

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JAMES WICKENS,	:	
Plaintiff	:	No. 1:19-cv-02021
	:	
v.	:	(Judge Kane)
	:	
RITE AID HDQTRS CORP.,	:	
Defendant	:	

MEMORANDUM

This case arises out of the termination of Plaintiff James Wickens (“Plaintiff”)’s employment with Defendant Rite Aid Hdqtrs. Corp. (“Defendant” or “Rite Aid”) in January 2018, which Plaintiff alleges was retaliation in violation of Section 806(a) of the Sarbanes-Oxley Act (“SOX”), 18 U.S.C. § 1514A. (Doc. No. 1.) Before the Court is Defendant’s motion for summary judgment. (Doc. No. 31.) For the reasons that follow, the Court will grant the motion.

I. BACKGROUND¹

Plaintiff is an attorney who graduated from law school in 1993 and has approximately two decades of legal experience in private practice and in-house corporate representation. (SUMF ¶ 1.) In approximately 2003, Plaintiff accepted a position as Immigration Counsel in Rite Aid’s Human Resources (“HR”) Department, which he held until 2010 when he became “Associate Counsel—Human Resources,” also in Rite Aid’s HR Department. (*Id.* ¶¶ 2-3.) Plaintiff worked in the HR Department for his entire tenure with Rite Aid, and neither of his positions required a full Pennsylvania law license. (*Id.* ¶ 4.) As Immigration Counsel, Plaintiff was responsible for immigration legal assistance, including securing business visas for

¹ The following relevant facts of record are taken from Defendant’s Statement of Undisputed Material Facts (“SUMF”) (Doc. No. 31-1), and Plaintiff’s Response to Statement of Facts (“RSUMF”) (Doc. No. 39), and are undisputed unless otherwise noted.

pharmacists and information technology specialists. (Id. ¶ 5.)² Plaintiff's immigration-related duties decreased as Rite Aid shifted away from sponsoring new immigration visas and Plaintiff took on his new role as Associate Counsel. (Id. ¶ 6.)³ As Associate Counsel, Plaintiff continued to provide immigration support in addition to reviewing and drafting HR policies, collaborating on employee trainings, performing legal research, and responding to pre-litigation demands. (Id. ¶ 7.)⁴ Plaintiff also served as the Chair of the HR Compliance Sub-Committee and a HR Representative for Rite Aid's Policy Oversight Committee. (Id. ¶ 8.) At the time of his termination, five other employees reported to Plaintiff. (Id. ¶ 10.)⁵ During the course of his

² Plaintiff clarifies that he was responsible for "the day-to-day direction of up to 3 corporate Paralegals and an International Recruitment Manager. He also worked closely with Operations and recruiters to recruit, hire, and staff IT professionals and international pharmacists." (RSUMF ¶ 5.)

³ Plaintiff denies this allegation in part, asserting that Defendant's citation to Plaintiff's deposition testimony "does not support" the assertion that Rite Aid moved away from sponsoring new immigration visas. (RSUMF ¶ 6.) However, the Court's review of the portion of Plaintiff's deposition transcript at issue shows that Plaintiff clearly and specifically stated that his immigration duties decreased in 2010 or 2011 because "Rite Aid made a business decision to decrease the amount of sponsoring new visas." (Doc. No. 35, Exh. B at 28.)

⁴ Plaintiff clarifies that he was "responsible for the day-to-day direction of Corporate Human Resources Managers" as well as "counsel[ing] and advis[ing] Senior Corporate Human Resource Managers responsible for HR investigations"; "provid[ing] daily legal advice and services to support both human resource and senior business leaders"; "responding to pre-litigation demand letters"; "participating in issues regarding labor unions"; "preparing the annual HR risk assessment"; "overseeing background checks"; "working with pharmacy operations and compliance on licensures and sanctions"; "creating trainings related to workplace discrimination"; "handling of EEOC compliance and state and federal labor, wage, and hours issues"; and "obtaining visas and permanent residency for pharmacists and IT staff." (RSUMF ¶ 7.)

⁵ Defendant states these direct reports were non-attorneys. (SUMF ¶ 10.) Plaintiff asserts that those individuals were attorneys. (RSUMF ¶ 10.) The Court's review of the deposition transcript at issue indicates that Plaintiff testified his direct reports were individuals with law degrees working in non-attorney positions. (Doc. No. 35, Exh. B at 32-33) (stating that Plaintiff's direct reports "were not working as attorneys for Rite Aid. They were working as HR managers").

employment, Plaintiff himself reported to Michelle Belsey (“Belsey”) (Vice President, Recruitment), then Traci Burch (“Burch”) (former Vice President of Labor Relations and Employment Counsel), then, finally, Ken Black (“Black”) (former Chief Human Resources Officer), but never Ron Chima (“Chima”) (Vice President of Litigation and Commercial Law). (Id. ¶¶ 11-12.)

On October 27, 2015, Rite Aid and Walgreens Boots Alliance (“Walgreens”) announced that they entered into a merger agreement (the “Merger Agreement”), under which Walgreens would acquire all outstanding shares in Rite Aid for nine dollars (\$9.00) per share. (Id. ¶ 34.) Approximately a year later, Rite Aid and Walgreens announced that they had agreed to extend the end date of the Merger Agreement to January 27, 2017; however, they ultimately announced an amended merger agreement (the “Amendment”), extending the end date to July 31, 2017 and lowering the price per share from \$9.00 to between \$6.50 and \$7.00. (Id. ¶¶ 35-36.) On June 29, 2017, Rite Aid and Walgreens announced the termination of the Merger Agreement and the Amendment, and entered into an asset purchase agreement under which Walgreens would acquire approximately half of Rite Aid’s retail locations. (Id. ¶ 37.)⁶ Rite Aid subsequently worked to transfer its stores to Walgreens. (Id. ¶ 38.)

Plaintiff alleges that in late February or early March 2017, he was informed that various vice presidents at Rite Aid sold their stock in January 2017 after learning that the Merger Agreement would be extended at a lower per-share sale price. (Doc. No. 1 ¶ 18.) Thereafter, Plaintiff believed that those vice presidents “had engaged in conduct in violation of securities laws,” namely, insider trading. (Id.) Plaintiff alleges that he protested any insider trading to

⁶ Plaintiff clarifies that the asset purchase agreement provided that Walgreens “would acquire 2,186 stores, related distribution assets, and inventory from Defendant.” (RSUMF ¶ 37.)

Chima and informed Chima that it needed to be investigated. (Id. ¶ 22.) Plaintiff also alleges that he raised the same issue with Burch, Frank Ho (“Ho”) (former Vice President of Indirect Procurement), and Bob Dwulet (“Dwulet”) (former Senior Director of Indirect Procurement), and similarly demanded an investigation. (Id. ¶¶ 23-25.) Plaintiff asserts that Burch informed Black of his allegations of insider trading. (Id. ¶ 24.) Black, Chima, Ho, and Dwulet testified in their depositions that they did not recall ever speaking to Plaintiff about any concerns he may have had about insider trading. (SUMF ¶ 44.) Burch testified that she recalled speaking with Plaintiff about his concerns and that she informed Black that Plaintiff requested an investigation into insider trading, but noted that she did not inform either Black or Chima that Plaintiff ever raised any duty or alleged any violation that Rite Aid itself may have committed. (SUMF ¶ 49; RSUMF ¶ 49; Doc. No. 35, Exh. F at 74-77.) At no time during the course of his employment with Rite Aid did Plaintiff himself conduct any legal research regarding whether Rite Aid’s alleged failure to investigate Plaintiff’s allegations of insider trading constituted a crime by Rite Aid. (SUMF ¶ 64.)⁷ At no time has Plaintiff identified what specific law he believes Rite Aid (as opposed to certain individual employees) to have violated. (Id. ¶ 65.)

As a result of the asset purchase agreement with Walgreens and subsequent transfer of Rite Aid retail locations to Walgreens, Rite Aid determined that its “need for the retention of associates within certain units of the corporate structure” changed, and that, Rite Aid selected certain associates for termination as part of a top-down reduction in force across multiple

⁷ Plaintiff states that he “did not need to research what constituted illegal insider trading as he already knew that such conduct violated Rule 10b-5 of the Securities Exchange Act” and that it was his “belief” that if Rite Aid failed to self-report insider trading to the Securities and Exchange Commission (“SEC”), that “may also constitute a crime.” (RSUMF ¶ 64.) The Court notes that Plaintiff does not dispute that he conducted no research into whether Rite Aid did or did not have a legal obligation to self-report to the SEC. (Id.)

departments. (Id. ¶ 74.)⁸ Ultimately, Rite Aid eliminated over eighty (80) positions, and executed a reduction in force that included severance benefit options based on length of service and pay level. (Id. ¶ 77.) Black selected Plaintiff for termination. (Id. ¶ 78.) Black testified at his deposition that he selected Plaintiff after reviewing “the overall structure of HR and the overall layers of management . . . as well as evaluat[ing] the roles that each held” and “identif[ying] the individuals where the work could either not be done or could be reallocated in some fashion.” (Id. ¶ 79.)⁹ Defendant asserts that Plaintiff’s work was “easily reallocated” to outside counsel, as well as various individuals already employed, including Steve Chesney (“Chesney”) (former Senior Director of Corporate Human Resources), Mike Atcovitz (“Atcovitz”) (former Vice President, Field Human Resources), Chima, and Emily Edmunds (“Edmunds”) (Senior Counsel). (Id. ¶ 80.)¹⁰

On January 24, 2018, Black and Chima met with Plaintiff and informed him that his employment was being terminated. (Id. ¶ 81.) Plaintiff’s five direct reports also left Rite Aid in 2018. (Id. ¶ 82.) From January 1, 2018 through January 1, 2020, staffing levels in the HR Department declined from eighty-seven (87) employees to sixty-seven (67) employees. (Id. ¶

⁸ Plaintiff does not clearly dispute that Rite Aid engaged in a reduction in force; however, Plaintiff disputes that Plaintiff’s position was eliminated as part of that reduction in force. (RSUMF ¶ 74.)

⁹ As noted, supra, Plaintiff denies that Black selected Plaintiff for termination for the reasons stated by Defendant and further denies that Plaintiff’s position was eliminated, but rather asserts that he was replaced. (RSUMF ¶ 79.)

¹⁰ Plaintiff denies that his immigration work was outsourced entirely to outside counsel and reiterates his belief that he was replaced by Edmunds. (RSUMF ¶ 80.)

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