

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSE CONEJO,

Plaintiff,

v.

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-
CIO,

Defendant.

Case No. 1:17-cv-1802-RCL

MEMORANDUM OPINION

On August 7, 2020, the Court issued an order to show cause why this case should not be dismissed for lack of subject matter jurisdiction. *See* Order, ECF No. 49. Upon consideration of Mr. Conejo's response to its order, ECF No. 50, and the Federation's response thereto, ECF No. 51, the Court will dismiss this case by separate order.

I. BACKGROUND

Plaintiff Jose Conejo sued defendant American Federation of Government Employees, AFL-CIO, for four state law torts. *See* Am. Compl. ¶¶ 39–43, ECF No. 43. The complaint asserted that the court had diversity jurisdiction over the action. *Id.* at ¶ 2 (citing 28 U.S.C. § 1332). Mr. Conejo is a citizen of the Commonwealth of Virginia and he alleged that the Defendant was a citizen of the District of Columbia. *Id.* at ¶¶ 2–3.

While the Federation is headquartered in the District of Columbia, it is a nationwide union, with 12,938 members who reside in Virginia.

The Court initially presumed that it had diversity jurisdiction over the parties. *See Conejo v. Am. Fed'n of Gov't Emps., AFL-CIO*, 377 F. Supp. 3d 16, 25 (D.D.C. 2019) (treating Mr. Conejo as a citizen of Virginia and the Federation as a citizen of the District of Columbia). When the

Court recognized that the Federation might be a citizen of Virginia, it directed the parties to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

II. LEGAL STANDARDS

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A court may raise the question of whether it has subject-matter jurisdiction over a case *sua sponte* and at any time. *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) (quoting *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884)). If the Court determines that it lacks jurisdiction, all that remains within its power is dismissing the case. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998); Fed. R. Civ. P. 12(h)(3).

The plaintiff bears the burden of establishing subject matter jurisdiction. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

III. ANALYSIS

A. Diversity Jurisdiction

Diversity jurisdiction requires complete diversity of citizenship. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996). For purposes of § 1332, an unincorporated union has citizenship in every place where one of its members is a citizen. *United Steelworkers of Am., AFL-CIO v. R. H. Bouligny, Inc.*, 382 U.S. 145, 153 (1965); *see also* 13F Charles Allan Wright & Arthur R. Miller, *Federal Practice and Procedure Jurisdiction* § 3630.1 n.7 (collecting cases).

Complete diversity does not exist here. Because the Federation has members who are domiciliary of Virginia, the Federation is a citizen of Virginia. So too is Mr. Conejo. Therefore, Mr. Conejo cannot establish diversity jurisdiction.

B. Federal Question Jurisdiction

The Federation suggests that the Court may exercise federal question jurisdiction over plaintiff's claims, claiming that they arise under the Civil Service Reform Act (CSRA).¹ Defs.' Br. 2–8. That argument fails.

A complaint raises a federal question only if that question appears on the face of the plaintiff's well-pleaded complaint. *Caterpillar*, 482 U.S. at 392. Preemption is ordinarily a defense to a complaint, and therefore a complaint does not present a federal question merely because the defendant asserts that the plaintiff's cause of action has been preempted. *Id.* at 393. The complete preemption doctrine provides an exception to this rule, providing that “[o]nce an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law.” *Id.*

The CSRA does not completely preempt state tort claims. *See Gutierrez v. Flores*, 543 F.3d 248, 256 (5th Cir. 2008) (holding that the CSRA does not completely preempt claims for libel, libel *per se*, and intentional infliction of emotional distress).

Moreover, even if the CSRA did completely preempt state tort claims, Mr. Conejo's claims do not fall within the CSRA. The court resolved the argument that Mr. Conejo's claims relate to statements the Federation's agents made while representing federal employees in denying the Federation's first motion to dismiss, when it decided that Mr. Conejo's complaint did not allege unfair labor practices. *See Conejo v. Am. Fed'n Gov't Emps., AFL-CIO*, 377 F. Supp. 3d 16, 26–28 (D.D.C. 2019). Nor were the harms Mr. Conejo suffered adverse employment actions because

¹ Confusingly, the Federation goes on to suggest that same Act operates to deprive the Court of subject matter jurisdiction. Defs. Br. 8–9. The Court does not have federal question jurisdiction over this case, *see infra*, so it will not reach this argument.

Mr. Conejo does not seek review of the GPO's decision to deny him a temporary promotion. Rather, he seeks damages against the Federation for torts he alleges that the Federation's agents committed against him. That distinction makes all the difference. The CSRA preempts claims related to a government personnel action or unlawful labor practice, but it does not totally prevent federal employees from suing for torts in federal court. *See Wood v. Am. Fed'n of Gov't Empls.*, 255 F. Supp. 3d 190, 197 (D.D.C. 2017).

Therefore, the complete preemption doctrine does not apply. And because the complaint fails to state a federal question on its face, the Court may not exercise federal question jurisdiction.

C. Transfer of Venue

Mr. Conejo asks the Court to transfer his case to any other Court in which it could have been brought under 28 U.S.C. § 1631. Pl.'s Br. 5. The Court lacks the power to grant his request.

Section 1631 allows courts to transfer cases only to other federal courts. *McLaughlin v. Arco Polymers, Inc.*, 721 F.2d 426, 429 (3d Cir. 1983). It provides relief when a court lacks personal jurisdiction and can transfer to another court that can establish personal jurisdiction over the defendants. But when one district court lacks subject matter jurisdiction, all district courts lack subject matter jurisdiction. Accordingly, there is no court to which the Court can transfer this action.²

² Mr. Conejo may be able to bring his action in another court, for example the Superior Court of the District of Columbia. But this Court does not have the statutory power to transfer his case to a non-Article III tribunal.

IV. CONCLUSION

Because it lacks subject-matter jurisdiction, the Court will dismiss this case without prejudice by separate order.

Date: August 24, 2020



Royce C. Lamberth
United States District Judge