

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MANUEL F. NUNES :
 :
 v. : C.A. No. 14-378L
 :
 BROWN UNIVERSITY :

**MEMORANDUM AND ORDER
PURSUANT TO 28 U.S.C. § 1915(e)**

Background

Pending before me for determination is Plaintiff Manuel Nunes' ("Plaintiff") Application to Proceed In Forma Pauperis ("IFP") (Document No. 2) pursuant to 28 U.S.C. § 1915. On August 26, 2014, Plaintiff filed a pro se Complaint against Brown University. Plaintiff's Complaint consists of a one-page letter and several attachments which generally allege that he was subjected to discrimination and harassment due to his national origin in his position as a custodial manager at Brown University. Plaintiff claims he was falsely accused of theft and terminated from his position, but that the true reason for his termination was his national origin. Plaintiff's Complaint was accompanied by an Application to Proceed IFP without being required to prepay costs or fees, including the \$400.00 civil case filing fee. After reviewing Plaintiff's Application, signed under penalty of perjury, I conclude that Plaintiff is unable to pay fees and costs in this matter and thus, Plaintiff's Application to Proceed IFP (Document No. 2) is GRANTED.

Having granted IFP status, I am required by statute to further review Plaintiff's Complaint *sua sponte* (on the Court's own motion) under 28 U.S.C. § 1915(e)(2)(B) and to dismiss this suit if it is "frivolous or malicious," "fails to state a claim on which relief may be granted" or "seeks monetary relief against a defendant who is immune from such relief." For the reasons discussed

below, rather than recommend dismissal of Plaintiff's Complaint at this time, Plaintiff is granted leave to file an Amended Complaint so that I may be better able to understand and then review his claims pursuant to 28 U.S.C. § 1915(e)(2)(B).

Facts

According to his IFP Application, Plaintiff is not currently employed, and has no checking or savings accounts. Plaintiff has not identified any sources of income and indicates that he has a mortgage which is currently "on hold" in addition to several other monthly bills. Plaintiff's Complaint alleges he was subject to "intolerable harassment" and that he was called a "stupid port-a-gee" and that this was "the true reason I was terminated." (Document No. 1). The Civil Cover Sheet accompanying his Complaint indicates that his Complaint is for employment discrimination. Plaintiff, however, fails to articulate the legal basis of his employment discrimination claims, including the statute under which he is pursuing his claims and whether he has exhausted any required administrative remedies in connection with his claim prior to filing this suit. Also, since his termination took place over two years ago in July 2012, it is unclear if his employment discrimination claims are timely filed.

Standard of Review

Section 1915 of Title 28 requires a federal court to dismiss an action brought thereunder if the court determines that the action "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). The standard for dismissal of an action taken IFP is identical to the standard for dismissal on a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6). See *Fridman v. City of N.Y.*, 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002). In other words, the court "should not grant the motion unless it appears to a certainty that the plaintiff would be unable to recover under any set of

facts.” Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996). Section 1915 also requires dismissal if the court is satisfied that the action is “frivolous” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i) and (iii). A claim “is frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989).

Discussion

In reviewing Plaintiff’s Complaint, I have taken all of his allegations contained therein as true and has drawn all reasonable inferences in his favor. Estelle v. Gamble, 429 U.S. 97 (1976). In addition, I have liberally reviewed Plaintiff’s allegations and legal claims since they have been put forth by a pro se litigant. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972). However, even applying these liberal standards of review to Plaintiff’s Complaint, there are some deficiencies apparent from the face of Plaintiff’s Complaint which require consideration before this case may proceed further. These deficiencies are discussed in more detail below.

Although Plaintiff’s pro se Complaint is held to a less stringent standard than one drafted by a lawyer, his pro se status does not excuse him from complying with the Court’s procedural rules. See Instituto de Educacion Universal Corp. v. U.S. Dep’t of Educ., 209 F.3d 18, 23 n.4 (1st Cir. 2000). As noted above, Plaintiff’s Complaint is confusing and vague as to many details. The Complaint does not contain a case caption listing Defendants. Moreover, the Complaint does not identify the legal basis for this Court’s jurisdiction, the legal basis of his employment discrimination claim and whether he has exhausted his administrative remedies in connection with his claims, nor does Plaintiff identify the particular relief sought from this Court.

Under Rule 8(a), Fed. R. Civ. P., a complaint must contain three essential elements: (1) a short and plain statement of the legal basis for federal court jurisdiction; (2) a short and plain statement of the Plaintiff's claim(s); and (3) a demand for judgment, i.e., the damages or other relief sought by plaintiff. One of the primary purposes of Rule 8(a) is to give the defendant(s) and the Court fair notice of the claim being made by a plaintiff. Here, Plaintiff's Complaint clearly fails to comply with Rule 8(a). In addition, Rule 10(a), Fed. R. Civ. P., requires that a complaint include a caption naming all of the parties (including all of the defendants) and that plaintiff's factual allegations be organized in separately numbered paragraphs. Finally, Rule 10(b), Fed. R. Civ. P. requires that each separate legal claim against a defendant(s) be set forth in a separately numbered "count" or section within the complaint. Plaintiff's Complaint also clearly fails to comply with Rules 10(a) and (b). See Simpson v. Kingston, No. 04-C-298-C, 2004 WL 1246058 (W.D. Wis. June 2, 2004) (complaint caption which did "not list any defendants" fails to comply with Rule 10(a)).

Conclusion

Giving due deference to Plaintiff's pro se status, at this time, I will not recommend that the District Court dismiss Plaintiff's Complaint under 28 U.S.C. § 1915(e)(2)(B) at this time. Rather, I GRANT Plaintiff Leave to file an Amended Complaint within thirty (30) days from the date of this Order which complies with the Federal Rules of Civil Procedure. In particular, the Amended Complaint should:

- (1) start with a case caption that lists or identifies all of the defendant(s), that is, the particular party(ies) and/or agency(ies) being sued by Plaintiff in this case, see Fed. R. Civ. P. 10(a);
- (2) be titled "Amended Complaint" at the top of the document;

(3) set forth Plaintiff's factual allegations and legal claim(s) in numbered paragraphs and counts (or sections), see Fed. R. Civ. P. 10(b);

(4) contain a short and plain statement of the legal grounds upon which the federal court's jurisdiction depends, see Fed. R. Civ. P. 8(a)(1);

(5) contain a short and plain statement of the legal claim showing that Plaintiff is entitled to relief, see Fed. R. Civ. P. 8(a)(2); and

(6) contain a demand for judgment specifying the relief which Plaintiff seeks from each named defendant, see Fed. R. Civ. P. 8(a)(3).

I will take further action as appropriate under 28 U.S.C. § 1915(e)(2)(B) after reviewing Plaintiff's Amended Complaint. If Plaintiff fails to file an Amended Complaint pursuant to this Order, I will recommend that Plaintiff's Complaint be DISMISSED WITHOUT PREJUDICE for the reasons discussed above pursuant to 28 U.S.C. § 1915(e)(2)(B).

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
September 25, 2014