

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENGE LEMO GAHANO,

Plaintiff - Appellant,

v.

UNITED STEEL WORKERS
INTERNATIONAL UNION LOCAL 8-
0369 (USW formerly known as PACE);
SUNDIAL MARINE & PAPER,

Defendants - Appellees.

No. 08-35100

D.C. No. CV-05-01946-AJB

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Denge Lemo Gahano appeals pro se from the district court's summary judgment for Gahano's former employer, Sundial Marine & Paper, and Gahano's

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

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

former labor union, Paper, Allied-Industrial, Chemical and Energy Workers International, Local 8-0369 (“PACE”). We have jurisdiction under 28 U.S.C. § 1291. We review de novo summary judgment, *Vasquez v. County of Los Angeles*, 349 F.3d 634, 639 (9th Cir. 2003), and review for abuse of discretion denial of a motion to amend a complaint, *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004). We affirm.

The district court properly granted summary judgment to Sundial on Gahano’s disparate treatment claim because, even if Gahano established a prima facie case of discrimination, Gahano failed to rebut Sundial’s legitimate nondiscriminatory reasons for his lay-off: lack of work, and Gahano’s inability to work well with colleagues. *See Vasquez*, 349 F.3d at 641-42 (affirming summary judgment for employer on claim of race discrimination where plaintiff failed to show employer’s reason for adverse employment action was pretextual).

The district court properly granted summary judgment to Sundial on Gahano’s retaliation claim because Gahano failed to present “specific” and “substantial” circumstantial evidence that Sundial’s decision to lay-off Gahano was motivated by his complaint of workplace racial harassment. *See Stegall v. Citadel Broad. Co.*, 350 F.3d 1061, 1066 (9th Cir. 2003) (“when direct evidence is unavailable . . . and the plaintiff proffers only circumstantial evidence that the

employer's motives were different from its stated motives, we require 'specific' and 'substantial' evidence of pretext to survive summary judgment").

The district court properly granted summary judgment to PACE on Gahano's claim that the union breached its duty of fair representation because his claim was filed more than six months after the union told him it would not pursue a grievance on his behalf. *See Moore v. Local Union 569 of Int'l Bhd. of Elec. Workers*, 989 F.2d 1534, 1541-42 (9th Cir. 1993) (six month statute of limitations for claims of breach of duty of fair representation).

The district court did not abuse its discretion by denying Gahano's motion to amend his complaint to add a defamation claim because amendment would be futile. *See Wallulis v. Dymowski*, 918 P.2d 755, 760-61 (Or. 1996) ("An 'absolute privilege' bars a claim for defamation [and] statements that are made as part of judicial and quasi-judicial proceedings are absolutely privileged."); *see also Johnson*, 356 F.3d at 1077 ("Futility alone can justify the denial of a motion to amend.") (citation and quotation omitted).

Gahano's remaining contentions are not persuasive.

We grant Gahano's motion for leave to file a replacement reply brief and instruct the Clerk to file the replacement brief submitted on May 21, 2010. We grant Gahano's motion to supplement, correct, or modify the record and his

informal brief. We deny, however, his motion to strike Sundial's Notice of Substitution of Counsel.

AFFIRMED.