

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
WESTERN DIVISION

02 JUL 23 PM 12:15

DISTRICT COURT  
N.D. OF ALABAMA  
*do*

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION )

Plaintiff, )

vs. )

CIVIL ACTION NUMBER:  
CV-02-C-0796-W

RYDER/ATE, INC.; )  
Now known as )  
FIRST TRANSIT, INC., )  
a DELAWARE CORPORATION; )  
RYDER CAPITAL SERVICES )  
CORPORATION, )  
a DELAWARE CORPORATION; )

Defendants, )

**I. INTERVENER'S COMPLAINT**

COMES now, Plaintiff Intervener, Pamela Smoot, by and through her attorney of record, Daniel C. Lemley, and alleges as follows:

1. The above entitled civil action was commenced by the EEOC and Plaintiff Intervener, Pamela Smoot, files this Intervener's Complaint pursuant to the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 USC Sec 2000e *et seq* (hereinafter Title VII), 42 U.S.C. 1981b, to recover actual damages, statutory damages, punitive damages, injunctive relief and reasonable attorneys' fees and costs.

2. This Court had jurisdiction of the subject of this action pursuant to 28 USC Sec 1331, 1343, and 42 USC Sec 2000e-5(f).

3. Plaintiff Intervener has filed a motion to intervene pursuant to said Title VII, and rule 24 of the FRCP. Plaintiff Intervener has previously filed a Bankruptcy petition in the Northern District of Alabama, Southern Division, Case number BK 01-06446-TBB-7, and has received approval from the Bankruptcy Court to represent the Plaintiff Intervener in this matter.

## **II. PARTIES; PARTICIPANTS**

4. Plaintiff Intervener Pamela Smoot (hereinafter known as Plaintiff Pamela Smoot) is a female African-American citizen of the United States over the age of nineteen years, residing in Birmingham, Jefferson County, Alabama. For all times relevant to this action, Plaintiff was an employee within the meaning of Section 701(f) of Title VII, 42 U.S.C. Sec. 2000e(f).

5. Defendants Ryder/ATE, Inc. now known as First Transit, Inc and Ryder Capital Services Corporation, both foreign corporations (hereinafter Ryder), authorized to do business and/or actually doing business in the State of Alabama. Ryder had over 500 employees during times relevant to this action. Ryder was in the business of providing transportation services in the Jefferson County, Alabama area.

6. W. Kenneth Gordon (hereinafter known as Gordon) was a male manager for Defendants Ryder at its Birmingham, Alabama facility during all times relevant to this action. He supervised both Plaintiff Pamela Smoot and Defendants Alphonso Pollard.

7. Alphonso Pollard (hereinafter known as Pollard) is a male supervisor for Defendants Ryder at its Birmingham, Alabama facility at all times relevant to this action.

Pollard was the direct supervisor of Plaintiff Pamela Smoot at all times relevant to this action.

8. Raymond Taylor (hereinafter known as Taylor) was a male manager for Ryder at its Birmingham, Alabama facility during all times relevant to this action. He supervised both Plaintiff Pamela Smoot and Alphonso Pollard.

### **III. ALLEGATIONS OF FACT**

9. Plaintiff, Pamela Smoot, was hired by Defendants Ryder as a Para Transit Driver (hereinafter VIP ) in December of 1997. A Para Transit Driver has primary routes for riders who have physical limitations. Pamela Smoot eventually wished to be moved up to a Fixed Route Driver. Fixed Route Drivers receive more pay and is a promotion.

10. In Plaintiff Pamela Smoot's job as a VIP driver Pollard was a supervisor for Ryder with authority over Plaintiff Pamela Smoot but was not Plaintiff Pamela Smoot's direct supervisor. Pollard began inappropriate unsolicited acts and statements with a sexual connotation directed at Plaintiff Pamela Smoot within a month of Ms. Smoot's hiring.

11. Pollard directed these sexually inappropriate acts only toward female workers and did not treat female workers the same as male workers.

12. Pollard began his sexually inappropriate conduct in January 1998 by making sexually explicit remarks to Plaintiff Pamela Smoot or directed to Plaintiff Pamela Smoot. These comments were made almost on a daily basis for nearly a year.

13. Pollard escalated his verbal sexual harassment to physical touching of Plaintiff Pamela Smoot beginning October 1998. This sexual harassment occurred continuously on almost a daily basis.

14. After an incident of sexual harassment Plaintiff Pamela Smoot made a report to one of Pollard's supervisors, Gordon, in January 1999. In spring 1999, Plaintiff Pamela Smoot reported Pollard's sexual harassment to Taylor.

15. Neither Gordon nor Taylor took any action to deal with Pollard's actions other than informally speak to Pollard.

16. In January and February of 1999, Plaintiff Pamela Smoot became personally aware of Pollard's sexual contact on the job with females on a work release program that performed cleaning services at Ryder on the weekends. Plaintiff Pamela Smoot personally observed an incident at Ryder where one of the work release females vocally complained of her performance of sexual services for which Pollard had not paid.

17. From late February until April 1999 Plaintiff Pamela Smoot was on medical leave. Upon the return of Plaintiff Pamela Smoot to work in April 1999, Pollard again began his sexual harassment of Plaintiff Pamela Smoot. This harassment came in the form of sexual comments from Pollard to Plaintiff Pamela Smoot.

18. In May 1999 Plaintiff Pamela Smoot, received an opportunity to be promoted from her VIP route to a Fixed Driver Route. As a Fixed Driver Route employee Plaintiff Pamela Smoot would be directly supervised by Pollard. The Fixed Route Driver position would pay Plaintiff Pamela Smoot at a higher rate and would be considered a promotion.

19. In June 1999 during a job interview between Plaintiff Pamela Smoot and Pollard directly related to the position of Fixed Route Driver Pollard took a pen and stroked the breast of Plaintiff Pamela Smoot. Plaintiff Pamela Smoot struck the hand of Pollard with enough force to knock the pen from Pollard's hand.

20. A few days after the incident where Pollard stroked Plaintiff Pamela Smoot's breast with his pen in an attempt of Pollard to make sexual favors a condition of Plaintiff Pamela Smoot's job promotion to Fixed Route Driver, Pollard told Plaintiff Pamela Smoot he was "still waiting."

21. Another job related meeting between Plaintiff Pamela Smoot and Pollard was scheduled.

22. Plaintiff Pamela Smoot was fearful, depressed, and angry due to Pollard's acts and the work environment created by Pollard's sexual harassment. Plaintiff Pamela Smoot was also fearful and depressed due to the lack of success and follow up on her previous report to Gordon. Based on these and other factors associated with a person victimized by sexual harassment and sexual assault Plaintiff Pamela Smoot sought the help of her Union Representative. The Union Representative accompanied Plaintiff Pamela Smoot to the meeting with Plaintiff Pamela Smoot and Pollard.

23. After this meeting Plaintiff Pamela Smoot again reported the sexual harassment to Gordon and other supervisory employees of Ryder. Gordon and these other supervisory employees of Ryder acknowledged the previous report of Plaintiff Pamela Smoot and the lack of action on this previous report. It was discovered that Plaintiff Pamela Smoot had not received her employee's handbook outlining the companies "policy" on reporting and handling sexual harassment complaints. It was also discovered Plaintiff Pamela Smoot had not received a sexual harassment training.

24. Ryder's response to Plaintiff Pamela Smoot's sexual harassment and report of sexual harassment was to call for a meeting with Ryder's supervisors with Plaintiff Pamela Smoot and her Union Representative. At that meeting Plaintiff Pamela

Smoot was informed of Pollard's discharge and lectured and reprimanded for her (Plaintiff Pamela Smoot's) "bad language".

25. Based on the quid pro quo sexual harassment, hostile work environment, and sexual assault of Plaintiff Pamela Smoot by her supervisor Pollard, the failure to appropriately timely and adequately investigate sexual harassment complaints of Plaintiff Pamela Smoot by Pollard by Gordon or Ryder, retaliation by Gordon and Ryder against Plaintiff Pamela Smoot for her reporting of sexual harassment, Plaintiff Pamela Smoot filed an EEOC complaint on October 8, 1999 with the Birmingham Alabama Equal Employment Opportunity Commission (hereinafter EEOC) office. The complaint was signed as received by the Birmingham Alabama EEOC office October 12, 1999. (Copy attached as exhibit "A")

26. The Birmingham Alabama EEOC office conducted a full and complete investigation and issued a "Determination" in June 2000 finding in favor of Plaintiff Pamela Smoot. (Copy attached as exhibit "B"), Conciliation efforts by the Birmingham Alabama EEOC office were terminated August 31, 2000. The EEOC retained jurisdiction and filed a complaint against Ryder.

27. Ryder failed to establish and implement an effective sexual harassment policy and grievance procedure designed to prevent sexual harassment and of which Plaintiff Pamela Smoot could have availed herself to report unlawful behavior to a Ryder official. Plaintiff Pamela Smoot was not given sexual harassment training or an employee handbook containing Ryder's sexual harassment policy. When Plaintiff Pamela Smoot reported the sexual harassment to Gordon and Taylor they did not follow Ryder's own policy. Plaintiff avers said Defendants' discriminatory conduct as aforesaid

was knowing, intentional, malicious, with reckless indifference and/or negligent in violation of her federally protected rights of the Plaintiff Pamela Smoot. As a result of the Defendants' knowing, intentional, malicious, with reckless indifference and/or negligent discriminatory conduct in violation of the Federally protected rights, Plaintiff Pamela Smoot has suffered emotional distress, lost wages, humiliation, impairment of self esteem, impairment of personal aspirations, anger and other forms of mental anguish.

28. Ryder's, Taylor's and Gordon's retaliation directed toward Plaintiff Pamela Smoot was related to her reporting of sexual harassment, and constituted knowing, intentional, malicious, with reckless indifference and/or negligent discriminatory conduct in violation of the Federally protected rights of the Plaintiff Pamela Smoot.

#### **IV. CLAIM ONE-RETALIATION UNDER TITLE VII**

29. This is a claim to redress unlawful employment practices on the basis of retaliation in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. sections 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. Sec. 1981a.

30. Plaintiff Pamela Smoot adopts and realleges Paragraphs 1-28 above, as if set out in full herein.

31. Plaintiff Pamela Smoot filed a timely charge of retaliation with the Birmingham Alabama office of the EEOC against Defendants on October 8, 1999. The Birmingham EEOC issued a finding in favor of Plaintiff Pamela Smoot in June 2000. The Birmingham EEOC retained jurisdiction and filed a complaint against Defendants on March 29, 2002. Plaintiff Pamela Smoot filed a motion to intervene under Title VII and Rule 24 of the FRCP.

32. The conduct of the Defendants as set forth above constitutes violations of Plaintiff Pamela Smoot's rights guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq., and particularly Plaintiff Pamela Smoot's right not to be discriminated or retaliated against on the basis of making a charge which alleges unlawful employment practices. 42 U.S.C. Sec 2000e-3(a). Said Defendants' conduct was knowing, intentional, malicious, with reckless indifference and/or negligent discriminatory conduct in violation of the Federally protected rights of the Plaintiff Pamela Smoot.

WHEREFORE, Plaintiff Pamela Smoot demands judgment against Defendants for declaratory and injunctive relief; lost wages and other lost employment benefits to which Plaintiff Pamela Smoot would have been entitled but for the wrongful actions complained of herein; compensatory and punitive damages; and costs and reasonable attorneys' fees pursuant to 42 U.S.C. Sections 1981a, 1988 and 2000e-5(k).

**V. CLAIM TWO-DIFFERENTIAL TERMS UNDER TITLE VII**

33. This is a claim to redress unlawful employment practices on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. Sec 1981a.

34. Plaintiff Pamela Smoot adopts and realleges Paragraphs 1-28 above, as if set out in full herein.

35. Plaintiff Pamela Smoot filed a timely charge of differential terms specifically *quid pro quo* sexual harassment and hostile work environment with the Birmingham Alabama office of the EEOC against Defendants on October 8, 1999. The Birmingham EEOC issued a finding in favor of Plaintiff Pamela Smoot in June 2000.



The Birmingham EEOC retained jurisdiction and filed a complaint against Defendants. Plaintiff Pamela Smoot filed a motion to intervene under Title VII and Rule 24 of the FRCP.

36. The conduct of the Defendants as set forth above created a hostile working environment pervaded by impermissible sex discrimination. Defendants' conduct also amounted to *quid pro quo* sexual harassment. The conduct of the Defendants was so severe and pervasive that it altered the conditions or terms of employment of Plaintiff Pamela Smoot and created an abusive working environment. The conduct of the Defendants amounted to an explicit or implicit condition of Plaintiff Pamela Smoot's employment that she submitted to Defendants' unwanted and unlawful sexual advances based on her sex in order to receive or retain tangible employment benefits. These actions constitute violations of Plaintiff Pamela Smoot's rights guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq., in particular Plaintiff Pamela Smoot's right not to be discriminated against on the basis of sex with respect to compensation, terms and conditions and privileges of employment, 42 U.S.C. Sec 2000e-2(a)(1), and the right not to be limited, segregated or classified in any way on the basis of sex. 42 U.S.C. Sec 2000e-2(a)(2).

WHEREFORE, Plaintiff Pamela Smoot demands judgment against Defendants for declaratory and injunctive relief; lost wages and other lost employment benefits to which Plaintiff Pamela Smoot would have been entitled but for the wrongful actions complained of herein; compensatory and punitive damages; and costs and reasonable attorneys' fees pursuant to 42 U.S.C. Sections 1981a, 1988 and 2000e-5(k).

**VI. CLAIM THREE DENIAL OF OPPORTUNITY TO BE ABLE TO ACCEPT A  
PROMOTION UNDER TITLE VII**

37. This is a claim to redress unlawful employment practices on the basis of sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.

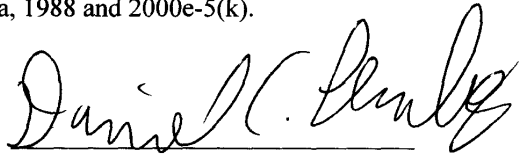
Sections 2000e et seq., and the Civil Rights Act of 1991, 42 U.S.C. Sec 1981a.

38. Plaintiff Pamela Smoot adopts and realleges Paragraphs 1-28 above, as if set out in full herein.

39. The conduct of the Defendants as set forth above created a hostile working environment pervaded by impermissible sex discrimination. Defendants' conduct amounted to *quid pro quo* sexual harassment. Defendants' actions also amounted to retaliation. Because of these actions by the Defendants, Plaintiff Pamela Smoot was unable to emotionally accept a promotion to Fixed Route Driver for a substantial period of time. These actions constitute violations of Plaintiff Pamela Smoot's rights guaranteed by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000e et seq., in particular Plaintiff Pamela Smoot's right not to be discriminated against on the basis of sex with respect to compensation, terms and conditions and privileges of employment, 42 U.S.C. Sec 2000e-2(a)(1), and the right not to be limited, segregated or classified in any way on the basis of sex. 42 U.S.C. Sec 2000e-2(a)(2).

WHEREFORE, Plaintiff Pamela Smoot demands judgment against Defendants for declaratory and injunctive relief; lost wages and other lost employment benefits to which Plaintiff Pamela Smoot would have been entitled but for the wrongful actions

complained of herein; compensatory and punitive damages; and costs and reasonable attorneys' fees pursuant to 42 U.S.C. Sections 1981a, 1988 and 2000e-5(k).

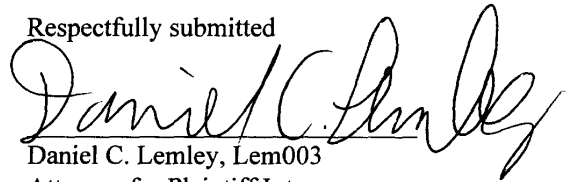


Daniel C. Lemley, LEM003  
Attorney for Plaintiff Intervener  
Pamelia Smoot

**VII. JURY DEMAND**

Plaintiff Pamela Smoot hereby demands a trial by struck jury.

Respectfully submitted



Daniel C. Lemley, Lem003  
Attorney for Plaintiff Intervener  
Pamelia Smoot

OF COUNSEL  
Andres and Lemley, LLC  
2711 Sixth Street  
Tuscaloosa, Alabama 35401  
(205) 345-3551,  
Fax (205) 345-0375  
lemley@uronramp.net

**PLAINTIFF/INTERVENER'S ADDRESS**

Pamelia Smooth  
c/o Andres and Lemley, LLC  
2711 Sixth Street  
Tuscaloosa, Alabama 35401

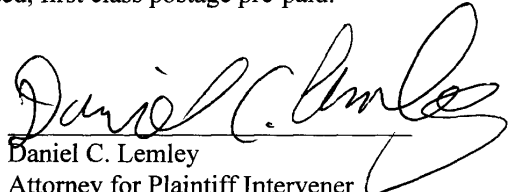
**DEFENDANTS' ADDRESSES**

RYDER/ATE, INC.  
Now known as  
FIRST TRANSIT, INC.  
The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, AL 36109

RYDER CAPITAL SERVICES CORPORATION  
The Corporation Company  
2000 Interstate Park Drive, Suite 204  
Montgomery, AL 36109

CERTIFICATE OF SERVICE

I hereby certify that I have this 8<sup>th</sup> day of July, 2002, served a copy of the foregoing complaint upon all counsel for the EEOC as listed below by placing a copy of the same in the United States mail, properly addressed, first class postage pre-paid.

  
Daniel C. Lemley  
Attorney for Plaintiff Intervener  
Pamelia Smoot

Hon. Charles E. Guerrier  
Regional Attorney for the EEOC  
1130 22nd Street South, Suite 2000  
Birmingham, AL 35205

Hon. Mildred Byrd  
Supervisory Trial Attorney  
1130 22nd Street South, Suite 2000  
Birmingham, AL 35205

Hon. Debra Crook  
Senior Trial Attorney  
1130 22<sup>nd</sup> Street South, Suite 2000  
Birmingham, AL 35205

Hon. Abdul Kallon, Attorney at Law  
Bradley, Arant, Rose and White  
P.O. Box 830709  
Birmingham, AL 35283-0709

This form is affected by the Privacy Act of 1974: See Privacy Act Statement before completing this form.

FEPA  
 EEOC

and EEOC

State or local Agency, if any

NAME (Indicate Mr., Ms., Mrs.) HOME TELEPHONE (Include Area Code)  
 Ms. Pamela Smoot 205-425-3152

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH  
 135 Fox Hollies Blvd. Bessemer, Alabama 35025 07/18/1964

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)  
 Ryder/ATE Inc. Hundreds 205-521-0180

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY  
 3105 8th Avenue North Birmingham, AL 35202 Jefferson

NAME TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)) DATE DISCRIMINATION TOOK PLACE  
 EARLIEST (ADEA/EPA) LATEST (ALL)  
 RACE  COLOR  SEX  RELIGION  AGE  
 RETALIATION  NATIONAL ORIGIN  DISABILITY  OTHER (Specify)  
 CONTINUING ACTION  
 January 1998 Oct. 6, 1998

THE PARTICULARS ARE (if additional paper is needed, attach extra sheet(s)):

I was hired in December 1997 as a VIP driver. Alfonzo Pollard was the supervisor over different bus drivers. He was not my direct supervisor but a general supervisor over bus drivers including me. I did not receive a handbook or any training about what to do if I was sexually harassed. In January 1998 Mr. Pollard began sexually harassing me by making sexually explicit comments to me. This occurred on almost a daily basis for nearly a year. Then, in October 1998, Mr. Pollard touched me between my legs. I immediately responded by pushing him and telling him to keep his hands off me. He said "excuse me" in a mocking tone of voice and he smirked at me. In Nov. 1998, Mr. Pollard took the antenna of his radio and rubbed it along the crease of my buttocks. He did this in the break room at work. I immediately struck him and informed him to leave me alone. In January 1999 Mr. Pollard put his

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT  
 Pamela Smoot  
 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE 10/7/99  
 (Day, month, and year)  
 Karen E. Sullivan

*Pamela Smoot*  
 Charging Party (Signature)

Date 10/7/99

\* continued from form\*

arm around me and squeezed my bottom. I immediately turned around and struck him with such force that his radio even fell. At that point, I reported this to one of his supervisors. Apparently, this supervisor spoke to Mr. Pollard because the comments and touching ceased temporarily after this report. However, the supervisor person whom I reported to, a Mr. Gordon, took no further appropriate action to deal with Mr. Pollard's harassing conduct. During the next month, on weekends, I received direct personal information about Mr. Pollard having sexual contact with female work release inmates who were employed by another company at Ryder for cleaning. On one occasion I even heard one of the work release ladies complain about performing sexual acts for Mr. Pollard when he did not follow through with his end of the bargain. At some point in February 1999, I was out for surgery. I returned in April 1999. Mr. Pollard almost immediately renewed his verbal sexual harassment of me. In May 1999 I was given an opportunity to move from my VIP route to a fixed driver route. Mr. Pollard would be supervising me directly in that capacity. In June 1999 during a direct interview with Mr. Pollard, he took his pen and stroked me on the breast while I was alone in his office going over matters required of me in my employment. I struck his hand so hard that I knocked the pen out of his hand. A few days later Mr. Pollard stated that he was "still waiting." I was in great fear. This caused me great stress and sadness. During this period of time I was depressed, fearful, concerned, and angry.

Based on the failure to properly investigate and follow through on my previous report of sexual harassment, I was not sure as to the exact procedure I should follow in order to correctly have this investigated. At some point I would have been forced to be alone again with Mr. Pollard to go over my routes. Based on my fear and apprehension of his previous continuing sexual harassment for almost 2 years, I consulted my union representative and explained to him briefly about what was going on and I asked him to come in with me during this interview with Mr. Pollard. After this interview the union representative confronted Mr. Pollard with his sexual harassment. He indicated that he had done nothing wrong and didn't know what she was talking about. I then continued to make reports to other supervising authorities. They acknowledged my previous report and the lack of action on my previous report. It was also discovered during this time that I had never received an employee handbook. It was also discovered during this time that I had never received any sexual harassment reporting training. In spite of my reports, Mr. Pollard was not immediately suspended. There were significant delays in the investigation in dealing with Mr. Pollard concerning this matter.

After an investigation was conducted by my attorney, Daniel C. Lemley, and he reported some of the actions of Mr. Pollard and some of the witnesses concerning Mr. Pollard's actions, including the relations that he had with the work-release ladies, it was only at that point that Mr. Pollard was suspended and subsequently apparently terminated for his acts.

Because of this long-term sexual harassment by a supervisor, I have suffered great and grave emotional distress, pain and difficulties. I have lived in fear for many, many months. The investigation was non-existent and when it began was poorly handled, until the participation by legal counsel for Ryder-Max. I withdrew my request for a fixed driver route and remained in the VIP driver status because of my fear of Mr. Pollard, even though the fixed driver route would

P.D.S 10/07/99

have offered more pay.

Subsequent to her numerous reports, including giving specific information concerning Mr. Pollard's dealings with work release ladies, he was apparently discharged. I was called into a meeting with supervisors of the company and my union representatives. At the meeting, I was informed of Mr. Pollard's discharge but then lectured on what they called my "poor language". I feel that I have been subject to a pattern of sexual harassment that took place over a period of almost two years. I believe I was forced to take negative job actions, including turning down a chance to obtain a fixed driver route, because of Mr. Pollard's continual harassment and the resulting fear and emotional stress I experienced. There was an absolute failure to adequately investigate my allegations. There was a failure to adequately or properly train me as to how to report sexual harassment. There was a hostile working environment in which I was forced to work. For my courage and willingness to come forward, leading to the discovery of the information necessary for Mr. Pollard's discharge, I was "rewarded" by being lectured on my "bad language."

P.D.S 10/07/99

EXHIBIT 'B'

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Birmingham District Office**

1900 3rd Avenue, North, Suite 101  
Birmingham, AL 35203-2397  
PH: (205) 731-1359  
TDD: (205) 731-0175  
FAX: (205) 731-2101

Pamelia Smoot  
135 Fox Hollies Blvd.  
Bessemer, Al 35025

Charge No. 130 A0 0162

Ryder/ATE, Inc.  
3105 8<sup>th</sup> Avenue North  
Birmingham, Al 35202

Charging Party

Respondent

**DETERMINATION**

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge, filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party, a black female bus driver, alleges that she has been subjected to sexual harassment because of her female gender, forced to decline a higher paying job because of sexual harassment, and disciplined in retaliation for reporting sexual harassment. Charging Party contends that Respondent took no action on her report of sexual harassment which was made in January 1999 and as a result, she was forced to decline an opportunity for advancement in June 1999, which placed her under the direct supervision of the alleged harasser. Charging Party asserts that it was not until August 1999 that Respondent took some action against the alleged harasser.

Respondent denies the allegations made by the Charging Party. Respondent represents that in January 1999 a report of sexual harassment was brought to the attention of the General Manager who arranged a meeting with the Charging Party. During the meeting, Respondent contends that Charging Party was asked if she wanted to file a complaint and her answer was "no". Respondent represents that in July 1999 Charging Party reported to the General Manager that she was being sexually harassed by a male supervisor. Respondent further represents that it immediately began an investigation. Respondent asserts that the alleged harasser was suspended without pay pending the outcome of the investigation and on the basis of the findings, he was subsequently terminated.

Record evidence supports Charging Party's allegation of sexual harassment. Respondent admits that the first report of sexual harassment of the Charging Party was brought to the attention of the General Manager in January 1999. Although Respondent contends that Charging Party stated that she did not want to file a complaint concerning the matter, a review of Respondent's sexual harassment policy indicates that reports of sexual harassment are to be investigated whether the victim wants the matter investigated or not. There is no evidence to indicate that Respondent took any action prior to the second report in July 1999.

Accordingly, I have determined that the evidence obtained during the investigation establishes reasonable cause to believe that Charging Party has been discriminated against by having been subjected to sexual harassment because of her female gender, as alleged.

With respect to Charging Party's allegation that due to Respondent's failure to take action on her report



of sexual harassment in January 1999, she had to decline an advancement opportunity which would have put her under the direct supervision of the alleged harasser, Respondent asserts that Charging Party provided a statement which indicated that she declined the position for personal and family commitment. Charging Party testified that the opportunity for advancement became available in May 1999. Charging Party requested to be transferred back to her old position in June 1999. Although required to do so by its sexual harassment policy, there is no evidence to indicate that Respondent took any action on Charging Party's January 1999 report of sexual harassment, as of June 1999.

Accordingly, I have determined that Respondent's failure to take appropriate action on Charging Party's report of sexual harassment, forced her to decline an advancement opportunity, as alleged.

With respect to Charging Party's allegation of having been disciplined in retaliation for reporting sexual harassment, evidence indicates that Charging Party was given a written warning by the General Manager on October 1, 1999. The warning advised Charging Party that during the investigation of her sexual harassment complaint, it came to Respondent's attention that Charging Party had used profane language (profanity, comments of a sexual nature).

Since Respondent's disciplinary warning to Charging Party indicated that it was a result of the investigation of Charging Party's sexual harassment complaint, I have determined that reasonable cause exist to believe that Charging Party was disciplined in retaliation for reporting sexual harassment, as alleged.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).

If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement. The proposal should be provided to the Commission's representative within 14 days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole and to provide corrective and preventive relief. These remedies may include, as appropriate, an agreement by the Respondent to not engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative, Roy L. Jackson at (205) 731-1029. Should there be no response from the Respondent in 14 days, we may conclude that further conciliation efforts would be futile or nonproductive.

On Behalf of the Commission:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Cynthia G. Pierre  
District Director