IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-4648

Summary Calendar

TOM ANDERSON,

Plaintiff-Appellant,

v.

BROWNING-FERRIS, Inc.,

Defendant,

SHREVEPORT LANDFILL DISTRICT OF BROWNING-FERRIS INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(91-CV-1685)

(June 28, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

Tom Anderson appeals the district court's judgment dismissing with prejudice his claim of religious discrimination,

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*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

brought pursuant to 42 U.S.C. § 2000e et seq. Finding no error, we affirm.

I.

Tom Anderson was employed as a heavy equipment operator at a landfill in Shreveport, Louisiana, operated by the Shreveport Landfill District of Browning-Ferris, Inc. (BFI), from October 1989 to February 1991. Anderson is a member of the Plain Dealing Assembly of God Church in Plain Dealing, Louisiana. On February 4, 1991, Anderson was terminated after he failed to appear at work, or to call in to advise that he would be absent, on Sunday, February 3, 1991.

On March 2, 1991, Anderson filed a charge of religious discrimination with the Equal Employment Opportunity Commission (EEOC), alleging that he had been terminated because he missed work to go to church. On August 9, 1991, after investigating Anderson's charge, the EEOC issued a "no cause" determination, finding that Anderson had been discharged because he violated express company policySQi.e., not calling in when he was unable to report to work.

On August 12, 1991, Anderson filed suit in the United States District Court for the Western District of Louisiana, alleging that his termination constituted discrimination based on his religion in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. He sought back pay, reinstatement to his former position and/or front pay, attorney's

fees, pre- and post-judgment interest, and costs. BFI then filed a motion for summary judgment seeking dismissal of Anderson's suit, which was denied. After completing discovery, BFI filed a second motion for summary judgment, which was also denied.

A bench trial was conducted on March 31 and April 1, 1993. The district court determined that Anderson had failed to meet his burden of proof regarding his religious discrimination claim and entered judgment dismissing the claim with prejudice. Anderson, proceeding pro se, now appeals.

II.

We review a district court's conclusions of law de novo; we accept a district court's findings of fact unless clearly erroneous. Randall v. Chevron U.S.A., Inc., 13 F.3d 888, 894 (5th Cir.), petition for cert. filed (U.S. May 11, 1994) (No. 93-1812); Prudhomme v. Tenneco Oil Co., 955 F.2d 390, 392 (5th Cir.), cert. denied, 113 S. Ct. 84 (1992). A finding of fact is clearly erroneous when, although there is enough evidence to support it, the reviewing court is left with a firm and definite conviction that a mistake has been made. United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948); Henderson v. Belknap (In re Henderson), 18 F.3d 1305, 1307 (5th Cir. 1994). If the district court's account of the evidence is plausible in light of the record viewed in its entirety, this court may not reverse it even though we are convinced that, had this court been sitting as the trier of fact, we would have weighed the evidence

differently. Anderson v. City of Bessemer City, 470 U.S. 564, 573-74 (1985); see Rangel v. Morales, 8 F.3d 242, 245 (5th Cir. 1993). Determinations relating to the credibility of witnesses are entitled to great deference as only the trial court has the opportunity to observe personally the witnesses' testimony and judge the demeanor of the witnesses. Anderson, 470 U.S. at 573.

III.

Construing Anderson's brief most liberally, we read his argument on appeal to be two-fold: (1) that the district court erred in determining that he had not proven his claim of religious discrimination and (2) that the district court was biased against Anderson. We address each of Anderson's arguments in turn.[1]

A. Religious Discrimination

Under Title VII, an employer engages in an unfair employment practice by discriminating against an employee because of the employee's religious beliefs unless the employer cannot "reasonably accommodate" the employee's needs without "undue hardship" on the employer's business. 42 U.S.C. § 2000e(j). An

[1] Anderson's brief conceivably identifies two other alleged errorsSQi.e., that "BFI erred in[]not relaying the message that [Anderson] would not be there on [S]unday, adding conclusive weight to appellants[sic] side and "[p]urjury[sic] on behalf of witnesses for the defendant/appellee." These alleged errors are basically disagreements with the district court's credibility determinations and are thus essentially addressed in Part III.A. of this opinion. Moreover, as we have already made clear, determinations by the trial court regarding the credibility of witnesses are entitled to great deference. Anderson, 470 U.S. at 573.

employee proves a prima facie case of religious discrimination by showing that he (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed his employer of this belief; and (3) was disciplined for failure to comply with the conflicting employment requirement. Jenkins v. State of Louisiana, through Dep't of Corrections et al., 874 F.2d 992, 995 (5th Cir.), cert. denied, 493 U.S. 1050 (1989). Once an employee establishes a prima facie case, the burden shifts to the employer to show that it was unable to reasonably accommodate the employee's religious needs without undue hardship. Id.

The district court determined in the instant case that Anderson had not proven a case of religious discrimination. We agree.

The Supreme Court has characterized a "religious" belief entitled to constitutional or statutory protection as "not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living." Wisconsin v. Yoder, 406 U.S. 205, 215-16 (1971). Anderson testified at trial that he generally attended Sunday services, unless somethingSQe.g., a flat tireSQprevented him from doing so. He also testified that church services at the Plain Dealing Assembly of God Church are held on Wednesday evening, Sunday morning, and Sunday evening. No evidence was presented, however, to indicate that Sunday morning worship is a mandatory requirement for church members or that a doctrine or tenet of Anderson's religion prohibits its members from working

on Sunday.[2] Moreover, the stipulated facts show that during the fifteen months Anderson had been employed at BFI, Anderson had worked five Sundays.

The record also indicates that Anderson never informed BFI that his religious beliefs prohibited him from working on Sundays or that he could not work on Sunday, February 3, 1991, because of a bona fide religious belief.[3] Anderson himself testified that he told BFI during his pre-employment interview that he preferred not to work on Sundays but that he had agreed with BFI to work Sundays, if needed, as long as it did not become a habit. The evidence also shows that BFI abided by the conditions of this agreement by generally not scheduling Anderson to work on Sundays and that when BFI did request that Anderson work on an occasional Sunday, Anderson had worked without complaint.

Moreover, the record indicates that BFI had a policy by which an employee was automatically terminated if he failed to work on an assigned day without calling in to explain why he would not be there and that Anderson was fully aware of that

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[2] In his brief, Anderson states: "Granted, [my] religious beliefs didn't prohibit [me] from working on Sunday, however, the church expects an usher/trustee to be there. Had [I] not been a true and faithful member in the church, [I] certainly would not have been voted in as trusty [sic]. . . . [I]n order to continue in the manner of the church, [I] felt that [I] was obligated to be present at the Sunday morning worship service."

[3] Anderson contended that the first Sunday of each month was "Communion Sunday" and that he had a sincere religious belief that he could not work on Communion Sundays. However, his testimony at trial indicated that did not tell any of his supervisors at BFI about Communion Sundays. Moreover, stipulated facts show that one of the five Sundays Anderson had worked at BFI was a Communion Sunday.

policy.[4] Anderson testified that he did not call in to inform BFI that he would not be at work on Sunday, February 3, 1991. Further, Robert Martin, who worked with Anderson, testified (1) that after he and Anderson had been asked to work the Sunday in question, Anderson told him he was not going to work on that day and (2) that after he then told Anderson that Anderson "ought to tell them that so they can make arrangements for you to be off," Anderson said he "wasn't gonna tell 'em nothing" and that he "didn't give a damn whether anybody worked or not."

In light of the evidence presented at trial, we conclude that the district court did not err in determining that Anderson failed to prove a case of religious discrimination. Accordingly, the district court did not err in dismissing Anderson's claim with prejudice.

B. BIAS

Anderson also contends that the district court was biased in favor of BFI. However, his only basis for this contention is that before the lunch recess on the first day of trial, the court stated that it had to take a guilty plea at 1:30 p.m. and that therefore court would not resume until 1:45 p.m. Anderson presents no argument whatsoever as to how this comment establishes the court's bias in favor of BFI. Hence, he has

[4] Admitted into evidence at trial was a copy of the policy, which Anderson had signed when he began working for BFI. The policy states in pertinent part: "In the event you do not call in when you can not report to work on time or can not work on a scheduled day, you will be terminated without any further written or verbal warning."

abandoned this issue on appeal. See Randall, 13 F.3d at 911; United States v. Ballard, 779 F.2d 287, 295 (5th Cir.), cert. denied, 475 U.S. 1109 (1986).

IV.

For the foregoing reasons, we AFFIRM the judgment of the district court.