UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ROSEANN WHEAT PLAINTIFF

v. CIVIL ACTION NO. 3:98CV-346-S

BROWN-FORMAN CORPORATION DEFENDANT

MEMORANDUM OPINION

This matter comes before the court on the motion of the plaintiff, Roseann Wheat, to remand and the motion of the defendant, Brown-Forman Corporation ("Brown-Forman"), to dismiss. This case involves the plaintiff's allegations of discrimination and retaliation by the defendant, his employer, in violation of Kentucky state law. The defendant removed this case from Jefferson Circuit Court. For the reasons below, the court will deny the plaintiff's motion to remand, grant the defendant's motion to dismiss, and dismiss the plaintiff's claims on the grounds that they are preempted by the Labor Management Relations Act.

FACTS

The plaintiff, Roseann Wheat, has been an employee of the defendant, Brown-Forman, and a union member for over twenty years. Her most recent position is that of Senior Production Operator. On February 16, 1996, Wheat allegedly suffered a work-related injury which she claims resulted in a disability. Wheat filed a worker's compensation claim and received benefits. Wheat returned to work on January 7, 1997, under medical restrictions. On January 12, 1998 Brown-Forman placed Wheat on lay-off status. Wheat filed suit in state court, claiming that she was wrongfully terminated because of her age and disability. She also claimed that Brown-Forman terminated her in retaliation for filing a worker's compensation claim. Brown-Forman removed the action to this court.

Wheat is a member of the General Drivers, Warehousemen & Helpers Local Union No. 89 ("Union"). The current Collective Bargaining Agreement ("CBA") has been in effect since August 1, 1995 and extends through November 30, 2000. The CBA mandates that all employment-related disputes are first to be filed as grievances. If the dispute is not resolved quickly via the grievance procedure, it must then be submitted to arbitration. Wheat failed to file a grievance or pursue arbitration before filing suit.

DISCUSSION

Although the defendant has filed a motion to dismiss in this case, that motion will be treated as one for summary judgment. Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A party's failure to establish an element of proof essential to his case and upon which he will bear the burden of proof at trial constitutes a failure to establish a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d. 265 (1986). *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

(1) Preemption Under the Labor Management Relations Act

Section 301 of the Labor Management Relations Act ("LMRA") allows an employee to bring suit for violations of a contract between an employer and a labor organization. 29 U.S.C. §185(a). "To ensure uniformity in this area of federal law, Section 301 has been held to preempt state law claims that are substantially dependent upon an analysis of a collective bargaining agreement." *In re Glass, Molders, Pottery, Plastics & Allied Workers International Union, Local No. 173*, 983 F.2d 725 (6th Cir. 1993). *See also Allis-Chalmers Corp. v. Lueck*, 471 U.S.

202, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985). State law claims will only be preempted by Section 301 if the claims require the court to construe a collective bargaining agreement. *DeCoe v. General Motors Corp.*. 32 F.2d 212, 216 (6th Cir. 1994).

The Sixth Circuit has developed a two-step approach to determine whether Section 301 preemption applies.

> First, the district court must examine whether proof of the state law claim requires interpretation of collective bargaining agreement terms. Second, the court must ascertain whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law. If the right is borne of state law and does not invoke contract interpretation, then there is no preemption. However, if neither or only one criterion is satisfied, section 301 preemption is warranted.

Id. (citations omitted). In order to decide the first step, the court is not limited to the language of the complaint, but should look at the essence of the plaintiff's claim. *Id.* "If the plaintiff can prove all of the elements of his claim without the necessity of contract interpretation, then his claim is independent of the labor agreement." *Id.*

Here, the plaintiff has brought state law claims of disability discrimination and retaliation for filing a worker's compensation claim. The defendant has asserted that these issues cannot be addressed without looking at the collective bargaining agreement, specifically, the provisions regarding job bidding and seniority. The plaintiff claims that her employer discriminated against her by failing to return her to a job that met her medical restrictions. She also claims that the company did not return her to work in retaliation for her worker's compensation claim. It is clear, however, that under the collective bargaining agreement, the defendant is required to follow the provisions on job bidding and seniority rights in returning Wheat to work. Therefore, Wheat's discrimination and retaliation claims cannot be analyzed without interpretation of the collective bargaining agreement, which establishes Wheat's rights under such circumstances.

The Supreme Court has held that "when resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor

contract, that claim must either be treated as a §301 claim or dismissed as pre-empted by federal labor-contract law." *Allis-Chalmbers*, 471 U.S. at 220 (citations omitted). Although the plaintiff did not bring suit under Section 301, the court will look to see if she could have brought her claims under that section.

(2) Exhaustion of the CBA's Grievance Procedure

Exhaustion of a grievance procedure contained in a collective bargaining agreement is a prerequisite to a Section 301 action by an employee against the employer for breach of a labor contract. *Apponi v. Sunshine Biscuits, Inc.*, 809 F.2d 1210, 1216 (6th Cir. 1987). "A contrary rule which would permit an individual employee to completely sidestep available grievance procedures in favor of a lawsuit has little to commend it." *Miller v. Chrysler Corp.*, 748 F.2d 323, 325 (6th Cir. 1984). "A recognized exception to this rule, however, exists when it is demonstrated that it would be 'futile' for the employee to pursue the contractual remedy." *Id.* "Whether a dispute must be arbitrated before judicial relief may be sought is determined by analyzing the collective bargaining agreement to see if it requires arbitration." *Apponi*, 809 F.2d at 1216.

Article 17 of the CBA governs the procedure when any grievance is filed by an employee. The CBA between the plaintiff's union and Brown-Forman requires that all alleged violations of the CBA must be raised through the contractual grievance procedure. The CBA also mandates that all unsettled grievances are to be submitted to arbitration. Because the collective bargaining agreement implements a binding grievance procedure, the plaintiff is required to exhaust this remedy as a prerequisite to bringing a suit under the LMRA. The plaintiff has taken no steps to file a grievance or to submit the matter to arbitration. For this reason, the court will dismiss Wheat's claim.

For the reasons set forth above, the court will dismiss the plaintiff's state law discrimination and retaliation claims. These claims are preempted by Section 301 of the LMRA, and the plaintiff has not met the prerequisite of that section by failing to exhaust the grievance procedures provided in the collective bargaining agreement. A separate order will be entered herein this date in accordance with this opinion.

This _____ day of ____________________, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the plaintiff's motion to **REMAND** is **DENIED** and the defendant's motion to **DISMISS** is **GRANTED**. Accordingly, the plaintiff's claims will be **DISMISSED**. The court having dismissed all claims in this case, this is a final and appealable order.

IT IS SO ORDERED this _____ day of ____________________, 1998.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record