IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

PATRICIA LEVIEGE, Plaintiff, v. VODAFONE US INC., d/b/a VODAFONE AMERICAS Defendant.	)	1:16-cv-374 (LMB/IDD)

ORDER

Defendant Vodafone US Inc. ("defendant" or "Vodafone") has filed a Motion to Dismiss Plaintiff's Complaint and Compel Arbitration ("Motion"), arguing that plaintiff Patricia Leviege ("plaintiff" or "Leviege") signed an agreement that any dispute with defendant would be submitted to binding arbitration. Plaintiff filed a memorandum in opposition, to which defendant has replied, and the Court finds that oral argument is not necessary to resolve this Motion. For the reasons that follow, defendant's Motion will be granted.

Plaintiff, an African-American woman who initially filed her complaint pro se, now has counsel.[1] In her complaint, she alleges discrimination, retaliation, and a hostile work environment in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Equal Pay and Compensation Act [sic]. Compl. 1–2. The core of plaintiff's complaint is that she was denied a promotion on the basis of her race, and subjected to retaliation and discriminatory treatment after she complained about having a lower salary than colleagues from other racial groups. Compl. 2.

[1] Plaintiff obtained counsel after defendant filed the instant Motion.

Defendant's exclusive argument for dismissal is that plaintiff agreed to arbitrate her claims. Def. Memo. 5.

Plaintiff joined the Vodafone Americas corporate family as an employee of a subsidiary named Cable and Wireless America Operations, Inc., in July 2013. Def. Memo. Ex. A 1. Effective April 1, 2014, Vodafone Americas changed the name of that subsidiary to Vodafone US Operations, Inc. Id. As part of the corporate reorganization, plaintiff signed a new letter of employment. That letter, which plaintiff signed on March 26, 2014, included clear, unambiguous language concerning arbitration:

> You acknowledge that you have carefully read and agree to comply with the Company's . . . Alternative Dispute Resolution Policy [("ADR Policy")], which [is] attached and considered [an] important component[] of this offer letter. You agree that any dispute of any nature between you and the Company will be resolved exclusively by the binding arbitration procedure set forth in the ADR Policy, rather than by a court or a jury. While the Company generally reserves the right, in its sole discretion, to change any terms, policies or procedures regarding your employment, the[] . . . alternative dispute resolution provision[] may be modified only be a written agreement signed by both you and the Head of Human Resources for the Company. In addition, you agree that the terms of this offer letter constitute the entire agreement between you and Vodafone regarding your employment, superseding any previous representations or understandings.

Def. Memo. Ex. A. 2.

The relevant provisions of the ADR policy referred to in the letter are:

> If a dispute arises, you should first attempt to resolve it directly with your supervisor or by utilizing other internal methods[.] If this is not successful, you are expected to give Vodafone an opportunity to mediate serious employment disputes, as a last step before arbitration or litigation. . . . As a final step, if you are an employee who has signed an arbitration agreement (in general, this includes employees who have signed formal employment agreements, or who received offer letters after June 1997), any unresolved dispute between you and Vodafone will be resolved by binding arbitration. If you have not signed an arbitration agreement, you may voluntarily agree to arbitration, and are strongly encouraged to do so.
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> * * *

> Beginning in 1997, all new employees are required as a condition of employment to agree to submit all unresolved disputes to arbitration, rather than pursue them in court, and Vodafone agrees to do the same. An arbitration clause which references this ADR Policy is included in these employees' offer letters.
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> If you are an employee who has signed an arbitration clause which references this ADR Policy, you have agreed that any dispute of any nature between you and the Company (defined as Vodafone and any of its subsidiary or related companies) which is not resolved informally or through mediation, whether it relates to contract, statute, tort, discrimination, public policy violation, Title VII of the Civil Rights Act, or any other legal theory under federal or state law[.]

Def. Memo. Ex. B 1–2.

The Federal Arbitration Act ("Arbitration Act") requires a district court to stay or dismiss a civil action when the issues involved are "covered by written arbitration agreements." Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc., 252 F.3d 707, 709–10 (4th Cir. 2001). Although a court must normally accept the plaintiff's complaint at face value when evaluating a motion to dismiss, Burbach Broadcasting Co. of Del. v. Elkins Radio Corp., 278 F.3d 401, 406 (4th Cir. 2002), when considering a motion to dismiss based on the Arbitration Act the court may consider evidence presented by the parties that an applicable arbitration agreement exists. See Adkins v. Labor Ready, Inc., 303 F.3d 496, 499–500 (4th Cir. 2002).

To determine whether such an arbitration agreement exists, a court must look to state law. Adkins, 303 F.3d at 501. The parties agree that Virginia law governs plaintiff's agreement with Vodafone. See Pl. Memo. 3; Def. Reply 2. In Virginia, a contract that is "clear and unambiguous" must be construed according to its "plain meaning." Bridgestone/Firestone, Inc. v. Prince William Square Assocs., 250 Va. 402, 407 (1995). If, on the other hand, a contract's terms leave room for doubt, any ambiguity must be construed against the drafter, even in the context of an arbitration clause. See Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52,

62–63 (1995) (holding that even federal policy favoring arbitration does not overcome the rule of contra preferendum); Winn v. Aleda Constr. Co., 227 Va. 304, 307 (1984) (observing that contra preferendum applies in Virginia).

The offer letter signed by plaintiff leaves no room for doubt. That letter provides that it is the "entire agreement" between plaintiff and defendant and that plaintiff agreed "that any dispute of any nature between [plaintiff] and the Company will be resolved exclusively by the binding arbitration procedure set forth in the ADR Policy, rather than by a court or jury." Def. Memo. Ex. A 2.

Plaintiff argues that the employment letter itself does not constitute an arbitration agreement and that the ADR Policy itself is drafted to apply to both employees who have signed a binding arbitration agreement and those who have not. Pl. Memo. 4; Def. Memo. Ex. B 1 ("If you have not signed an arbitration agreement, you may voluntarily agree to arbitration, and are strongly encouraged to do so."). Based on this language, plaintiff argues there is an ambiguity as to whether plaintiff actually agreed to arbitrate her employment dispute. There is no support for plaintiff's argument. The offer letter is an unequivocal agreement to arbitrate. Def. Memo. Ex. A 2. Moreover, the ADR Policy itself makes clear that employees who have signed offer letters after 1997 generally have agreed to binding arbitration. Def. Memo. Ex. B 1. Because plaintiff signed her offer letter in 2014, under the ADR Policy she is deemed to have agreed to arbitration. See Def. Memo. Ex. A 2; Def. Memo. Ex. B 1. This language creates no ambiguity about whether plaintiff agreed to arbitrate any disputes with her employer.

Finally, there can be no question that the offer letter plaintiff signed covers employment discrimination claims of the kind raised in her complaint. The offer letter covers "any dispute of any nature," and the ADR Policy specifically mentions disputes involving claims of

"discrimination" or arising under "Title VII of the Civil Rights Act." Def. Memo. Ex. A 2; Def. Memo. Ex. B 2. By signing the offer letter, plaintiff agreed to submit any employment discrimination claims to binding arbitration, depriving this Court of jurisdiction to consider such claims. Accordingly, defendant's Motion [Dkt. 10] is GRANTED and it is hereby

ORDERED that this civil action be and is DISMISSED.

The Clerk is directed to enter judgment in the defendant's favor pursuant to Fed. R. Civ. P. 58 and to forward copies of this Order to counsel of record.

Entered this 4th day of October, 2016.

Alexandria, Virginia

/s/
Leonie M. Brinkema
United States District Judge