

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2703  
Summary Calendar

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BERNARD HARDY,

Plaintiff-Appellant,

versus

PINKERTON SECURITY SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas

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(CA-H-92-2564)

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(March 28, 1994)

ON PETITION FOR REHEARING

Before POLITZ, Chief Judge, KING and WIENER, Circuit Judges.

PER CURIAM:

The petition for rehearing is GRANTED.

We affirmed the district court's dismissal of Bernard Hardy's Title VII suit for failure to obtain a notice of right to sue from the Equal Employment Opportunity Commission. Hardy attached the requisite right-to-sue letter to his petition for rehearing. It was issued on September 24, 1992, approximately one month after

Hardy filed suit, retroactively satisfying a precondition to suit.<sup>1</sup>

Pinkerton also asserted failure to state a claim, Fed.R.Civ.P. 12(b)(6), and it was on this ground that the district court granted dismissal. We cannot agree. According Hardy, a *pro se* litigant, the benefit of a liberal construction of his complaint,<sup>2</sup> we must find that it adequately alleges a Title VII claim of race discrimination. Using the form "Employment Discrimination Complaint" from the Southern District of Texas, Hardy charges that he was fired because of his race. He goes on to allege that he was fired for sleeping on the job but a white employee who had engaged in the same misconduct was not. That is an adequate complaint of disparate treatment on the basis of race. Pinkerton finds fault in Hardy's failure to specify his own race. By asserting race discrimination, however, the complaint implies that Hardy is not white.

This matter is before the court on a Rule 12(b)(6) dismissal only. The ruling thereon must be vacated. We express no opinion about a dismissal under a proper Rule 56 motion.

VACATED and REMANDED for proceedings consistent herewith.

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<sup>1</sup>**Pinkard v. Pullman-Standard, A Division of Pullman, Inc.**, 678 F.2d 1211 (5th Cir. 1982), cert. denied, 459 U.S. 1105 (1983).

<sup>2</sup>**Haines v. Kerner**, 404 U.S. 519 (1972).