

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

FEB 11 2011

JAMES W. MOORE, JR.
BY _____
ATTORNEY AT LAW

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PLAINTIFF

ROBERT STORAY

PLAINTIFF IN INTERVENTION

VS.

CASE NO. :LR-C-98-834

SNACK VENDING COMPANY, INC.

DEFENDANT

COMPLAINT IN INTERVENTION

COMES NOW the Plaintiff in Intervention, Robert Storay, by and through counsel, Harrill & Sutter P.L.L.C., and for his Complaint in Intervention, states:

PARTIES AND JURISDICTION

1. Plaintiff in Intervention, Robert Storay, at all times relevant hereto, was and is an African-American citizen of the United States and a resident of Little Rock, Pulaski County, Arkansas.

2. Defendant, The Snack Vending Company, Inc., at all times relevant hereto was and is an Arkansas corporation doing business in the State of Arkansas, City of Little Rock, Pulaski County, Arkansas.

3. This is an action under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, and to remedy violations of Arkansas State law under the pendent jurisdiction of this Court pursuant to United Mine Workers v. Gibb, 38 U.S. 715 (1966) and 28 U.S.C. § 1367, including but not limited to, violations of the Arkansas Civil Rights Act of 1993. Venue of this action lies in the Eastern District of Arkansas pursuant to 42 U.S.C. § 2000(e)-5(f) and 28 U.S.C. § 1391. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343.

GENERAL ALLEGATIONS OF FACT

4. Defendant is an employer within the meaning of 42 U.S.C.A. § 2000e(b) and the Arkansas Civil Rights Act of 1993, and employs more than fifteen (15) employees.

5. On December 19, 1997, Plaintiff in Intervention applied for a route driver position with Defendant, Snack Vending Company, Inc. At the time of his application, Plaintiff in Intervention had numerous years of route driving experience.

6. On the same date as Plaintiff in Intervention's application for the aforementioned route driver position, another white applicant with no route driver experience also applied with Defendant; said white driver applicant was hired as a route driver by Defendant on January 30, 1998.

7. Plaintiff in Intervention was hired by Defendant for a warehouse position on March 9, 1998, at a rate of pay of approximately half that of a route driver position.

8. On July 7, 1998, Defendant advertised a route driver position in the newspaper, and Plaintiff in Intervention responded to the advertisement by asking to be considered for the position.

9. Defendant told Plaintiff in Intervention that no route driver positions were available, and Plaintiff in Intervention subsequently produced the advertisement.

10. Defendant told Plaintiff in Intervention that he would have an opening for a route driver soon, and they would break the Plaintiff in Intervention in slowly.

11. On July 16, 1998, a white applicant with no route driving experience was hired for the vacant route driver position that Plaintiff in Intervention was allegedly to receive.

12. Upon learning that a white applicant with no route driving experience had been hired to fill the position, Plaintiff in Intervention resigned his employment with Defendant on July 16, 1998.

13. Defendant has been in business for approximately twenty-three (23) years and has contended that during this time, it hired a black male route driver in 1985, but upon information and belief, this contention is false.

14. Defendant further contends that they transferred a black employee to a route driver position in January of 1997, but upon information and belief, this contention is also false.

15. Defendant has previously contended that a third black employee was placed into a relief driver position, prior to Plaintiff's in Intervention filing of a Charge with the EEOC, but upon information and belief, this contention is also false.

16. At the time that Plaintiff in Intervention was constructively discharged, Defendant had no African-American route drivers.

17. All African-American employees of Defendant were confined to warehouse positions, which paid approximately half of what route driver positions paid.

18. At the time Plaintiff in Intervention was constructively discharged from Defendant's company, there were no African-American individuals working as route drivers, despite the fact that approximately sixty-percent (60%) of applicants for route driver positions over the prior period of two (2) years were African-American.

COUNT I – TITLE VII

19. Plaintiff in Intervention repeats and realleges the above paragraphs as if fully set forth herein.

20. Defendant has denied Plaintiff in Intervention equal employment opportunity for job assignments, promotion, wages and other terms and conditions of employment, solely due to Plaintiff in Intervention's race.

21. Defendant follows a policy and practice of discrimination in employment against African-Americans on account of their race. The policies and practices referred to herein have been and are implemented by Defendant among other ways as follows:

a) Defendant maintains jobs in departments that are segregated on a basis of race, so that when employees are hired, assigned, promoted, or demoted, they are placed in a job that is either a "white job" or "African-American job".

b) Defendant depresses all wages of African-American employees on the basis of race by assigning white employees to "white jobs" and African-American employees to "African

American jobs", and paying African-American employees the lowest wages possible under the circumstances.

c) Defendant excludes all or substantially all African-Americans, including Plaintiff in Intervention, from route driver positions on the basis of their race.

d) Defendant assigns African-American employees to the lowest paid and the least desirable jobs, these jobs generally being the jobs demanding the most strenuous and the most continuous physical exertion.

22. Plaintiff in Intervention was employed by the Defendant working in the warehouse, as were all African-American job positions, and was denied equal pay and job opportunities due to his race.

23. Plaintiff in Intervention sought to be promoted or transferred to a better job position, specifically, a route driver position, but Plaintiff in Intervention was denied such promotion and transfer due to his race.

24. Plaintiff in Intervention attempted on or about December 19, 1997 and July 9, 1998, to be assigned to the open positions of route driver, but the Defendant refused to permit Plaintiff in Intervention to transfer and instead, assigned the position to white employees with less qualification, experience, or seniority.

25. Despite Plaintiff in Intervention's efforts to obtain better job positions and pay, Defendant has continued to assign white employees, with less experience and/or seniority than Plaintiff in Intervention, to better positions.

26. Plaintiff in Intervention worked for Defendant from March 9, 1998 through July 16, 1998, the time of his constructive discharge. Plaintiff in Intervention's work performance was wholly satisfactory, and he was qualified to obtain the position of route driver. Yet, due to the inherently discriminatory system of promotion used and approved of by Defendant, Plaintiff in Intervention was never assigned to the position of route driver.

27. Plaintiff in Intervention, as an African-American employee, was treated in a disparate manner and subjected to Defendant's unfair policies and practices in that Plaintiff in Intervention was treated differently than white employees similarly situated with the Defendant. Said unfair policies and practices, both limited Plaintiff in Intervention in his job classifications, jobs assignments, wages, and other benefits because of his race, and further resulted in his constructive discharge from employment on or about July 16, 1998.

28. Defendant's method of selecting route drivers is a primary source of discrimination, which has resulted in an unfair denial of advancement opportunities of the African-American race and particularly, the Plaintiff in Intervention herein. No objective standards are used for the selection of route drivers. Defendant's selection of white only route drivers constitutes a self-perpetuating situation in which African-Americans is seldom, if ever, objectively considered for the position of route driver.

29. Due to Defendant's wrongful job advancement practices, Plaintiff in Intervention was ignored for the consideration for route driver, while Caucasian employees with less experience and seniority were being made route drivers. As a result thereof, Plaintiff in Intervention became increasingly dissatisfied with his employment and with the prospect of raising his objection to said practices, which not only failed, but also resulted in harassment and further discrimination against the Plaintiff in Intervention. All of the above-described conduct resulted in the constructive discharge of Plaintiff in Intervention, from which Plaintiff in Intervention seeks recovery of damages.

COUNT II – § 1981 VIOLATION

30. Plaintiff in Intervention repeats and realleges the above paragraphs as if fully set forth herein.

31. Defendant has denied Plaintiff in Intervention equal employment opportunity for job assignments, promotion, wages and other terms and conditions of employment, solely due to Plaintiff in Intervention's race, African-American.

32. Defendant's actions, as set forth above, constitute unlawful employment discrimination in violation of 42 U.S.C. § 1981.

COUNT III - ARKANSAS CIVIL RIGHTS ACT

33. Plaintiff in Intervention repeats and realleges the above paragraphs as if fully set forth herein.

34. Defendant has denied Plaintiff in Intervention equal employment opportunity for job assignments, promotion, wages and other terms and conditions of employment, solely due to Plaintiff in Intervention's race, African-American.

35. Defendant's actions, as set forth above, constitute unlawful employment discrimination in violation of the Arkansas Civil Rights Act of 1993.

DAMAGES

36. As a direct and proximate result of the Defendant's unlawful employment practices and disregard for Plaintiff in Intervention's rights, Plaintiff in Intervention has lost, and will continue to lose, substantial income, including but not limited to, wages, benefits, and compensation.

37. As a further direct and proximate result of said unlawful employment practices, Plaintiff in Intervention has suffered emotional pain and suffering, inconvenience, mental anguish, and aggravation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff in Intervention, Robert Storay, prays that this Court enter Judgment in his favor and against Defendant, as follows:

(a) that a finding be entered that Defendant intentionally discriminated and retaliated against Plaintiff in Intervention with malice or reckless indifference to his protected rights in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, 42 U.S.C. § 1981, and the Arkansas Civil Rights Act of 1993, based upon his race/color;

(b) that said Plaintiff in Intervention be made whole by placing him in a route driver position with Defendant that would have been obtained but for the Defendant's unlawful discriminatory acts, with all its appropriate compensation and fringe benefits;

(c) that said Plaintiff in Intervention be awarded all wages, benefits, and compensation lost due to Defendant's unlawful discriminatory conduct;

(d) that said Plaintiff in Intervention be awarded punitive damages and compensatory damages in an amount exceeding that required for federal diversity jurisdiction;

(e) that said Plaintiff in Intervention be awarded reasonable attorney's fees and costs;

(f) that said Plaintiff in Intervention be awarded pre-judgment interest;

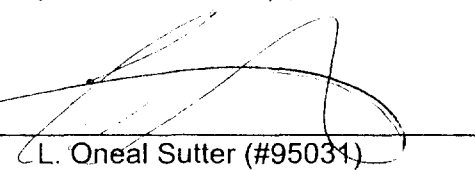
(g) that said Plaintiff in Intervention be awarded injunctive relief and declaratory relief; and

(h) that said Plaintiff in Intervention be awarded such other relief as this Court may deem just and proper.

Respectfully submitted,

HARRILL & SUTTER, P.L.L.C.
Attorneys at Law
Post Office Box 26321
310 Natural Resources Drive
Little Rock, Arkansas 72221
(501) 224-1050 FAX (501) 223-9136
Attorneys for the Plaintiff(s)

By: _____


L. Oneal Sutter (#95031)
Christopher Gomlicker (#95009)