

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MISSOURI, WESTERN DIVISION

Steve Tesch v. Kyndryl, Inc.

Tesch · No. No. 4:26-cv-00036-DGK · Decided June 4, 2026

SUMMARY

The United States District Court for the Western District of Missouri granted Kyndryl, Inc.’s motion to dismiss two theories of retaliation under the Missouri Human Rights Act. The court held that the plaintiff’s complaint could not have been the but-for cause of his termination because it was made after the termination decision, and that alleged failures to investigate or meaningfully respond were not actionable adverse employment actions. The court dismissed those theories with prejudice but left standing the retaliation theory based on Kyndryl’s alleged failure to interview, respond to, or hire the plaintiff for positions for which he was qualified.

CASE DETAILS

COURT	United States District Court for the Western District of Missouri, Western Division
WRITING FOR THE COURT	Greg Kays
JURISDICTION	United States District Court for the Western District of Missouri, Western Division
DECIDED	June 4, 2026
DOCKET	No. 4:26-cv-00036-DGK
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss two retaliation theories pleaded under Count III of Plaintiff's Missouri Human Rights Act claim.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts the complaint's factual allegations as true, views them in the light most favorable to the plaintiff, liberally construes the complaint, and determines whether it pleads enough facts to state a facially plausible claim for relief.
PRECEDENTIAL VALUE	unknown
PARTIES	Steve Tesch v. Kyndryl, Inc.

TOPICS

retaliation

age discrimination

employment discrimination

motions to dismiss

civil procedure

PRACTICE AREAS

employment law

civil rights

civil procedure

QUESTIONS PRESENTED

1. Whether Tesch could state an MHRA retaliation claim based on his termination when his protected complaint was made after he had already been selected for termination.
2. Whether Kyndryl's alleged failure to properly investigate or meaningfully respond to Tesch's age-discrimination complaint constituted an adverse employment action supporting an MHRA retaliation claim.

HOLDINGS

1. Tesch could not establish a prima facie MHRA retaliation claim based on his termination because he complained about age discrimination only after his manager had already told him he would be terminated as part of the reduction in force; therefore, the complaint could not have been the but-for cause of the termination.
2. Tesch could not establish a prima facie MHRA retaliation claim based on Kyndryl's alleged failure to properly investigate or meaningfully respond to his age-discrimination complaint because those alleged actions did not constitute a qualifying adverse employment action, and the argument was conceded when Plaintiff failed to address it.

KEY QUOTATIONS

“Because Plaintiff cannot establish a prima facie retaliation claim under either of these two theories, the motion is GRANTED.”

“Plaintiff’s retaliation claims based on (1) his termination and (2) the failure to investigate or meaningfully reply to his complaint are DISMISSED WITH PREJUDICE for failure to state a claim.”

FACTUAL BACKGROUND

Kyndryl employed Tesch beginning in September 2021 and announced a company-wide reduction in force in October 2024. Although his manager initially told him he would not be affected, Tesch was later informed that his employment would end on October 29, 2024. Tesch complained on October 22 that he had been selected because of his age and alleged that Kyndryl retaliated by terminating him and by failing to properly investigate or meaningfully respond to his complaint.

PROCEDURAL HISTORY

Plaintiff sued Kyndryl alleging age discrimination, national-origin discrimination, and retaliation under the Missouri Human Rights Act. Kyndryl moved to dismiss the retaliation theories based on Plaintiff's termination

and the alleged failure to investigate or meaningfully respond to his complaint. The court granted the motion and dismissed those two theories with prejudice, while noting that the retaliation theory based on Kyndryl's failure to interview, respond to, or hire Plaintiff remained pending.

DISPOSITION

other

CASES CITED

- Stodghill v. Wellston School District, 512 F.3d 472, 476 (8th Cir. 2008)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Monson v. Drug Enforcement Administration, 589 F.3d 952, 961 (8th Cir. 2009)
- Miller v. Toxicology Lab. Inc., 688 F.3d 928, 931 (8th Cir. 2012)
- Williams v. United Parcel Service, Inc., 963 F.3d 803, 807 (8th Cir. 2020)
- Kader v. Board of Regents of Harris-Stowe State University, 565 S.W.3d 182, 190 (Mo. 2019)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION STEVE TESCH,)) Plaintiff,)) v.) No. 4:26-cv-00036-DGK) KYNDRYL, INC.,)) Defendant.) ORDER GRANTING MOTION TO DISMISS This lawsuit arises out of Plaintiff Steve Tesch's employment with Defendant Kyndryl, Inc. ("Kyndryl"). Plaintiff alleges Kyndryl included him in a company-wide reduction in force on the basis of his age (Count I) and national origin (Count II), and in retaliation for making a formal complaint about being selected for the reduction in force because of his age (Count III), all in violation of the Missouri Human Rights Act ("MHRA").

Now before the Court is Kyndryl's motion to dismiss two theories under Count III for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). ECF No. 8. Because Plaintiff cannot establish a prima facie retaliation claim under either of these two theories, the motion is GRANTED. Plaintiff's retaliation claims based on (1) his termination and (2) the failure to investigate or meaningfully reply to his complaint are DISMISSED WITH PREJUDICE for failure to state a claim.

Standard of Review A claim may be dismissed if it fails "to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In ruling on a motion to dismiss, a court "must accept as true all of the complaint's factual allegations and view them in the light most favorable to" the plaintiff. Stodghill v. Wellston School Dist., 512 F.3d 472, 476 (8th Cir.

2008). To avoid dismissal, a complaint must include “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The plaintiff need not demonstrate the claim is probable, only that it is more than just possible. *Id.* In reviewing the complaint, a court construes it liberally and draws all reasonable inferences from the facts in the plaintiff’s favor. *Monson v. Drug Enforcement Admin.*, 589 F.3d 952, 961 (8th Cir. 2009). A court generally ignores materials outside the pleadings but may consider materials that are part of the public record or materials that are necessarily embraced by the pleadings.

Miller v. Toxicology Lab. Inc., 688 F.3d 928, 931 (8th Cir. 2012). Background For purposes of ruling on the pending motion, the Court finds the facts to be as follows. Kyndryl employed Plaintiff since September 2021, and prior to September 2024 he never received any complaints or criticism about his work.

On or about October 1, 2024, Defendant Kyndryl announced a company-wide reduction in force. Plaintiff’s manager told him at that time that he would not be affected by the reduction in force. On October 15, 2024, however, Plaintiff’s manager informed him that he would be impacted by the reduction in force and that his last day of work would be on October 29, 2024.

Kyndryl was attempting to replace older employees and workers based in the United States with younger, foreign workers to save money. On October 22, 2024, Plaintiff made a “formal complaint” reporting he was selected for the reduction in force due to his age. Pet. ¶ 27, ECF No. 1-3. He asked for a copy of how many people had been eliminated and their ages, as well as evidence that his termination was made within the neutral reduction in force guidelines.

Plaintiff never received any formal follow-up or a response from the human resource department. On October 29, 2024, Plaintiff received an email stating that his complaint could not be substantiated. Between October 28, 2024, and March 2025, Plaintiff applied to approximately fifty job openings through Kyndryl’s career job website that he was qualified for and Kyndryl never interviewed him for any of the positions.

In support of his retaliation claim, Plaintiff alleges he “reported and objected to incidents of age discrimination,” and Kyndryl retaliated against him by “failing to properly investigate his complaints, failing to meaningfully reply to his complaints, [and] terminating his employment, and failing to interview, respond, or hire him for jobs he was qualified for.” *Id.* ¶¶ 57, 58, and 60.

Plaintiff contends that he was retaliated against because he allegedly “reported and opposed the age discrimination against him.” ¶ 27. Discussion The parties agree that to state a prima facie claim for retaliation under the MHRA, Plaintiff must show he was (1) engaged in a protected

activity; (2) he suffered an adverse employment action; and (3) there was a casual connection between the two.¹ They also agree that a causal relationship exists where the desire to retaliate was the but for cause of the adverse action.

In this case, Plaintiff did not complain about age discrimination until after his manager told him he would be terminated as part of the reduction in force. Thus, the Court holds his 1 Both parties cite the same case as authority: *Williams v United Parcel Service, Inc.*, 963 F.3d 803, 807 (8th Cir. 2020), an Eighth Circuit case dealing with a retaliation claim brought under 42 U.S.C. § 1981. complaint could not have been the “but-for” cause of his termination, and he cannot establish a prima facie claim of retaliation based on his termination.

Plaintiff’s alternate/additional theory that Kyndryl retaliated by failing to meaningfully investigate and respond to his age-discrimination complaint suffers a similar fate. Kyndryl argues that allegedly not properly investigating or “meaningfully” replying to his discrimination complaint do not constitute the kind of adverse actions that can support a retaliation claim.

Kyndryl cites a Missouri Supreme Court case for support: *Kader v Board of Regents of Harris-Stowe State University*, 565 S.W.3d 182, 190 (Mo. 2019) (holding an employer’s failure to appeal the denial of the plaintiff’s visa application did not constitute an adverse action under the MHRA because it did not adversely impact the plaintiff). Plaintiff’s brief did not address this point, so it is conceded, and the Court holds Plaintiff cannot establish a prima facie claim of retaliation based on any failure to properly investigate or “meaningfully” reply to his age- discrimination claim.

Accordingly, Kyndryl’s motion is GRANTED. In closing, the Court notes the Petition advanced a third adverse action taken against Plaintiff, namely “failing to interview, respond, or hire him for jobs he was qualified for.” Kyndryl did not move to dismiss a claim of retaliation based on these adverse actions, so this theory—and Count III—still remains. Conclusion Defendant Kyndryl’s motion to dismiss two theories under Count III for failure to state a claim under Rule 12(b)(6) is GRANTED.

Plaintiff’s retaliation claims based on (1) his termination and (2) Kyndryl’s alleged failure to investigate or meaningfully reply to his complaint are DISMISSED WITH PREJUDICE. IT IS SO ORDERED. Date: June 4, 2026 /s/ Greg Kays GREG KAYS, JUDGE UNITED STATES DISTRICT COURT