that participation. Rather, as the Special Board of Adjustment 951 concluded, Donahue appears to have based his decision on a credibility assessment of the plaintiff and Vaughn.

Moreover, the plaintiff's admission that "Donahue made the decision to terminate on his own," (Def's. Local Rule 56(a)2 Statement ¶ 11), defeats the claim that Vaughn's retaliatory animus, if any, should be imputed to Donahue. Apart from reporting the plaintiff's alleged violation of Safety Rule 9021(a)(1) and offering testimony at the subsequent hearing, Vaughn had no involvement in the decision to terminate the plaintiff. As a result, any retaliatory animus Vaughn may have harbored toward the plaintiff may not be imputed to Donahue, the actual decision maker. See Collins, 305 F.3d at 119 (plaintiff failed to meet burden of establishing the *prima facie* element of causation where there was no claim that the decision maker had "rubber stamped" the recommendations of the plaintiff's supervisors). The plaintiff, therefore, has failed to establish this fourth element of the *prima facie* case.

IV. CONCLUSION

For the foregoing reasons, the defendant's Motion for Summary Judgment (Doc. No. 31) is hereby GRANTED. Judgment shall enter for the defendant on all counts.

The Clerk shall close this case.

Dated this 13th day of September 2005 at Hartford, Connecticut.

/s/
Alvin W. Thompson
United States District Judge