

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  
(CA-H-92-2564)

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(March 7, 1994)

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

PER CURIAM:\*

Bernard Hardy was discharged by Pinkerton Security Services, Inc. for sleeping on the job. Proceeding *pro se* and *in forma pauperis* he brought suit under Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000e *et seq.*, claiming racial discrimination in that a white employee, allegedly caught sleeping

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

on the job, was not terminated. Pinkerton moved to dismiss, in part because Hardy had not received a Notice of Right to Sue from the Equal Employment Opportunity Commission. Hardy did not dispute that assertion. The district court dismissed the case without prejudice. Hardy timely appealed.

Attached to Hardy's complaint is a Notice of Right to Sue from the Texas Human Rights Commission. That notice indicates that Hardy had filed a charge with the EEOC. Hardy has neither produced a copy nor suggested that he has received a Notice of Right to Sue from the EEOC. We cannot determine from the record before us whether the EEOC notice ever issued. Receipt of a Notice of Right to Sue from the EEOC is a prerequisite to filing suit.<sup>1</sup> A Notice of Right to Sue from the Texas Human Rights Commission is not sufficient.<sup>2</sup> Hardy must file suit within the 90-day period after receiving a Notice of Right to Sue from the EEOC.<sup>3</sup>

AFFIRMED.

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<sup>1</sup> 42 U.S.C. § 2000e-5(f)(1).

<sup>2</sup> See **Black v. Brown University**, 555 F.Supp. 880 (D.R.I. 1983).

<sup>3</sup> **Pinkard v. Pullman-Standard, A Division of Pullman, Inc.**, 678 F.2d 1211 (5th Cir. 1982), cert. denied, 459 U.S. 1105 (1983).