

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 17

JAMES HOGAN X

- against -

JET BLUE AIRWAYS CORPORATION X

INDEX NO. 15940/2005

MOTION

DATE: SEPTEMBER 19, 2007

MOTION CAL. NO. 43

SEQ. NO. 4

BY: KITZES, J.

DATED: NOVEMBER 15, 2007

In this action to recover for discrimination in the workplace, defendant JetBlue Airways Corporation (JetBlue) seeks an order granting summary judgment dismissing the complaint.

Plaintiff James Hogan is a 54-year-old Caucasian male who began his employment with JetBlue as an in-flight crew member in September 2002, following his retirement from the New York City Police Department in September 2001. Plaintiff's employment offer states that Mr. Hogan employment was "at will". The JetBlue Crew Member Blue Book, also states that the relationship is one of employment at will, and that the employee could be terminated "at any time within [JetBlue's] discretion based on the situation at hand." Plaintiff's employment offer provided that he could be subject to immediate dismissal for a violation of safety guidelines or a material violation of any law, rule or regulation. As a flight attendant, plaintiff was responsible for performing or

assisting in the performance of all safety, passenger service, and cabin preparations. The JetBlue Flight Attendant Manual (FAM), which plaintiff received and acknowledged receipt of, states that a flight attendant's "[d]uty period starts from the report for show time until relieved from duty or 15 minutes after final block time whichever is greater." The FAM provides that during flights, at least one flight attendant must have visual access to the cabin at all times, and be aware of his or her surroundings, unauthorized bags, lavatories and galleys, suspicious/unusual activity, and to be vigilant for suspicious and/or inappropriate items carried into lavatories.

On April 19 and 20, 2005, plaintiff was a flight attendant on flights between New York/Las Vegas/New York, along with three other flight attendants: Lori Yelanovic, Cindy K. Laney, and Maurice Thornton. Plaintiff had not previously worked with, or met, these flight attendants. Plaintiff was assigned to perform the duties of flight attendant #2. After returning to New York, Yelanovic, Laney and Thornton each filed written complaints with JetBlue about Mr. Hogan. Ms. Yelanovic stated that plaintiff "was sitting in row 1 of the customer seats watching TV with the headphones on. He sat there for the majority of the flight and even fell asleep at one point ... [plaintiff] sat in the front jumpseats with only the little service light on. He fell asleep in the jumpseat also. During service he told me I was speaking too

loud on the PA and I was waking up the customers with my voice. When I would speak to customers he told me to be quiet. He said I should let them sleep so we don't have to do as much work." Ms. Laney complained that "[d]uring the JFK-LAS leg James was seated in the row 1L for much of the flight. In the LAS-JFK I still did not observe James do any safety checks and again he did very little in the way of assistance with boarding ... I did go up to the G1 galley area several times as I did walk throughs- on two occasions I observed James sleeping or appearing to be asleep in the jump seat." Mr. Thornton complained that "[a]s I did a walk through I noticed the #2 in the forward jumpseat dosing off (actually dosed off)."

Plaintiff's In-Flight supervisor Sonia Goodman and JetBlue's Vice-President of In-Flight Service, Vicky Stennes investigated these complaints. On April 24, 2005, Mr. Hogan met with Ms. Goodman and Joseph Romanello, a JetBlue supervisor, at which time he was informed that he was being investigated following a complaint that he had been sleeping on the job during the April 20 flight from Las Vegas to New York. Ms. Goodman testified that she read the written complaints to Mr. Hogan and asked him to give her his side of the story, and that Mr. Hogan stated that "you know I could have been praying" and that she said "well if you were this is your opportunity to fill that out in your statement. He said, no. No. I'm not saying that." She further testified that

Mr. Hogan did not say that he prays. Mr. Hogan then gave Ms. Goodman a written statement in which he stated that on the flights in question he "performed to the best of his ability (wide awake), 'I did not sleep'. The flight was quiet and 100 passengers I performed f2 with no interruption. No one approached to discover I was sleeping and that I was not performing my responsibilities. Now if somebody on this crew state I was sleeping its false. I never was late never took PTO never called in sick and I never slept on any flight." In a letter dated May 9, 2005, JetBlue informed Mr. Hogan that he was terminated, effective May 9, 2005 for the "appearance of sleeping while on duty."

Plaintiff commenced this action on July 20, 2005 and alleges that he was terminated from his employment due to religious and age discrimination in violation of State Human Rights Law (Executive Law § 296 et seq.) and the New York City Human Rights Law (RCNY 8-108[3]). Following the joinder of issue, plaintiff entered into a stipulation dated October 16, 2006 withdrawing his age discrimination claims. As regards his religious discrimination claims, plaintiff alleges in his complaint that he is devout Catholic, and a Grand Knight of the Knights of Columbus, who practices his faith regularly by engaging, among other things, in daily prayer; that at the April 24, 2005 meeting with Ms. Goodman and Mr. Romanello he denied that he had been sleeping on the job on

any flight he had ever flown on as a JetBlue flight attendant; that upon submitting the April 24, 2005 written report in which he denied sleeping on the April 20th flight; that he orally told Goodman and Romanello that he prayed on every flight he is on when his duties to the passengers and other crew members permit him the time to do so; that on May 5, 2005 he had a telephone conversation with Julia Gomez, a JetBlue Crew Relations Manager, at which time he stated that he had not been sleeping on the April 20 flight, but had been praying, as it was his custom when he was not performing his duties. It is also alleged that although he informed his employer of his desire to engage in silent prayer while in-flight and while not actively servicing the needs of passengers or other crew members, defendant failed to engage in any effort to find a reasonable accommodation for him, and in fact made no such accommodation. Plaintiff alleges that he had an exemplary work record, and that he was never given a warning that engaging in silent prayer was a prohibited practice or grounds for peremptory dismissal from employment, or that if his praying in-flight gave the appearance he was sleeping, his employment would be terminated. It is alleged that his termination for giving the "appearance" of sleeping, while silently praying in-flight, is a pretext for discriminatory conduct.

Defendant JetBlue now seeks an order granting summary judgment dismissing the complaint. Defendant asserts that

plaintiff cannot establish a cause of action for discrimination in employment and that he was terminated due to the fact he appeared to be sleeping while on duty and not because of his religious beliefs. In support of its motion, defendants have submitted Mr. Hogan's responses to the first set of interrogatories, relevant portions of Mr. Hogan's deposition testimony, and relevant portions of the deposition testimony of Lori Yelanovic, Cindy Laney, Maurice Thornton, Sonia Goodman and Vicky Stennes, as well as documentary evidence, including confidential documents that were reviewed by the court in camera.

Plaintiff, in opposition asserts that triable issues of fact exist as to his religious discrimination claim. Plaintiff alleges that JetBlue was aware of his religious practice of engaging in prayer while on duty prior to April 20, 2005. In support of his claims, plaintiff has submitted an affidavit from Mr. Hogan, his responses to the first set of interrogatories, portions of his deposition testimony, and, portions of the deposition testimony of Lori Yelanovic, Cindy Laney, Maurice Thornton, Sonia Goodman and Vicky Stennes, as well as documentary evidence.

The standards for recovery under the New York State Human Rights Law (see Executive Law § 296[1]) are the same as the federal standards under title VII of the Civil Rights Act of 1964 (42 USC § 2000 et seq.) (see Mittl v New York State Div. of Human

Rights, 100 NY2d 326, 330 [2003]). Thus, "because both the Human Rights Law and title VII address the same type of discrimination, afford victims similar forms of redress, are textually similar and ultimately employ the same standards of recovery, federal case law in this area also proves helpful to the resolution of this appeal" (Matter of Aurecchione v New York State Div. of Human Rights, 98 NY2d 21, 26 [2002]; see also Forrest v Jewish Guild for the Blind, 3 NY2d 295 [2004]). In addition, as "the human rights provisions of the New York City Administrative Code mirror the provisions of the Executive Law" they "should therefore be analyzed according to [federal] standards" (Forrest v Jewish Guild for the Blind, supra at 305 n 3).

Title VII of the Civil Rights Act of 1964, (42 USC §§ 2000e et seq.) prohibits discrimination in employment on the basis of religion. Specifically, an employer may not "fail or refuse to hire or ... discharge any individual, or otherwise ... discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's ... religion." (42 USC § 2000e-2[a][1]). Title VII provides that "the term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the

conduct of the employer's business." (42 USC § 2000e[j].) In short, it is "an unlawful employment practice ... for an employer not to make reasonable accommodations, short of undue hardship, for the religious practices of his employees and prospective employees." (Trans World Airlines, Inc. v Hardison, 432 US 63, 74 [1977].) To make out a prima facie case of discrimination alleging that an employer failed to reasonably accommodate the plaintiff's religious practices, the plaintiff must show that (1) he held a bona fide religious belief conflicting with an employment requirement; (2) he informed his employers of this belief; and (3) he suffered an adverse employment action for failure to comply with the employment requirement that conflicted with his belief (Baker v The Home Depot, 445 F3d 541, 546 [2006].)

JetBlue asserts that Mr. Hogan cannot establish that he has a bona fide religious belief that conflicts with the company rule forbidding employees from sleeping or appearing to sleep during flights. Mr. Hogan offers no evidence that his religion requires him to pray in a specific manner, at specific times, at specific places, or in specific circumstances. In his answers to the first set of interrogatories Mr. Hogan stated that he prays at different times of the day; that he is required to pray the rosary as often as possible; that there is no specific requirement for an exact time or location; that there is no specific length of time he is required to pray, that during prayers he often has his eyes

closed; that he will often kneel, sit or lay down when he prays; and that he often wears electronic devices when engaged in prayer, that he finds listening to music or using the head phones as ear plugs muffles out distracting noises and enables him to concentrate more on his prayer.

The sincerity of Mr. Hogan's religious beliefs with regard to prayer is not in question. However, the court finds that plaintiff cannot establish that his bona fide religious beliefs conflicted with JetBlue's rule on sleeping or appearing to sleep during flights.

JetBlue further asserts that plaintiff is unable to establish that he informed his employer of his religious beliefs, including the fact that he prayed while on duty with his eyes closed or while wearing headphones. Mr. Hogan asserts that he informed defendant's "People's Department" when he applied for his position in 2002 that he volunteered time to his faith, including the Knights of Columbus. Plaintiff has submitted a letter dated June 14, 2002 which verifies his affiliation and activities with the Knights of Colombus and his church. However, there is nothing in this letter which indicates the manner in which Mr. Hogan prays. Furthermore, Mr. Hogan's testimony regarding two conversations he had with David Neeleman, former president and CEO of JetBlue on two separate flights is insufficient to establish that the defendant was informed of either his desire to pray, or the manner of his

prayer, while on duty. At the most, Mr. Hogan's testimony establishes that he and Mr. Needeman, discussed their respective religious beliefs and faiths. Mr. Hogan conceded that he never told Mr. Needeman that he wanted to pray while on duty, that he never told Needeman that he wanted to keep his eyes closed while on duty and that he never told Needeman that he wanted to wear headphones while on duty. Rather, Mr. Hogan claims that in his conversations with Mr. Needeman it was inferred that he wanted to pray at anytime on the aircraft. However, Mr. Hogan does not claim that it was "inferred" that such prayer would involve closing his eyes or using headphones while on duty. Mr. Hogan further admitted that he never told Sonia Goodman, Joe Perez, or anyone at JetBlue that he wanted to close his eyes or wear headphones while on duty, and that prior to April 20, 2005 he never asked anyone to accommodate his religious practices. Vicky Stennes testified that she was unaware of plaintiff's religious beliefs, his affiliation with the Knights of Columbus, or that he prayed often. In view of Mr. Hogan's own statements, it is evident that he cannot prove that he told JetBlue of his need to pray -- in any manner -- before he was reported for sleeping or appearing to sleep while on duty. Mr. Hogan, therefore, is unable to establish that JetBlue was aware of his religious beliefs and practices (see Rose v Midwest Express Airlines, Inc., United States District Court for the District of Nebraska, 2002 US Dist LEXIS 17665 [2002]).

Mr. Hogan asserted at his deposition that after April 20, 2005 he asked Julie Gomez to permit him to pray on board the aircraft while on duty. In his answers to the interrogatories he stated that he told Ms. Gomez that he would be more discrete and would go behind the bulkhead, and that he informed Ms. Goodman and Mr. Romanello that he would pray with his head down and with his arms on his knees, that he would pray in a different way if necessary. However, even if Mr. Hogan belatedly notified JetBlue of his religious beliefs, the airline could hardly have accommodated him on the no-sleeping rule. JetBlue imposed the no-sleeping rule to comply with federal aviation regulations and for the safety of passengers and flight crew. Thus, forcing JetBlue to accommodate Hogan's chosen manner of praying could not only violate federal law but also jeopardize the safety of everyone aboard a flight to which Hogan was assigned if he were praying with his eyes closed, while wearing a headset, or behind the bulkhead and out of the sight of the passengers and crew, or with his head bowed down, if an emergency arose during flight. The no-sleep rule plainly did not prevent Mr. Hogan from praying. This rule is facially neutral and has nothing whatever to do with praying or with religion. Mr. Hogan was free to pray at any time during a flight -- so long as he did not do so in a manner that gave an appearance of sleeping or that violated some other company rule or policy.

Finally, the court finds that Mr. Hogan is unable to prove that he was terminated was a result of his religious beliefs or practices. JetBlue investigated the complaints made by the other flight attendants and found their statements to be more credible than those of the defendant. Jetblue was free to accept the co-workers' version of events over Hogan's version and to fire Hogan. The termination was unrelated to Mr. Hogan's religious beliefs and practices and was based upon Hogan's violation of a facially neutral no-sleeping rule.

In view of the foregoing, the court finds that plaintiff is unable to establish a prima facie case of religious discrimination in employment. Defendant's motion for summary judgment dismissing the complaint, therefore, is granted.

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J.S.C.