

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

ROGER TISCH,

Appellant,

v.

DST SYSTEMS, INC.,

Respondent.

DOCKET NUMBER WD73454

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: April 3, 2012

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable J. Dale Youngs, Judge

JUDGES

Division II: Witt, P.J., and Ellis and Pfeiffer, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ROGER TISCH,)
)
Appellant,)
v.) **OPINION FILED:**
) **April 3, 2012**
DST SYSTEMS, INC.,)
)
Respondent.)

WD73454

Jackson County

Before Division II Judges: Gary D. Witt, Presiding Judge, and Joseph M. Ellis and Mark D. Pfeiffer, Judges

Roger Tisch brought an action against his employer, DST Systems, Inc. (“DST”), for reverse gender discrimination, age discrimination, and retaliation in violation of the Missouri Human Rights Act (“MHRA”). The Circuit Court of Jackson County granted partial summary judgment to DST, and a jury returned a verdict in favor of DST on the remaining discrimination claim. The trial court entered judgment on the jury verdict in favor of DST. Tisch appeals, claiming that the trial court erred: (i) in granting partial summary judgment to DST as to discriminatory acts occurring outside the 180-day period for filing an administrative charge under section 213.075.1 and the two-year statute of limitations for filing a civil action in section 213.111.1 because genuine issues of material fact existed as to whether these claims were timely under the “continuing violation” doctrine; (ii) in refusing to submit his proposed verdict directing jury instructions for age discrimination and retaliation; and (iii) in overruling his motion to amend his petition to add a claim for hostile work environment based on age discrimination and retaliation.

AFFIRMED.

Division II holds:

1. To take advantage of the “continuing violation” theory, a plaintiff must satisfy a two-part test: (i) demonstrate that at least one act occurred within the 180-day filing period; and (ii) show that the current claim of discrimination is part of a series of interrelated events. Tisch

sufficiently alleged that DST refused to promote him to a position in April 2006, which was within 180 days of April 21, 2006, the date he filed his MCHR discrimination charge. However, while Tisch alleged that he suffered from numerous discriminatory and retaliatory acts occurring in 2003 and 2005, each of the acts of which he complains are individually significant “discrete” events. A discrete act that falls within the statutory time period does not make acts that fall outside of that time period timely and actionable.

2. Tisch’s proposed verdict directors constituted impermissible “roving commissions.” By using the word “including,” the instructions impermissibly enlarged the scope of conduct for the jury’s consideration beyond that which was actionable. The trial court did not err in giving the verdict directing instructions without modification for the timely 2006 failure to promote claim based on age discrimination and retaliation.

3. The recognized function of the amendment rule is to enable a party to present evidence that was overlooked or unknown at the time that the original pleading was filed without changing the original cause of action. The trial court did not abuse its discretion in denying Tisch’s motion to amend his petition when Tisch failed to show that his additional count for harassment included any facts that were unknown when his original petition was filed.

Opinion by: Mark D. Pfeiffer, Judge

April 3, 2012

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