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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEAN L. HARGROW,

Plaintiff - Appellant,

v.

FEDERAL EXPRESS CORPORATION;
et al.,

Defendants - Appellees.

No. 07-15623

D.C. No. CV-03-00642-DGC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted January 15, 2009
San Francisco, California

Before: WALLACE, FARRIS and McKEOWN, Circuit Judges.

Sean Hargrow appeals the district court's summary judgment on his claims of disparate treatment and harassment pursuant to Title VII and 42 U.S.C. § 1981. He also appeals the district court's grant of motions in limine excluding evidence of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

discrimination from trial. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

Hargrow's disparate treatment claims fail. He failed to demonstrate that Federal Express "acted with conscious intent to discriminate." *Costa v. Desert Palace, Inc.*, 299 F.3d 838, 854 (9th Cir. 2002), *aff'd by Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003). There is no evidence, direct or circumstantial, of discriminatory intent. *See Vasquez v. County of Los Angeles*, 349 F.3d 634, 640 (9th Cir. 2003). Hargrow alleges no conduct that satisfies the elements of a prima facie case under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Noyes v. Kelly Servs.*, 488 F.3d 1163, 1168 (9th Cir. 2007) (citing *Godwin v. Hunt Wesson, Inc.*, 150 F.3d 1217 (9th Cir. 1998)). The allegedly discriminatory statements by Federal Express management do not rise to the level of adverse employment actions. They were not "reasonably likely to deter employees from engaging in protected activity." *Ray v. Henderson*, 217 F.3d 1234, 1243 (9th Cir. 2000). The denial of a day off, the denial of overtime hours for one week during the employment period, and the denial of a schedule change similarly do not rise to the level of adverse employment actions. *See id.* Regarding the written reprimands, the employees who allegedly received more favorable treatment than Hargrow were not similarly situated to Hargrow. They were subject to different

supervisors. *See Hollins v. Atlantic Co., Inc.*, 188 F.3d 652, 659 (6th Cir. 1999), *cited with approval in Vasquez*, 349 F.3d at 641 n.17. Regarding the increased workload, Hargrow did not identify any similarly-situated employees.

Hargrow's harassment claims also fail. He failed to raise a genuine factual dispute as to the existence of a hostile work environment. *See Dominguez-Curry v. Nev. Transp. Dep't*, 424 F.3d 1027, 1042 (9th Cir. 2005). We have declined to find harassment in employer conduct considerably more severe, humiliating, disruptive to the workplace, and explicitly discriminatory than the conduct Hargrow alleges. *See Vasquez*, 349 F.3d at 643 (9th Cir. 2003); *Kortan v. California Youth Authority*, 217 F.3d 1104, 1106-07 (9th Cir. 2000).

The district court properly excluded evidence of discrimination from trial. The court admitted evidence concerning the nature of Hargrow's allegations of discrimination, but evidence concerning the truth of these allegations had little or no relevance to the claim that Federal Express fired Hargrow in retaliation for his lawsuit against the company. *See Moyo v. Gomez*, 40 F.3d 982, 984 (9th Cir. 1994).

AFFIRMED.