

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BEVERLY LIPSEY,

Plaintiff,

v.

CESSNA AIRCRAFT COMPANY,

Defendant.

No. 07-2279-KHV

ORDER

Plaintiff brings suit against Cessna Aircraft Company for violation of rights under the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2615(a)(1) and for breach of contract. This matter comes before the Court on Defendant's Answer To First Cause Of Action And Motion To Dismiss Second Cause Of Action Of Plaintiff's First Amended Complaint (Doc. #8) filed September 10, 2007. Plaintiff has not opposed defendant's motion to dismiss.¹

Pursuant to D. Kan. Rule 7.4, if a respondent fails to file a timely response, "the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice." For this reason, the Court finds that defendant's motion should be sustained. Further, if the Court were to reach the merits, the Court would sustain the motion for substantially the reasons stated in defendant's memorandum in support. See Doc. #9. Defendant asserts that plaintiff's breach of contract claim must be treated as a claim under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a). To state a claim under the LMRA, plaintiff must allege

¹ On October 2, 2007, the Court granted plaintiff's motion for an extension of time to October 8, 2007 to file a response to the motion to dismiss. See Doc. #14. Plaintiff has not filed a response.

that (1) her employer's actions violated the terms of a collective bargaining agreement and (2) the union breached its duty of fair representation. Defendant correctly points out that the amended complaint does not allege that the union breached its duty of fair representation, and therefore plaintiff's breach of contract claim must be dismissed for failure to state a claim.

IT IS THEREFORE ORDERED that Defendant's Answer To First Cause Of Action And Motion To Dismiss Second Cause Of Action Of Plaintiff's First Amended Complaint (Doc. #8) filed September 10, 2007, be and hereby is **SUSTAINED**. Plaintiff's claim for breach of contract (Count II) is **DISMISSED**.

Dated this 19th day of February, 2008 at Kansas City, Kansas.

s/Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge