

**CAPTAIN TAMMY S. BLAKEY, Plaintiff, v.
CONTINENTAL AIRLINES, INC., a foreign corporation,
Defendant.**

Civ. No. 93-2194 (WGB)

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

**February 25, 1997, Decided
February 25, 1997, Filed**

NOTICE: NOT FOR PUBLICATION

DISPOSITION: Magistrate Judge Cavanaugh's January 6, 1997 Order AFFIRMED.

COUNSEL: For Tammy S. Blakey, Plaintiff: Gregory S. Schaer, Esq., LAW OFFICES OF LINDA B. KENNEY, Red Bank, N.J.

For Continental Airlines, Inc., Defendant: Robert H. Bernstein, Esq., Margaret M. Madden, Esq., EPSTEIN BECKER & GREEN, P.C., Newark, N.J.

JUDGES: William G. Bassler, U.S.D.J.

OPINION BY: William G. Bassler

OPINION

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BASSLER, DISTRICT JUDGE:

Plaintiff Captain Tammy S. Blakey filed a Complaint on February 5, 1993, alleging violations of Title VII of the Civil Rights Act, 42 U.S.C. § 2000(e), New Jersey's Law Against Discrimination, *N.J.S.A. 10:5-1*, New Jersey's Conscientious Employee Protection Act, *N.J.S.A. 39:19-1*, and common law. Discovery has been ongoing for the past three years. Defendant Continental Airlines appealed Magistrate Judge Cavanaugh's Order of January 6, 1997, refusing to order Plaintiff Blakey to produce (1) copies of Plaintiff's personal income tax returns, and (2) copies of alleged "personal journals" which defendants believe were not produced during discovery. Plaintiff Blakey opposed this appeal and submits that Defendant's conduct is deserving of sanction. On February 24, 1997, Defendant Continental Airlines withdrew the portion of its appeal having to do with Magistrate Judge Cavanaugh's decision regarding copies of Plaintiff's alleged "personal journals." Therefore, this decision will only address the appeal of Magistrate Judge Cavanaugh's decision regarding Plaintiff's personal income tax returns. For the following reasons, the Court affirms Magistrate Judge Cavanaugh's decision with regard to the individual income tax forms.

I. BACKGROUND

Plaintiff, Captain Tammy S. Blakey, is a pilot employed by defendant Continental Airlines, Inc. ("Continental").¹ Blakey alleges that Continental subjected her to sexual harassment in violation of Title VII and the New Jersey Law Against Discrimination. She specifically claims that pornographic materials were placed in the cockpit of aircraft that she flew. Although she informed Continental, the airline allegedly took no action to ameliorate the problem. Furthermore, she contends that the airline retaliated against her for complaining about the sexual harassment and for filing this suit. As a result, plaintiff claims that she has suffered emotional distress.

1 Blakey has been on voluntary unpaid leave of absence since August, 1993.

Defendant Continental served its Request for Production of Documents on December 20, 1993. Continental sought, inter alia, copies of Plaintiff's personal income tax returns from 1990 to the present and copies of Plaintiff's calendars and diaries from January 1, 1989 to the present. (Bernstein Cert., Ex. B).

Plaintiff responded to the Request for Production of Documents on January 28, 1994, but refused to produce her personal tax returns. In defending her right not to produce these documents, Plaintiff claimed that these requests invaded her privacy, were not calculated to lead to admissible evidence, and were beyond the scope of discovery permitted under *Federal Rule of Civil Procedure 26*. (*Id.*, Ex. C)

On July 24, 1996, Defendant Continental advised Plaintiff that this discovery was outstanding. (*Id.*, Ex. D) Defendant Continental informed Plaintiff that it would move to compel discovery if Plaintiff did not produce the requested documents. Despite Defendant's requests, Plaintiff maintained the position that these documents were beyond the scope of discovery. (Bernstein Cert., P2)

On October 4, 1996, Defendant Continental served a motion to dismiss for failure to produce the documents or to compel their production which was ultimately refiled as a motion to compel discovery before Magistrate Judge Cavanaugh. (*Id.*, P3). Oral argument on this motion was heard on December 16, 1996. Magistrate Judge Cavanaugh ruled from the bench that disclosure of Plaintiff's personal income tax returns infringed on Plaintiff's right of privacy. Magistrate Judge Cavanaugh ruled from the bench that because Plaintiff Blakey was already under a Court Order to produce all W-2 income tax forms for the years 1993 to the present, it was not necessary to compel Plaintiff to produce her income tax returns. Additionally, Magistrate Judge Cavanaugh ruled on a number of other discovery issues in his January 6, 1997 Order.

Defendant now appeals the decisions of Magistrate Judge Cavanaugh denying its motion to compel Plaintiff to produce copies of Plaintiff's personal income tax returns.

II. DISCUSSION

A. Standard of Review

The standard of review of a magistrate-judge's order is set forth at 28 *U.S.C.* § 636(b)(1)(A), *Fed. R. Civ. P.* 72(A), and Rule 40(a) of the Local Rules of the United

States District Court for the District of New Jersey. In accordance with these standards, the Third Circuit has held that a magistrate-judge's order can be set aside only if it is found to be clearly erroneous or contrary to law. *Environmental Tectonics Corp., Int'l v. W.S. Kirkpatrick & Co., Inc.*, 659 F. Supp. 1381, 1396 *aff'd in part, rev'd in part*, 847 F.2d 1052 (3d Cir.), *cert. granted in part*, 492 U.S. 905 (1989); *aff'd*, 493 U.S. 400, 110 S. Ct. 701, 107 L. Ed. 2d 816 (1990) (citing *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108 (3d Cir. 1986), *cert. denied.*, 484 U.S. 976, 98 L. Ed. 2d 485, 108 S. Ct. 487 (1987)).

"A finding is 'clearly erroneous' when, although there is evidence to support it, the reviewing court on the entire *record* is left with the definite and firm conviction that a mistake has been committed." *Environmental Tectonics*, 659 F. Supp. at 1398 (quoting *Agricultural Services Ass'n, Inc. v. Ferry-Morse Seed Co.*, 551 F.2d 1057, 1071 (6th Cir. 1977)). However, "several courts have also held that a magistrate's order in a discovery dispute is subject to great deference and will only be reversed if found to be an abuse of discretion." 659 F. Supp. at 1398-99 (citations omitted).

B. Standard for Discovery Under Rule 26.

Federal Rule of Civil Procedure 26 provides that "unless otherwise limited by court order... parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." *Fed.R.Civ.P. 26(b)(1)*. Ordinarily, the court should interpret "relevant" very broadly to mean matter that is relevant to any aspect of the case or that may become an issue in the litigation. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.12, 57 L. Ed. 2d 253, 98 S. Ct. 2380 (1978), citing 4 J. Moore, *Federal Practice P 26.56*[1], p.26-131 n.34 (2d Ed. 1976).

However, "discovery, like all matters of procedure, has ultimate and necessary boundaries." *Hickman v. Taylor*, 329 U.S. 495, 507, 91 L. Ed. 451, 67 S. Ct. 385 (1947). When a party's aim is not to obtain relevant information but to instead embarrass or harass a person from whom the party seeks discovery, a court must deny the party's discovery request. *United States v. Howard*, 360 F.2d 373, 381 (3d Cir. 1966).

In reviewing a party's request to compel discovery, a court must balance the liberal language of *Rule 26* against the need to protect the other party from unduly intrusive inquiries. The onus is on the party objecting to the discovery to state the grounds for the objection with specificity, *Momah*, 164 F.R.D. at 417, citing *Fed.R.Civ.P. 33(b)(4)*. "If the objection has been properly articulated, it rests with the party seeking discovery to show that a discovery request lies within the bounds of *Rule 26*. When this showing has been made, the party opposing discovery must convince the court why discovery should not be had." *Id.*, citing *Amcast Indus. Corp. v. Detrex Corp.*, 138 F.R.D. 115, 118-119 (N.D. Ind. 1991).

Defendant Continental Airlines claims that the Plaintiff's individual tax returns and personal diaries and calendars are necessary in order for the Defendant to evaluate Plaintiff's claims for economic loss, present and future wage loss, lost employment benefits and emotional distress. Magistrate Judge Cavanaugh held that this discovery was not necessary in light of other discoverable material.

C. Tax Returns.

In determining whether or not to compel the production of individual tax returns, a court must take into account the public policy against disclosure of individual tax returns together with the policy which favors liberal pretrial discovery. *Cooper v. Hallgarten & Co.*, 34 F.R.D. 482, 483-484 (S.D.N.Y. 1964) (J. Weinfeld). "Giving appropriate weight to each, the production of tax returns should not be ordered unless it clearly appears they are relevant to the subject matter of the action or to the issues raised thereunder, and further, that there is a compelling need therefor because the information contained therein is not otherwise readily obtainable." *Id.*

"Good cause for the production of income tax returns is not shown when the movant has the information sought or can obtain it with little difficulty through other methods." *Ullmann v. Hartford Fire Insurance Co.*, 87 N.J. Super. 409, 415, 209 A.2d 651 (App. Div. 1965), citing *Cooper v. Hallgarten & Co.*, 34 F.R.D. 482 (S.D.N.Y. 1964). Defendant Continental Airlines claims that copies of Plaintiff's tax returns are necessary in order to evaluate her claim for back pay. However, Magistrate Judge Cavanaugh ordered Plaintiff to turn over copies of her W-2 Tax Forms in November, 1995. The W-2 forms provide information on Plaintiff's income since she went on administrative leave from Continental Airlines. For mitigation of damages, the W-2 forms provide complete documentation of Plaintiff's income for 1993, 1994, and 1995. Additionally, Magistrate Judge Cavanaugh had already ordered Plaintiff in the November, 1995 Order to turn over corporate tax returns for a ranch that she was involved in from 1993 to the present.

At the December 16, 1996 hearing, Magistrate Judge Cavanaugh told the parties, "I am going to direct that she give you the W-2 forms. You have already received, as I understand it, the corporate tax returns from the ranch that she's involved in. I am going to deny you request." (Dec. 16, 1996 Hearing, Tape Counter # 820-950).

This Court agrees with Defendant Continental Airlines that proof of Plaintiff's income from 1993 to the present is relevant to whether or not she has mitigated her damages. However, this Court finds that Magistrate Judge Cavanaugh's decision to Order production of Plaintiff's W-2 forms and corporate tax returns adequately provides Defendant Continental Airlines with information to establish Plaintiff's income during that period. Magistrate Judge Cavanaugh's decision to deny the motion to compel production of Plaintiff's individual tax returns was not clearly erroneous nor was it contrary to the governing law. The Court will affirm Magistrate Judge Cavanaugh in regard to this portion of his Order.

Plaintiff urges the Court to sanction Defendant Continental Airlines. Plaintiff argues that Defendant Continental Airlines moved to compel discovery of Plaintiff's individual tax returns in September, 1995. Magistrate Judge Cavanaugh, by Order dated November 15, 1995, Ordered Plaintiff to disclose her W-2 income tax forms. The November 15, 1995 Order did not deny a motion to compel disclosure of Plaintiff's individual tax forms. Therefore, Defendant's action in filing a motion to compel disclosure of Plaintiff's individual tax forms is not sanctionable conduct.

III. CONCLUSION

For the foregoing reasons, the Court affirms Magistrate Judge Cavanaugh's decision to deny Defendant Continental Airlines' motion to compel production of Plaintiff's individual tax returns. An appropriate order follows.

William G. Bassler, U.S.D.J.

Dated: 2/25/97

ORDER

This matter having come before the Court on the appeal of Magistrate Judge Cavanaugh's January 6, 1997 Order denying Defendant Continental Airlines' motion to compel discovery of Plaintiff's individual income tax returns;

For good cause having been shown;

IT IS on this 25th day of February, 1997, HEREBY ORDERED that Magistrate Judge Cavanaugh's January 6, 1997 Order is AFFIRMED.

William G. Bassler, U.S.D.J.