IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TANISHA SANDERS, ***Plaintiff*,** **v.** **TC TRANSCONTINENTAL TULSA,** ***Defendant.***	**Case No. 23-CV-345-GAG-JFJ**

ORDER ON DEFENDANT TC TRANSCONTINENTAL TULSA'S MOTION FOR SUMMARY JUDGMENT

Defendant TC Transcontinental Tulsa ("TC Transcontinental" or "Defendant") has moved for summary judgment (Dkt. No. 32 ("Motion")) against Plaintiff Tanisha Sanders ("Plaintiff") on her claims for discrimination and retaliation under Title VII.

At the outset, the undersigned notes that, while Defendant complied with Local Civil Rule 56.1, Plaintiff did not. Local Rule 56.1 provides, in relevant part:

> **(b) Brief in Support.** The brief in support of a motion for summary judgment (or partial summary judgment) shall begin with a section stating the material facts to which the moving party contends no genuine issue of fact exists. The facts shall be set forth in concise, numbered paragraphs.
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> **(c) Response Brief.** The response brief in opposition to a motion for summary judgment (or partial summary judgment) shall begin with a section responding, *by correspondingly numbered paragraph*, to the facts that the movant contends are not in dispute and shall state any fact that is disputed. All material facts set forth in the statement of material facts of the movant shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the statement of material facts of the opposing party, using the procedures set forth in this rule.
>
> **(e)** Each individual statement by the movant or nonmovant pursuant to subparagraphs (b), (c), or (d) of this rule shall be followed by

> citation, with particularity, to any evidentiary material that the party presents in support of its position pursuant to Fed. R. Civ. P. 56(c). This citation shall include reference to the pages (including paragraphs or lines, where applicable) of the evidentiary materials that are pertinent to the motion.

(Emphasis added). Defendant submitted thirty-one undisputed facts in concise, numbered paragraphs properly supported--as the Local Rule requires--by record citations. (Dkt. No. 32 at 6-10.) Plaintiff, in turn, presented nineteen facts in dispute. (Dkt. No. 33 at 6-16.) These statements, for the most part, lack any record citation. Plaintiff instead seeks to refute several of Defendant's statements of material fact by characterizing them as misleading and/or false. (*See, e.g.*, *id.* ¶¶ 6-12, 19.) Moreover, these statements largely contain Plaintiff's own self-serving characterization of the record evidence. (*See, e.g.*, *id.* ¶¶ 14, 15, 17, 20, 21, 25, 26, 28-31.) And Plaintiff has not presented any contrary evidence, such as a sworn statement. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (noting the well-settled principle that the party opposing a motion for summary judgment "must respond with affidavits or other evidence to show a genuine issue of material fact" (citing *Jaxon v. Circle K Corp.*, 773 F.2d 1138, 1139 (10th Cir. 1985))). Hence, for purposes of summary judgment, I deem as admitted Defendant's thirty-one undisputed facts. *See Milam v. Pafford EMS*, 729 F. App'x 632, 636 (10th Cir. 2018) (construing Eastern District of Oklahoma's analogous Local Rule 56.1); *see also Bell v. BOKF, NA*, No. 12-28, 2013 WL 1309411, at *1-2 (N.D. Okla. Mar. 26, 2013) (deeming undisputed a statement of material facts where a plaintiff failed to comply with Local Rule 56.1 and Federal Rule of Civil Procedure 56(e)); *cf. Nahno-Lopez v. Houser*, 625 F.3d 1279, 1284 (10th Cir. 2010) (explaining that Federal Rule 56(e)(2) requires a nonmoving party to produce evidence in opposition to a motion for summary judgment).

Notwithstanding Plaintiff's failure to properly dispute Defendant's statement of material

facts, Defendant is only entitled to summary judgment if its motion and supporting materials--including the facts deemed admitted--show that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a), (e)(3); *cf. Perez v. El Tequila, LLC*, 847 F.3d 1247, 1254-55 (10th Cir. 2017) ("Of course, in granting summary judgment based upon a failure to respond, a district court must still determine that summary judgment is appropriate." (citation omitted)). Writing only for the parties, and not a broader audience, I shall proceed to conduct the corresponding analysis, going directly to each of Plaintiff's claims and succinctly addressing the jurisprudence on point, rather than spelling out a comprehensive treatise on Title VII law. In doing so, I assume that all are familiar with the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) and its progeny.

I proceed to step two of that framework, assuming without deciding that Plaintiff has met her prima facie burden. *See, e.g.*, *DePaula v. Easter Seals El Mirador*, 859 F.3d 957, 971 (10th Cir. 2017). Defendant's legitimate, nondiscriminatory reason for Plaintiff's termination is that she was unable to work with others as a team. Kelly Sivadon, a General Manager at TC Transcontinental, prepared a sworn statement describing that deficiency, Plaintiff's lack of improvement, and her failure to complete tasks. (*See generally* Dkt. No. 32-7.) To establish that those proffered reasons are pretextual, Plaintiff points to her termination letter, (Dkt. No. 33 at 26 ("Termination Letter")), and notes that the same does not mention her misgivings. This, in and of itself, does not generate a genuine issue of material fact. A reading of the Termination Letter shows that it merely confirms Plaintiff's separation from employment at TC Transcontinental and highlights the benefits she is entitled to thereupon. In addition, Plaintiff's own conclusory assertions and characterizations in her response to the Motion do not carry the day.

Plaintiff further alleges that she was subject to a hostile work environment, resting her

claim upon two single instances: a comment by a coworker about a "soul food restaurant," and the same coworker showing photos of female bodybuilders to a third individual. Even accepting these instances as true, such instances do not reach the level of severity or pervasiveness required within this Circuit. *See Morris v. City of Colorado Springs*, 666 F.3d 654, 663-668 (10th Cir. 2012) (collecting cases and holding that isolated incidents of "juvenile, unprofessional, and perhaps independently tortious conduct" was not sufficiently severe or pervasive to alter the terms and conditions of plaintiff's employment). Moreover, Plaintiff's spin on these incidents at paragraphs 17 and 22 of her response is a self-serving assertion not supported properly in accordance with Federal Rule 56(e) and Local Rule 56.1.

Finally, as to Plaintiff's retaliation claim, she alleges that she was retaliated against for having complained about "tension" between her and a subordinate employee. This, however, does not constitute protected activity under Title VII. It is well settled that Title VII's antiretaliation provision protects against retaliation employees who either "'participat[e] in any manner in an investigation, proceeding, or hearing under' Title VII," or "oppose[] any practice made an unlawful employment practice' by Title VII." *Vaughn v. Epworth Villa*, 537 F.3d 1147, 1151 (10th Cir. 2008) (citations omitted). Plaintiff provides no evidence of such protected activity prior to her termination. *Cf. Kilcrease v. Domenico Transp. Co.*, 828 F.3d 1214, 1225-26 (10th Cir.) (holding that adverse employment action taken before employer becomes aware of protected activity is not actionable as retaliation). Therefore, her retaliation claim, too, does not survive summary judgment.

Accordingly, I hereby find that no genuine issues of material fact abound and that Defendant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. Defendant's Motion (Dkt. No. 32) is hereby **GRANTED** and Judgment is to be entered accordingly.

DATED: January 23, 2025

s/ Gustavo A. Gelpí
GUSTAVO A. GELPÍ
United States Circuit Judge, Sitting by Designation