

96CV02655-55-MJ

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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S. DAWUD MUHAMMAD ALI  
A/K/A/ CALVIN WEBB,

Plaintiff,

96 CV 2655 (SJ)

-against-

MEMORANDUM AND  
ORDER

NEW YORK CITY TRANSIT AUTHORITY,  
JOHN AND JANE DOES 1 THROUGH 5,  
and TRANSIT WORKER'S UNION  
LOCAL 100,

Defendants.

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A P P E A R A N C E S:

S. DAWUD MUHAMMAD ALI  
C/O 84-08 Rockaway Beach Boulevard  
Queens, NY 11693  
Plaintiff, Pro se

MARTIN B. SCHNABEL, ESQ.  
New York City Transit Authority  
130 Livingston Street, Room 1210  
Brooklyn, NY 11201  
By: George S. Grupsmith  
Attorney for New York Transit Authority

O'DONNELL, SCHWARTZ, GLANSTEIN & ROSEN, L.L.P.  
60 East 42<sup>nd</sup> Street  
New York, NY 10165  
By: Howard Rosen, Esq.  
Attorney for Transport Workers  
Union of Greater New York, Local 100

JOHNSON, District Judge:

Plaintiff S. Dawud Muhammad Ali ("Plaintiff"), acting pro se, brought this

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action requesting declaratory judgment, injunctive relief, and damages against defendants New York City Transit Authority ("NYCTA"), John and Jane Does 1 through 5, and Transit Workers Union of Greater New York, Local 100 ("TWU").<sup>1</sup> Defendants now move this Court for a judgment on the pleadings pursuant to the Federal Rule of Civil Procedure 12(c) and Plaintiff moves to amend his complaint. For the reasons set forth below, defendants' motion for a judgment on the pleadings is granted, and the Plaintiff's case is dismissed.

#### **BACKGROUND**

Plaintiff, an employee of the NYCTA was discharged from his position on August 2, 1989. He then filed a complaint against NYCTA, TWU, and John and Jane Does 1 through 5 on May 26, 1996.

On January 16, 1998, TWU filed a motion for judgment on the pleadings stating that the statute of limitations passed on all of Plaintiff's claims. On February 12, 1998, the NYCTA also filed a motion for judgment on the pleadings. Plaintiff filed a motion in opposition requesting that the motion to dismiss the claims be set aside, and requested leave to amend the complaint.

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<sup>1</sup> Although served under the name of Transit Worker's Union Local 100, it appears this party's proper name is Transport Worker's Union of Greater New York, Local 100.

## DISCUSSION

### I. Motion to Amend Complaint

Plaintiff has requested that his complaint be amended. Rule 15(a) of the Federal Rules of Civil Procedure states in part, "leave shall be freely given when justice so requires." Granting leave is within the sound discretion of the court, but refusal to allow a proposed amendment must be based on a valid ground. St. George Seaport Assocs. v. CSX Realty, Inc., No. 90 CV 2271, 1993 U.S. Dist. LEXIS 427, at \*4 (E.D.N.Y. January 12, 1993) (citing Kaster v. Modification Sys., Inc., 731 F.2d 1014, 1018 (2d Cir. 1984)).

Since it is within the discretion of this Court, and because there are no valid grounds to deny the amendment of this complaint, Plaintiff is granted leave to amend the complaint, and the Plaintiff's amended complaint is accepted by this Court.

### II. Fed.R.Civ.P. 12(C)

When acting pursuant to a 12(c) motion for judgment on the pleadings, this Court must accept all allegations in the complaint as true and must draw all inferences in favor of the Plaintiff. See Sheppard v. Beerman, 94 F.3d 823, 827 (2d Cir. 1996); Madonna v. United States, 878 F.2d 62, 65 (2d Cir. 1989). The well-pleaded material facts must be taken as admitted. Gumer v. Sharson, Hammill & Co., 516 F.2d 283, 286 (2d Cir. 1974). Dismissal is proper only when it "appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Sheppard, 94 F.3d at 827.

III. Claims under the Fifth, Eighth, Thirteenth and Fourteenth Amendments, 42 U.S.C. § 1985 and 42 U.S.C. § 1986

Plaintiff alleges that the NYCTA and TWU violated his Fifth, Eighth, and Fourteenth Amendment rights.<sup>2</sup> Additionally, he alleges conspiracy to interfere with his civil rights under 42 U.S.C. § 1985 and an action for neglecting to prevent a conspiracy under 42 U.S.C. § 1986. Defendants argue the statute of limitations for these claims have expired. This Court agrees.

Because neither Congress nor the Constitution provides a statute of limitation for violations of constitutional rights, courts must borrow the most analogous state statute of limitations. Johnson v. Railway Express Agency, 421 U.S. 454, 460 (1975). In Wilson v. Garcia, the Supreme Court held that the proper statute of limitations for § 1983 claims was that of personal injury tort state claims. 471 U.S. 261, 275 (1985). In New York, this statute of limitations is found in New York Civil Practice Law and Rules § 214(5) which states, "The following must be commenced within three years: . . . an action to recover damages for a personal injury. . . ."

Furthermore, there is a general consensus among district courts in this Circuit

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<sup>2</sup> Although 42 U.S.C. § 1983 is not mentioned in the complaint, claims for violations of the Fifth, Thirteenth, and Fourteenth amendments are normally brought under §1983, since the purpose of the statute is to provide a cause of action under which individuals can sue state organizations for violations of their civil rights. See Monroe v. Foster, 407 U.S. 255, 238-39, 240 (1972). Therefore, this analysis of the statute of limitation claim is based largely on 42 U.S.C. §1983 case law.

that the statute of limitations for 42 U.S.C. § 1985 should be the same as under 42 U.S.C. §1983. See Upper Hudson Planned Parenthood, Inc. v. Doe, No. 90-CV-1084, 1991 U.S. Dist. LEXIS 13063, \*23-28 (N.D.N.Y. Sept. 16, 1991); Jurgens v. Morgenthau, No. 88 CIV. 4836, 1989 U.S. Dist. LEXIS 7513, \*2-3 (S.D.N.Y. July 10, 1989); aff'd, No. 97-7296, 1998 U.S. App. LEXIS 22040 (2d Cir. Feb. 9, 1998); Jones v. Coughlin, 665 F.Supp. 1040, 1043-45 (S.D.N.Y. 1987).

Lastly, with respect to the claim brought under 42 U.S.C. § 1986, that statute states that “no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.”

Plaintiff was discharged on August 2, 1989, but did not file his complaint until May of 1996, more than six years after the alleged wrongdoing. There was no evidence of bad faith or deliberate misconduct on the part of the Defendants to delay the filing of this lawsuit; therefore, the claims brought pursuant to 42 U.S.C. §§ 1983, 1985 and 1986 are time barred. See O'Malley v. GTE Serv. Corp., 758 F.2d 818, 822 (2d Cir. 1985).

#### IV. Duty of Fair Representation

Plaintiff also claims that TWU violated the collective bargaining agreement by breaching its duty of fair representation. This Court finds that this claim is also time barred.

In DelCostello v. Teamsters, 462 U.S. 151, 172 (1983), the Supreme Court

decided that the appropriate statute of limitations for hybrid cases involving the violation of the collective bargaining agreement and the violation of the duty of fair representation by a union was the six months under §10(b) of the National Labor Relations Act, 29 U.S.C. §160 (b). Yet, in Eatz v. DME Unit of Local No. 3, the Second Circuit stated, "we read DelCostello to require that the § 10(b) six-month limitations period also be applied to unfair representation claims standing alone." 794 F.2d 29, 33 (2d Cir. 1986).

In this case, Plaintiff alleges that TWU violated its duty of fair representation. The statute of limitation in this instance is six months; therefore, this cause of action is time barred.

#### V. Claim under 18 U.S.C. § 242

Plaintiff claims that TWU and NYCTA violated his civil rights under 18 U.S.C. § 242. However, 18 U.S.C. § 242 is a criminal statute, and can provide no private right of action. See Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 511 (2d Cir. 1994); Powers v. Karen, 768 F.Supp. 46, 51 (E.D.N.Y. 1991), aff'd, 963 F.2d 1522 (2d Cir. 1992).

#### VI. State Claims

28 U.S.C. § 1357 requires that if all other claims under which the federal court has original jurisdiction are dismissed, all state claims must be dismissed as well. See

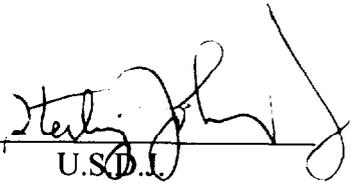
United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966). Therefore, the claims for fraud and violation of New York's Taylor law are also dismissed.

**CONCLUSION**

For the reason set forth above, Defendants' motion to dismiss is GRANTED.

SO ORDERED.

Dated: November 6, 1998  
Brooklyn, NY

  
U.S.D.J.