

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff, )

v. )

TRANSPORTATION SOLUTIONS, INC., )

Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO.

1:04-CV-2854-WSD

JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT**

This is an action under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex, and to provide appropriate relief due to employees as a result of such unlawful practices. The EEOC, hereinafter referred to as the "Commission", alleges that Transportation Solutions, Inc., hereinafter referred to as the "Defendant", pays its female shift supervisors, and in particular Charging Party, Neva Smith, at wage rates which are less than the rates paid to its male shift supervisors performing substantially equal work, and otherwise discriminates against those female shift supervisors because of their sex.

## JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963, codified as Section 6(d) of the FLSA, 29 U.S.C. § 206(d), and pursuant to Sections 706 (f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1),(3), and (6) ("Title VII").

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division.

## PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of the Equal Pay Act and Title VII, and is expressly authorized to bring this action by Section 16(c) and 17 of the FLSA, 29 U.S.C. §§ 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705; and by

Section 706 (f)(1)and(3)of Title VII, 42 U.S.C. §§ 2000e-5(f)(1).

4. At all relevant times, Defendant, Transportation Solutions, Inc., has continuously been a Georgia corporation, doing business in the State of Georgia and the City of Stockbridge, and has continuously had at least 15 employees.

5. At all relevant times, the Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e-(b), (g) and (h).

6. At all relevant times, the Defendant has acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, the Defendant has continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j), or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(r) and (s) of the FLSA, 29 U.S.C. §§ 203(r) and (s), in that said enterprise has continuously been an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.

## STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Charging Party, Neva Smith, filed a charge with the Commission alleging violations of Title VII by the Defendant. All conditions precedent to the institution of this lawsuit have been fulfilled.

9. Since at least April 2002, the Defendant has engaged in unlawful employment practices at its Stockbridge, Georgia facility, in violation of Section Sections 703(a) of Title VII, 42 U.S.C. § 2000e. The practices referenced above include discriminating against Neva Smith and other similarly situated female shift supervisors with respect to their compensation, terms, conditions, and privileges of employment by paying female shift supervisors lower wage rates than were being paid to male shift supervisors, because of their sex.

10. The effect of the practices complained of in paragraph 9 above has been to deprive Neva Smith and other female shift supervisors of equal employment opportunities and otherwise adversely affect their status as employees, because of their sex.

11. The unlawful employment practices complained of in paragraph 9 above were intentional and were carried out with malice and/or reckless indifference to the

federally protected rights of Neva Smith and other female shift supervisors.

12. Since at least April 2002, the Defendant has willfully violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying wages to its female shift supervisors, in its Stockbridge, Georgia facility, at rates less than the rates paid to male shift supervisors in the same establishment for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

13. As a result of the acts complained of above, the Defendant unlawfully has withheld and is continuing to withhold the payment of wages due to Neva Smith and other similarly situated female shift supervisors.

### **PRAYER FOR RELIEF**

Wherefore, the Commission requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of sex.

B. Grant a permanent injunction enjoining the Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from discriminating within any of its establishments between employees on the basis of

sex, by paying wages to employees of one sex at rates less than the rates at which it pays wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

C. Order the Defendant to institute and carry out policies, practices and programs which provide equal employment opportunities for women, and which eradicate the effects of its past and present unlawful employment practices.

D. Order the Defendant to make whole all individuals adversely affected by the unlawful practices described above by providing appropriate back-pay with prejudgment interest, in amounts to be proved at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to Neva Smith.

E. Grant a judgment requiring the Defendant to pay appropriate back wages in amounts to be determined at trial, an equal sum as liquidated damages or prejudgment interest in lieu thereof, to employees whose wages are being unlawfully withheld as a result of the acts complained of above, including but not limited to Neva Smith.

F. Order Defendant to make whole Neva Smith and other affected female employees by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described above.

G. Order Defendant to make whole Ayers and Jean Marie, respectively, by providing compensation for non-pecuniary losses resulting from the unlawful employment practices described above, including emotional pain and suffering, anxiety, stress, depression, and humiliation, in amounts to be determined at trial.

H. Order the Defendant to make whole those employees whose wages are being unlawfully withheld as a result of the acts complained of above, by restraining the continued withholding of amounts owing as back wages with prejudgment interest, in amounts to be determined at trial.

I. Grant such further relief as this Court deems necessary and proper in the public interest.

J. Award the Commission its costs of this action.

### **JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its complaint.

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