IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-4091
Summary Calendar

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CARL E. JACKSON,

Plaintiff-Appellant,

versus

WILLAMETTE INDUSTRIES, INC.,

Defendant-Appellee,

and

WAYNE PARKER and BILL KING,

Movants-Appellees.

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Appeal from the United States District Court for
the Western District of Louisiana
89 CV 2740

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April 23, 1993

Before REAVLEY, JONES and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:[1]

Carl E. Jackson, pro se, appeals the district court's dismissal of his retaliatory discharge suit against his former

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

employer, Willamette Industries, Inc. (Willamette) and his former superiors, Wayne Parker and Bill King. We affirm.

## I. BACKGROUND

Jackson, a black male, began full-time employment with Willamette in August 1980. In July 1985, Jackson contacted the EEOC, complaining that Willamette's promotion policies discriminated against racial minorities. The EEOC chose not to pursue Jackson's complaint, but did issue a right-to-sue letter in April 1986. In June 1986, Jackson sued Willamette for engaging in discriminatory employment practices, in violation of Title VII of the Civil Rights Act of 1964. In March 1987, during the pendency of Jackson's original Title VII action against Willamette, Jackson was fired for "rank insubordination." Jackson subsequently brought this suit, claiming that Willamette had fired him in retaliation for suing Willamette over its minority employment practices.

Willamette employees testified that, while Jackson continued to satisfy production goals, his attitude toward work, his fellow supervisors and superiors, and Willamette began to deteriorate about the time that Jackson first contacted the EEOC. Specific instances are discussed in the district court's January 30, 1992 memorandum opinion, and the trial testimony indicates that these were not isolated occurrences.

In September 1986, Jackson met with two of his superiors, plant manager King and plant superintendent Gary Hemphill. King and Hemphill informed Jackson that if Jackson did not improve his

attitude and work "as a member of the team" he would be terminated, regardless of the legal consequences to Willamette.[2] After the September 1986 meeting, Jackson's attitude apparently improved for a while, and his production levels were maintained.

On February 27, 1987, King met individually with Jackson and each of the other supervisors in order "to evaluate their work for the prior year and to discuss management issues." When the meeting turned to management practices, Jackson pressed King about Willamette's minority promotion record. As the conversation deteriorated, Jackson (1) stated that his performance would not change until Willamette abandoned its discriminatory employment practices, (2) accused King of trying to fire him, (3) complained that King was too concerned with production goals, and, ultimately, (4) told King that his attitude would not improve until King was fired or resigned. Jackson and King also exchanged charges that each was racist.

King concluded that Jackson's statement that his attitude would not improve until King was terminated was a direct challenge to his authority, constituting "rank insubordination." Coupled with Jackson's poor attitude and prior insubordinate behavior, King, on behalf of Willamette, decided to fire Jackson, which he did on March 2, 1987.

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[2] Willamette contends that it treated Jackson preferentially, "repeatedly excused intolerable conduct," and "insulated" Jackson "from having to comply with Willamette's minimal conduct standards" because Jackson "filed a Title VII claim and [Willamette's] certainty that a cry of `retaliation,' followed by additional expensive litigation, would result from any disciplinary action taken against him." A.R. at 656.

Jackson's employment discrimination action ended in summary judgment in favor of Willamette on March 20, 1989. Jackson subsequently filed this retaliatory discharge action in November 1989, seeking severance pay, reinstatement, back pay, and damages. Jackson's complaint was tried, pro se, to the court. At the close of Plaintiff's case-in-chief, the district court granted Willamette's Rule 41(b) motion to dismiss, finding that Jackson had failed to prove a prima facie case of retaliatory discharge.[3]

## II. DISCUSSION

### A. Discovery of Jackson's Tape Recordings.

Jackson surreptitiously made tape recordings of both his February 27th evaluation meeting with King and the March 2nd meeting at which he was fired. Along with two other tape recordings of conversations purported to establish his good work performance and to gauge reaction to his firing, Jackson's tapes constituted the bulk of his evidence in this case. Despite their obvious relevance, Jackson repeatedly refused to produce the tapes and attempted to limit Willamette's discovery of their content. Eventually, the district court ordered their

[3] The district court had previously granted Willamette's motion for partial summary judgment denying Jackson severance pay because Willamette's written severance policy clearly denies severance benefits to employees fired for "serious misconduct as determined by [Willamette] in its sole judgment." The district court concluded that Willamette was entitled to determine that "rank insubordination" constituted "serious misconduct;" and therefore, to deny Jackson severance benefits.

production. Jackson contends that his case was prejudiced by the district court's order compelling production of the tapes.

Control of discovery is committed to the sound discretion of the trial court, and this court will not reverse its discovery rulings unless we find they are arbitrary or clearly unreasonable. *Mayo v. Tri-Bell Indus.*, 787 F.2d 1007, 1012 (5th Cir. 1986). We will afford the district court wide discretion in determining the appropriate scope of discovery. *Quintero v. Klaveness Ship Lines*, 914 F.2d 717, 724 (5th Cir. 1990), *cert. denied*, 111 S. Ct. 1322 (1991).

Willamette is entitled to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" unless such discovery is "unreasonably cumulative or duplicative," obtainable from other sources, or "unduly burdensome or expensive." FED. R. CIV. P. 26(b)(1).[4] Clearly, these tape recordings were "relevant to the subject matter." Further, since Jackson had the only copies and no manual transcriptions of the meetings were made, the discovery sought was neither "unreasonably cumulative or duplicative" nor obtainable from other sources. Finally, since Willamette made it clear that it would bear the cost of copying and transcribing the tapes, the district court's order imposed neither undue burden nor expense on Jackson.

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[4] Jackson argues erroneously that Willamette failed to show "substantial need" under Rule 26(b)(3). However, that provision only applies to attorney "work-product" and similar materials.

B. JACKSON'S MOTION FOR RECUSAL.

Following the district court's unfavorable ruling on production of the tape recordings, Jackson moved to have Judge Walter recused based upon his "exemplary inability to render an unbiased, [un]prejudic[ial] decision." Jackson failed to file the "good faith" certification required by 28 U.S.C. § 144.

Jackson complains that Judge Walter's failure to assign another judge to hear the recusal motion was prejudicial error. However, since Jackson failed to comply with the requirements of 28 U.S.C. § 144, Judge Walter was not required to refer the matter to another judge, *Henderson v. Department of Public Safety and Corrections*, 901 F.2d 1288, 1296 (5th Cir. 1990), nor did he err in denying Jackson's motion. *United States v. Branch*, 850 F.2d 1080, 1083 (5th Cir. 1988), *cert. denied*, 488 U.S. 1018, 109 S. Ct. 816 (1989). Moreover, Jackson fails to identify any extra-judicial source of Judge Walter's bias. The only "proof" offered in support of his motion of recusal is Judge Walter's adverse ruling. This is simply not enough. *See Danielson v. Winnfield Funeral Home of Jefferson, Inc.*, 634 F. Supp. 1110, 1114-15 (E.D. La. 1986), *aff'd in part*, 820 F.2d 1222 (5th Cir. 1987).

C. PROPRIETY OF SUMMARY JUDGMENT ON SEVERANCE PAY.

Jackson alleges that he was entitled to severance pay at the time of his termination, pursuant to Willamette's "established practices and agreements," despite Willamette's written policy granting the company discretion to deny severance benefits to

employees fired for "serious misconduct as determined by [Willamette] in its sole judgment." *See supra* note 2. Jackson's only evidence to the contrary is the testimony of a fellow employee who, despite working for Willamette for 26 years, claimed to have had no prior knowledge of the written severance policy. We agree with the district court that Jackson failed to raise any issue of material fact sufficient to overcome summary judgment on his eligibility for severance pay.

D. SUFFICIENCY OF THE EVIDENCE.

The remainder of Jackson's issues on appeal challenge the sufficiency of the evidence to support the district court's findings of fact. We will not set aside the district court's fact findings upon granting a Rule 41(b) involuntary dismissal unless they are clearly erroneous. *In re Placid Oil Co.*, 932 F.2d 394, 397 (5th Cir. 1991). A factual finding is "clearly erroneous" when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Anderson v. City of Bessemer City*, 470 U.S. 564, 573, 105 S. Ct. 1504, 1511 (1985) (citation omitted). Having reviewed the entire record on appeal and the trial testimony, we are not left with a firm and definite conviction that the district court committed a mistake with regard to any of the fifteen alleged factual errors raised by Jackson.

AFFIRMED.