

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

ALADE TOKUTA,

Plaintiff-Appellant,

v.

JAMES MADISON UNIVERSITY,

Defendant-Appellee,

and

No. 97-2445

CHARLES W. REYNOLDS,

Defendant.

EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION; THE COUNCIL ON

HUMAN RIGHTS,

Amici Curiae.

Appeal from the United States District Court
for the Western District of Virginia, at Harrisonburg.
James H. Michael, Jr., Senior District Judge.
(CA-96-113-H)

Argued: October 29, 1998

Decided: November 23, 1998

Before ERVIN and NIEMEYER, Circuit Judges, and
BUTZNER, Senior Circuit Judge.

Vacated and remanded by unpublished opinion. Senior Judge Butzner
wrote the opinion, in which Judge Ervin and Judge Niemeyer joined.

COUNSEL

ARGUED: Kirk Chalis Downey, Hagerstown, Maryland, for Appellant. David Raymond Simonsen, Jr., Richmond, Virginia, for Amicus Curiae Council. Guy Winston Horsley, Jr., Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellee. **ON BRIEF:** Mark L. Earley, Attorney General of Virginia, Judith Williams Jagdmann, Deputy Attorney General, Neil A.G. McPhie, Senior Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for Appellee. C. Gregory Stewart, General Counsel, Vincent J. Blackwood, Acting Associate General Counsel, Lamont N. White, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Washington, D.C., for Amicus Curiae EEOC.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

BUTZNER, Senior Circuit Judge:

Alade Tokuta charged that James Madison University (JMU) discriminated against him on the basis of race and national origin. Without the benefit of this court's recent ruling on the issue, the district court found that Tokuta had failed to file a timely complaint with the Equal Employment Opportunity Commission (EEOC) and granted summary judgment in favor of JMU. Tokuta filed this appeal. We vacate the district court's judgment and remand for consideration of the merits.

I

On February 28, 1995, JMU notified Tokuta, an associate professor, that his application for tenure would be denied. Tokuta filed a charge of discrimination with the EEOC on November 14, 1995, 259

days after learning of the alleged act of discrimination. Tokuta's EEOC charge was filed with the Virginia Council on Human Rights (VCHR) pursuant to a federal-state work-sharing agreement.

II

Title VII of the Civil Rights Act of 1964 directs that discrimination charges must be filed with the EEOC within 180 days of the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(e)(1) (1994). The filing period is extended to 300 days, however, when a charge is filed, in Title VII parlance, with a state deferral agency. *Id.* The sole issue in this case is whether the VCHR is a deferral agency.

We recently answered this question in the affirmative after the district court issued its judgment. *Tinsley v. First Union Nat'l Bank*, 155 F.3d 435, 440 (4th Cir. 1998). See also *Armstrong v. Siemens Co.*, No. 97-1222 (4th Cir. unpublished per curiam, decided Nov. 13, 1997) (concluding in a footnote that Virginia is a valid deferral state, and thus the EEOC filing limit is 300 days). But see *Childress v. Appalachian Power Co.*, No. 97-2057 (4th Cir. unpublished per curiam, decided July 21, 1998) (concluding that Virginia is not a valid deferral state).

Governed by the precedent set forth in *Tinsley*, we hold that because the VCHR is a state deferral agency, Tokuta had 300 days to file his EEOC charge. His charge was timely. We remand this case to the district court for consideration of Tokuta's claims on the merits.

VACATED AND REMANDED