UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANNITRE EDISON, **Plaintiff,** **v.** **TYSON FOODS, INC.,** **Defendant.**	**Case No. 1:20-CV-2484** **Hon. Edmond E. Chang** **Hon. Sunil R. Harjani**

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

In her two-Count Complaint, Plaintiff Annitre Edison ("Plaintiff"), a former high-ranking IT employee of Defendant The Hillshire Brands Company ("Hillshire" or the "Company"),[1] alleges that the Company discriminated against her on account of her race (African-American) and gender (female) in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, when it terminated her employment after the Company concluded that she had engaged in expense reimbursement fraud. Plaintiff's claims are baseless and should be dismissed.

Plaintiff cannot dispute that she treated the Company as her personal piggy bank. The Company's internal investigation revealed that she (among other expense reimbursement transgressions): (a) routinely charged personal airline flights between Chicago and St. Louis to the Company; (b) on several occasions purchased two tickets for the same flight between Chicago and St. Louis and either gave the second ticket to a family member or obtained a refund for the second

[1] Plaintiff incorrectly identifies her former employer (and the defendant in this action) as Tyson Foods, Inc. ("Tyson Foods"). Hillshire is a wholly-owned subsidiary of Tyson Foods. *See* Defendant's Local Rule 56.1(a)(3) Statement of Material Facts in Support of Its Motion for Summary Judgment ("SOF"), filed herewith, at ¶ 3. This Memorandum of Law is filed on behalf of whichever entity or entities are determined to be the proper defendant(s) in this matter.

ticket and pocketed the cash; (c) sought and obtained reimbursement of personal parking expenses at the St. Louis airport; (d) obtained reimbursement for several trips to the movies; (e) misrepresented on her expense reports that she had business-related meals with co-workers who were not in the same city on the date of the meals; (f) misrepresented that she had breakfast at restaurants that were not open for breakfast; and (g) charged the cost of her team's December 11, 2018 holiday party to the Company, even though five days earlier her boss had explicitly instructed her that Company-funded holiday parties were prohibited. By terminating Plaintiff's employment, the Company treated Plaintiff no differently than it and Tyson Foods have treated comparable employees – many of whom are Caucasian and male – who have engaged in similar expense reimbursement misconduct. In sum, Plaintiff's termination had nothing to do with her race and gender, and everything to do with her inappropriate expense reimbursement practices.

Indeed, in addition to granting summary judgment in the Company's favor on Plaintiff's race and gender discrimination claims, the Court also should grant the Company's motion for summary judgment on its Counterclaims for breach of fiduciary duty and conversion. Between April and December 2018 alone, Plaintiff sought and obtained reimbursement for more than 140 separate illegitimate expenses, totaling in excess of $15,000.

I. BRIEF SUMMARY OF THE FACTS

As stated in more detail in the Company's Local Rule 56.1(a)(3) Statement of Material Facts, Plaintiff was a highly-compensated IT "executive" of Hillshire. SOF, ¶¶ 19-20. Plaintiff reported to Ryan Earley, Vice President of Prepared Foods IT. *Id.*, ¶ 21. Earley, in turn, reported to Scott Spradley, Tyson Foods' Chief Technology Officer. *Id.*

In June 2018, Plaintiff relocated from St. Louis to Chicago (where Earley was based) at Earley's request. SOF, ¶¶ 23-24, 26. Plaintiff received a lump sum payment of $10,000 for her relocation-related expenses. *Id.*, ¶ 25. After relocating to Chicago, Plaintiff flew to St. Louis

nearly every weekend to see her family. *Id.*, ¶ 27. There is no dispute that Plaintiff's trips to St. Louis were purely personal in nature. *Id.*, ¶ 28. Plaintiff acknowledges that she charged the cost of her personal flights between Chicago and St. Louis to the Company. *Id.*, ¶ 51. Moreover, on several occasions, Plaintiff purchased two plane tickets for the same flight between Chicago and St. Louis, and she apparently either gave the second ticket to a family member or obtained a refund for one of the tickets and pocketed the cash. *Id.*, ¶ 50. Plaintiff also incurred charges for parking at the St. Louis airport and meals in St. Louis and similarly charged them to the Company. *Id.*

In November or December 2018, Tyson Foods and its affiliated entities (including Hillshire) issued an organization-wide directive that they would not fund the cost of department holiday parties in 2018. SOF, ¶ 29. If a manager wished to host a holiday party for his/her team, he/she was required to pay for the party out of his/her own pocket. *Id.* During a staff meeting on December 6, 2018, Earley expressly communicated the holiday party directive to his direct reports, including Plaintiff. *Id.*, ¶ 30. On Tuesday, December 11, 2018, Plaintiff hosted a holiday party in the Chicago office for her team. *Id.*, ¶ 31. In defiance of Earley's directive from five days earlier, Plaintiff instructed her administrative assistant, Beverly Hayes, to charge more than $300 in holiday party-related expenses on the IT department's corporate credit card. *Id.*

Meanwhile, while Spradley was in Chicago for business on December 10 or 11, 2018, he heard from another employee that Plaintiff had hosted a separate social gathering for her team at a Chicago restaurant and may have charged the cost of the gathering to the Company. SOF, ¶ 35. This prompted Spradley to pull and review some of Plaintiff's prior expense reports. *Id.*, ¶ 36. Upon reviewing the reports, Spradley observed that Plaintiff "was the highest spending employee in all of the technology groups." *Id.*, ¶ 37. As a result, Spradley instructed Earley to take a closer look at Plaintiff's expense reimbursement practices. *Id.*, ¶ 38.

In the meantime, on December 11 or December 12, 2018, Earley learned of Plaintiff's holiday party. SOF, ¶ 39. Earley suspected that Plaintiff had charged the cost of the party to the Company despite his clear directive on December 6. *Id.*

On December 12, 2018, Earley reported Plaintiff to the Ethics and Compliance Department. SOF, ¶ 40. Ethics and Compliance then looped in the Internal Audit Department, which commenced an investigation. *Id.* Anthony Merryman, a Certified Internal Auditor and Fraud Examiner, led the investigation. *Id.*, ¶¶ 41-42. Merryman's investigation revealed that Plaintiff's abuse of the Company's expense reimbursement policies was rampant. *Id.*, ¶ 50. The Company terminated Plaintiff's employment on January 25, 2019. *Id.*, ¶ 56.

On June 17, 2020, the Company demanded payment from Plaintiff in the amount of $19,885.22, representing the sum of the expenses for which the Company believed (at the time) Plaintiff had improperly sought and received reimbursement. SOF, ¶ 63. Pursuant to Fed. R. Civ. P. 13, the Company filed several Counterclaims against Plaintiff seeking to recoup the ill-gotten funds, including claims of breach of fiduciary duty and conversion. *Id.*, ¶ 64.

II. THE COMPANY IS ENTITLED TO SUMMARY JUDGMENT

A. Rule 56 Standard

Summary judgment is warranted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The non-moving party bears the burden of presenting admissible evidence to demonstrate that facts exist that raise genuine issues of fact that should be reserved for trial. *E.g.*, *Warsco v. Preferred Tech. Group*, 258 F.3d 557, 563 (7th Cir. 2001). Because summary judgment "is the put up or shut up moment in a lawsuit," a hunch or speculation about the moving party's motives is not enough to withstand summary judgment. *Springer v. Durflinger*, 518 F.3d

479, 484 (7th Cir. 2008). Instead, the non-moving party must demonstrate that there is enough evidence to support a jury verdict in her favor. *Lawrence v. Kenosha County*, 391 F.3d 837, 842 (7th Cir. 2004). Judged in light of this standard, the Company's Motion for Summary Judgment should be granted in its entirety.

B. Plaintiff's Race and Gender Discrimination Claims Should Be Dismissed

To state a *prime facie* case of discriminatory termination, a plaintiff must prove that: (1) she belongs to a protected class; (2) she performed satisfactorily in the job in accordance with the defendant's legitimate expectations; (3) despite her reasonable performance, she was terminated; and (4) the defendant treated similarly situated employees outside of her protected class(es) more favorably. *Quevedo v. Top-Line Furniture Warehouse Corp.*, 2018 U.S. Dist. LEXIS 49889, at *28 (N.D. Ill. Mar. 27, 2018). If (and only if) the plaintiff establishes each of these elements, the burden shifts to the defendant to offer "a legitimate, non-discriminatory reason for the employee's termination." *Peele v. Country Mutual Insurance Co.*, 288 F.3d 319, 326-28 (7th Cir. 2002) ("If a plaintiff fails to demonstrate that she was meeting her employer's legitimate employment expectations at the time of her termination, the employer may not be 'put to the burden of stating the reasons for their termination.'") (internal cite omitted). If the employer does so, it is entitled to summary judgment unless the plaintiff presents evidence that the defendant's explanation is pretextual. *Quevedo*, 2018 U.S. Dist. LEXIS 49889, at *28. At all times, the plaintiff has the ultimate burden of proving that her termination was motivated by unlawful race or gender discrimination. *E.g.*, *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016).

Here, Plaintiff cannot satisfy the second and fourth elements of her *prima facie* case. Nor can she prove that the Company's stated reasons for her termination – specifically, her violations

of the Company's travel and expense reimbursement-related policies and her flagrant defiance of Earley's holiday party-related directive – are pretextual.

1. Plaintiff Cannot Establish a *Prima Facie* Case of Race or Gender Discrimination

a. Plaintiff Failed to Meet the Company's Job Expectations

In "evaluat[ing] the question of whether an employee was meeting an employer's legitimate employment expectations, the issue is not the employee's past performance but whether the employee was performing well at the time of [her] termination." *Peele*, 288 F.3d at 329 (internal cite and quotation omitted); *see also Gates v. Caterpillar, Inc.*, 513 F.3d 680, 689 (7th Cir. 2008) ("The proper inquiry mandates looking at [the employee's] job performance through the eyes of her supervisors at the time of her … termination."). Here, Plaintiff cannot possibly dispute that she violated multiple Company policies, including the terms of the Travel & Entertainment/Expense Reimbursement Manual, the Code of Conduct, and the Standards of Behavior Management Policy, by seeking and obtaining reimbursement of personal expenses. *E.g.*, SOF, ¶¶ 10-12, 15, 46, 50. Indeed, Plaintiff admits that she charged the cost of her personal flights between Chicago and St. Louis to the Company. *Id.*, ¶ 51. Nor can Plaintiff dispute that she defied Earley's express directive by hosting a holiday party for her team and instructing Hayes to charge the expense of the party to the department's credit card. *Id.*, ¶¶ 29-34, 47, 50. Hayes, who had received the same holiday party directive, testified that she "was sorry for not pushing back harder," and she "had obviously made the wrong choice" by following Plaintiff's directions. *Id.*, ¶¶ 30, 34.

Thus, Plaintiff cannot satisfy the second element of her *prima facie* case. *E.g., Foster v. Bay Industries*, 2001 U.S. Dist. LEXIS 28506, at *10-11 (E.D. Wis. May 31, 2001) ("Because a requirement that employees only use company resources for company business is a legitimate

business expectation and Foster has failed to demonstrate that she conducted herself consistent with such expectation, she has failed to prove the second prong of a prima facie case."); *Hughes v. SouthernCare, Inc.*, 2014 U.S. Dist. LEXIS 137056, at *33-34 (N.D. Ind. Sept. 29, 2014) ("Hughes violated … policy by documenting that he traveled from the office to his first visit and claiming mileage for that travel, when he was never actually in the office. … Thus, Hughes cannot state a prima facie case for race discrimination related to his termination….").

b. Plaintiff Cannot Demonstrate that Similarly Situated Employees Outside of Her Protected Class(es) Were Treated More Favorably

"Similarly situated" employees must be "directly comparable to [the plaintiff] in all material respects." *Abuelyaman v. Illinois State University*, 667 F.3d 800, 810 (7th Cir. 2011). In the context of employee misconduct, employees are similarly situated to the plaintiff if they "dealt with the same supervisor, were subject to the same standards, and had engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them." *Short v. Ultra Foods*, 2008 U.S. Dist. LEXIS 72877, at *19 (N.D. Ill. Sept. 24, 2008); *Culbert v. Hilti, Inc.*, 2011 U.S. Dist. Lexis 135282, at *24 (N.D. Ill. Nov. 23, 2011) ("similarly-situated" employees must share "a comparable set of failings") (internal cite and quotation omitted).

Here, Plaintiff has not identified *any* non-African-American or male employee who worked in a comparable role, reported to Earley, engaged in similar expense reimbursement fraud, and was not terminated. *McKenzie v. Milwaukee County*, 381 F.3d 619, 626 (7th Cir. 2004) (affirming summary judgment in employer's favor because plaintiff failed to identify a similarly situated employee who was treated more favorably). Indeed, the Company has proffered indisputable evidence establishing that the Tyson Foods family of companies consistently investigates incidents

of potential expense reimbursement fraud and terminates the wrongdoers' employment – irrespective of their race or gender – in the event that evidence of misconduct is found. SOF, ¶¶ 59-60; *Short*, 2008 U.S. Dist. LEXIS 72877, at *25 ("The fact that at least two other employees, Franco and Pop, were discharged for similar misconduct, bolsters SVT's contention that Short's consumption of food she had not purchased was the genuine reason for her discharge.").[2] And in two of the situations (Plaintiff's was not one of them), the Company referred the matters to the authorities for possible criminal prosecution. *Id.*, ¶ 60 (*see* "B.S." and "D.R." entries). Plaintiff's race and gender discrimination claims should be dismissed for this additional reason.

2. Plaintiff Cannot Produce Any Evidence of Pretext

Even assuming that Plaintiff is able to make out her *prime facie* cases of race and/or gender discrimination (which she cannot), her claims still fail because she cannot refute the Company's proffered reasons for her termination: her clear violation of the Company's travel and expense reimbursement policies and her defiance of Earley's directive not to charge holiday party-related expenses to the Company. "In order to prove pretext, [the plaintiff's] burden is to squarely rebut the articulated reason for [her] discharge." *Plair v. E.J. Brach & Sons*, 105 F.3d 343, 349-50 (7th Cir. 1997). Pretext is "more than just faulty reasoning or mistaken judgment on the part of the employer; it is [a] lie, specifically a phony reason for some action." *Phillips v. Spencer*, 793 Fed. Appx. 435, 439 (7th Cir. 2019) (internal cite and quotation omitted); *see also Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 153 (2000) ("The ultimate question in every employment

[2] Of the eight investigations between October 2017 and July 2020 that substantiated violations of travel and entertainment expense reimbursement policies (excluding Plaintiff), five employees were terminated and three resigned prior to the conclusion of the investigations. SOF, ¶ 60. Four of the five terminated employees are male, and three are Caucasian. *Id.*

discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination.").

Plaintiff's "evidence" of pretext consists solely and entirely of the following testimony from her deposition: "I believe if I was not an African-American woman that this situation would have been handled differently. I can't say how it would have been [handled], but I don't think I would have been railroaded." SOF, ¶ 62. Plaintiff has yet to articulate how she was "railroaded" and by whom. There is no doubt that Merryman's investigation was deliberate, fair, objective and thorough. SOF, ¶¶ 44-52. Merryman has led over 100 fraud investigations at Tyson Foods (*id.*, ¶ 42), and he had no incentive to "railroad" Plaintiff. Nor is there any evidence that Merryman even knew (or knew of) Plaintiff prior to the investigation. And based on Merryman's thoughtful conclusions, Earley made the obvious decision to terminate Plaintiff's employment. *Id.*, ¶ 56.

While Plaintiff may feel that the termination of her employment was unfair, her unsubstantiated "belief" that she was railroaded falls well short of supporting a finding of pretext. *E.g., Simpson v. Franciscan Alliance, Inc.*, 827 F.3d 656, 663 (7th Cir. 2016) ("[T]he relevant inquiry is whether the stated reason for an adverse employment action is in fact the reason for that action, not whether the action was free of mistake or even fair."); *Cliff v. Board of School Commissioners of Indianapolis*, 42 F.3d 403, 412 (7th Cir. 1994) (conclusory assertions of discrimination are insufficient to defeat summary judgment); *Han v. Whole Foods Market Group, Inc.*, 44 F. Supp. 3d 769, 795 (N.D. Ill. 2014) ("The Seventh Circuit has long championed an employer's right to make its own business decisions, even if they are wrong or bad. Therefore, regardless of whether it is correct in its beliefs, if an employer acted in good faith and with an honest belief, we will not second-guess its decisions.") (internal cite and quotation omitted).

Stated differently, Plaintiff cannot prove that the Company would have retained her, despite her egregious misconduct, if she were Caucasian or male. *Carson v. Bethlehem Steel Corp.*, 82 F.3d 157, 158 (7th Cir. 1996) ("The central question in any employment-discrimination case is whether the employer would have taken the same action had the employee been of a different race (age, sex, religion, national origin, etc.) and everything else had remained the same."). Tyson Foods' and its affiliated entities' consistent termination of Caucasian males for similar expense reimbursement transgressions shows just the opposite – i.e., that the abuse of expense reimbursement policies is a terminable offense, no matter who engaged in it. SOF, ¶ 60; *see also Short*, *supra*. Accordingly, the Court should dismiss Plaintiff's race and gender discrimination claims.

C. The Company is Entitled to Summary Judgment on Its Breach of Fiduciary Duty and Conversion Counterclaims

For the same reasons detailed above, the Company is entitled to summary judgment on its Counterclaims for breach of fiduciary duty (Count II) and conversion (Count III). SOF, ¶ 64.

1. Plaintiff Breached Her Fiduciary Duty to the Company

To establish a claim of breach of fiduciary duty under Illinois law, the Company must show that: (1) Plaintiff owed a fiduciary duty to the Company, (2) Plaintiff breached that duty, and (3) Plaintiff's breach proximately caused damages to the Company. *E.g.*, *Gross v. Town of Cicero, Illinois*, 619 F.3d 697, 709 (7th Cir. 2010). In Illinois, employees, particularly if they are high-ranking, owe a fiduciary duty of loyalty to their employers. *Laba v. Chicago Transit Authority*, 2016 U.S. Dist. LEXIS 4113, at *6 (N.D. Ill. Jan. 13, 2016) ("Illinois law recognizes that employees, as well as officers and directors, owe a duty of loyalty to their employer."); *see also Gavin/Solmonese LLC v. Kunkel*, 2019 U.S. Dist. LEXIS 38933, at *28-29 (N.D. Ill. Mar. 12, 2019) ("Courts applying Illinois law have construed 'self-dealing scenarios' to include employees

… misappropriating the employer's property or funds.") (internal cite omitted); *RKI, Inc. v. Grimes*, 177 F. Supp. 2d 859, 877 (N.D. Ill. 2001) (holding that the duty of loyalty requires an employee to act solely in the interest of her employer).

Here, Plaintiff admits that she owed a fiduciary duty to the Company. SOF, ¶ 65. The Company has presented indisputable evidence establishing that Plaintiff breached her duty of loyalty by misappropriating Company funds. Written and oral discovery demonstrated that between April and December 2018 (after Plaintiff had received her $10,000 relocation stipend), Plaintiff sought and obtained reimbursement for more than 140 illegitimate expenses, totaling at least $15,228.58. *Id.*, ¶ 67. Thus, the Company is entitled to judgment in its favor on its breach of fiduciary duty claim. *E.g., Kunkel*, 2019 U.S. Dist. LEXIS 38933, at *31-32 (holding that the defendant employee, who charged lavish personal meals and entertainment to the plaintiff employer, "engaged in self-dealing behavior, thus breaching a fiduciary duty of loyalty"); *Brulin & Co. v. Higgins*, 1987 U.S. Dist. LEXIS 3430, at *4-5 (N.D. Ill. Apr. 29, 1987) (granting plaintiff employer's motion for summary judgment where former employee "creat[ed] an unauthorized Brulin bank account, deposit[ed] this check, and refus[ed] to return the proceeds to Brulin, clearly violat[ing] the fiduciary duty he owed to Brulin").

2. Plaintiff Wrongfully Converted the Company's Funds

"The essence of an action for conversion is the wrongful deprivation of property from the person entitled to possession." *In re Thebus*, 483 N.E.2d 1258, 1260 (Ill. 1985) (internal cite and quotation omitted). In order to prove conversion, the Company must establish by a preponderance of the evidence that it: (1) has a right to the property at issue, (2) it has an absolute and unconditional right to immediate possession of the property, (3) it made a demand for possession, and (4) Plaintiff wrongfully and without authorization assumed control, dominion, or ownership

over the property. *Cirrincione v. Johnson*, 703 N.E.2d 67, 70 (Ill. 1998). An action for conversion may be maintained where, as in the present matter, the converted property is money and "the converted funds are capable of being described, identified, or segregated in a specific manner." *Groot Industries v. Cordell*, 2009 U.S. Dist. LEXIS 107628, at *12-13 (N.D. Ill. Nov. 17, 2009) (internal cite and quotation omitted).

Merryman's investigation revealed that Plaintiff "converted" the Company's funds by submitting fraudulent expense reports and accepting reimbursement from the Company. *E.g.*, SOF, ¶¶ 50, 67. Despite the Company's written demand, Plaintiff has refused to repay the sum of the expenses for which she improperly sought and received reimbursement. *Id.*, ¶¶ 63, 68.[3] The Company is therefore entitled to summary judgment on its claim for conversion. *E.g., Cordell*, 2009 U.S. Dist. LEXIS 107628, at *19 (granting summary judgment for employer on conversion claim where employee misappropriated employer's funds).

III. CONCLUSION

For the foregoing reasons, Plaintiff's two-Count Complaint, in which Plaintiff alleges that the Company discriminated against her on account of her race and gender, should be dismissed in its entirety. Moreover, the Company respectfully requests that the Court enter summary judgment in its favor on its Counterclaims for breach of fiduciary duty and conversion.

[3] The Company acknowledges that the amount demanded in the June 17, 2020 letter ($19,885.22) differs from the amount of the Company's damages calculation ($15,228.58). SOF, ¶¶ 63, 67. The Company's counsel prepared and transmitted the June 2020 letter prior to the commencement (and without the benefit) of written and oral discovery. *Id.*, ¶ 67.

Dated: June 25, 2021

Respectfully submitted,

THE HILLSHIRE BRANDS COMPANY

By: /s/ *Chad W. Moeller*
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on June 25, 2021, he caused the foregoing **Defendant's Memorandum in Support of Its Motion for Summary Judgment** to be served on all parties pursuant to the Court's electronic filing system.

/s/ *Chad W. Moeller*
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