

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01273-WYD-BNB

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Plaintiff,

and

CHRISTOPHER ADAMS,
JAMES BAXTER, and
JAMES STEADHAM

Intervenors,

vs.

ALBERTSON'S LLC,

Defendant.

**COMPLAINT AND JURY DEMAND OF INTERVENORS
CHRISTOPHER ADAMS AND JAMES STEADHAM**

Christopher Adams ("Adams") and James Steadham ("Steadham") (jointly the "Intervenors"), by their attorneys the law firm of McNamara & Martínez LLP, complain against Defendant Albertson's LLC as follows:

NATURE OF COMPLAINT IN INTERVENTION

1. This complaint in intervention is brought under (a) Section 1 of the Civil Rights Act of 1866, 42 U.S.C. § 1981 ("Section 1981"), as amended, and (b) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* ("Title VII"), as amended.

2. Intervenors have been adversely affected by unlawful employment practices taken against them by Defendant on the basis of their African-American race

and/or black color. These unlawful employment practices include the maintenance of a severe, pervasive, and hostile work environment because of Intervenors' race and/or color; discriminatory terms and conditions of Adams' employment; and the discriminatory discharge of Adams. As redress for the damages they have suffered, and in the future will suffer, Intervenors seek legal and equitable remedies sufficient to make them whole, as more fully set forth below.

PARTIES

3. Adams is a citizen of the United States and a resident of the State of Colorado. Adams is African-American and a member of the black race, and is thus entitled to the rights and privileges protected by Section 1981 and Title VII.

4. Steadham is a citizen of the United States and a resident of the State of Colorado. Steadham is African-American and a member of the black race, and is thus entitled to the rights and privileges protected by Section 1981 and Title VII.

5. At all times herein relevant, Defendant has continuously been doing business in the State of Colorado, and has continuously had in excess of 15 employees in Colorado.

6. At all times relevant herein, Defendant was 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).

7. At all times relevant herein, Defendant was Intervenors' employer, within the meaning of Section 701 of Title VII.

JURISDICTION AND VENUE

8. This Court's federal question jurisdiction over Intervenor's claims is invoked pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4). This action is authorized and instituted pursuant to Section 1981 and Section 706 of Title VII.

9. Venue is proper in this Court pursuant to 42 U.S.C. § 2000e-5(f) (3) and 28 U.S.C. § 1391(b). The employment practices alleged to be unlawful were committed within the jurisdiction of the U.S. District Court for the District of Colorado. Defendant maintains offices and conducts business within the State of Colorado.

10. Plaintiff Equal Employment Opportunity Commission ("Plaintiff" or "EEOC") investigated two class-wide pattern or practice charges of discrimination filed by a former black employee of Defendant, Matthew Ricks. Based on these charges, on 30 June 2006, the EEOC filed the instant class action lawsuit, alleging that Defendant has, since at least 1995, maintained a hostile work environment affecting a class of employees based on their race, color and/or national origin, and has subjected employees to discriminatory terms and conditions of employment, based also on such class member's race, color and/or national origin.

11. Intervenor's are members of the similarly-situated class of minority employees described in Plaintiff's Amended Complaint, and are aggrieved individuals within the meaning of 42 U.S.C. § 2000e-5(f)(1).

12. On 29 May 2007, Adams filed his charge of discrimination, Charge No. 541-2007-1928. This charge is being investigated by Plaintiff.

ALLEGATIONS OF INTERVENOR ADAMS

13. Adams first worked for Defendant from about June 2001 to about December 2004, when he voluntarily terminated his employment with Defendant. Adams then returned to Defendant's employ in about January 2005, and continued to work for Defendant until his involuntary discharge in March 2007.

14. Adams worked at Defendant's distribution center located at 2780 N. Tower Road, Aurora, CO 80011 (the "Distribution Center").

15. Adams was an Order Selector while employed with Defendant.

16. Throughout his tenure with Defendant, Adams performed the functions of his position in a satisfactory manner.

Hostile Work Environment

17. Throughout his employment with Defendant, Adams has been subjected to a work environment at the Distribution Center which was permeated with racially explicit graffiti, epithets, drawings and writings.

18. The racially-offensive material to which Adams was exposed on a consistent and pervasive basis at the Distribution Center included, but were not limited to, the following: (a) "nigger"; (b) swastikas; (c) "nigger cottonpicker"; (d) "kill niggers"; (e) "die nigger die"; (f) "KKK"; (g) "white power"; (h) "a good nigger is a dead nigger"; (h) drawing of a gun with bullets hitting a black man; and (i) drawing of a black man with noose around neck.

19. Adams was exposed to these racially-offensive materials on a daily or nearly daily basis. At times viewing these racially-charged materials was so hurtful to

Adams that he used the rest room in the maintenance room instead of using the men's room, where a major portion of these offensive materials were to be found.

20. Adams complained on numerous occasions to his supervisors about these racially-charged materials, including without limitation Jim Hayes and Nate Valentine. Adams informed his supervisors that he was very offended by these racial materials, and requested that these incidents and materials be promptly investigated.

21. Adams did not witness a member of management take prompt and effective remedial action in response to these complaints until about the time that this litigation was filed by the EEOC. Adams observed these racially-charged materials remain in place without removal for long periods of time.

Discriminatory Terms & Conditions of Employment

22. Adams was subjected to discriminatory work assignments during his tenure with Defendant, including without limitation:

(a) Adams was denied a position in Grocery in favor of a white employee who had not even bid on the position pursuant to the collection bargaining agreement in effect at the Distribution Center;

(b) When he was assigned to work the service deli area, Adams and other black Order Selectors were denied assistants, in contrast to similarly-situated white employees who were often given assistants when assigned to the service deli area;

(c) Adams and other black employees were frequently assigned more difficult orders to fill, in contrast to similarly-situated white employees who were assigned easier orders to fill;

23. Adams was suspended without pay for about 2-3 days for failing to “pull average” during a particular calendar week, in contrast to similarly-situated white employees who failed to “pull average,” and were either not disciplined at all, or disciplined in a less severe manner; and

24. Adams was denied his requests to receive training on operating a forklift, how to load trailers, and how to replenish “pick slots,” in contrast to similarly-situated white employees who were provided such training.

Discriminatory Discharge

25. In about March 2007 Defendant accused Adams of engaging in a non-physical altercation with a non-black employee.

26. Adams denied any inappropriate conduct in the incident, and he and the other employee involved gave conflicting versions of the incident to management.

27. Prior to this incident, Adams had no history of workplace arguments or violence. In contrast, the non-black employee involved had a history of arguments in the workplace.

28. Adams’ supervisor, Jim Hayes, tampered with and altered the report prepared as a result of this incident, in an effort to falsely create the impression that Adams was more culpable in the incident than he really was.

29. After concluding its investigation of the incident, Defendant discriminatorily chose to involuntarily discharge Adams, but kept the other employee on its payroll.

30. As a direct and proximate result of Defendant’s unlawful employment practices complained of herein, Adams has suffered, and in the future will suffer, back pay and fringe benefit losses, front pay and benefit losses, out-of-pocket pecuniary

losses, lost future earnings capacity, mental suffering, emotional distress, loss of enjoyment of life, humiliation, loss of reputation, intimidation and inconvenience, and other compensable, non-economic injuries.

ALLEGATIONS OF INTERVENOR STEADHAM

31. Steadham has continuously worked for Defendant since August 1982.

32. Throughout his tenure with Defendant, Steadham has worked at the Distribution Center.

33. Steadham has held the positions of Warehouseman, Loader and Forklift Operator, as well as having worked in the Shipping and Receiving department at the Distribution Center.

34. Throughout his tenure with Defendant, Steadham has performed the functions of his positions in a satisfactory manner.

35. Since about the early 1980s, Steadham has been subjected to a work environment at the Distribution Center which was permeated with racially explicit graffiti, epithets, drawings and writings.

36. The racially-offensive material to which Steadham was exposed on a consistent and pervasive basis at the Distribution Center included, but were not limited to, the following: (a) "nigger"; (b) swastikas; (c) "niggers go back to Africa"; (d) "go back to Africa"; (e) "nigger Nate"; (f) "KKK"; (g) "white power"; and (h) drawings of black men with huge penises, testicles, lips and hair.

37. Steadham was exposed to these racially-offensive materials with considerable frequency, at some points during the course of the class period on a daily or almost daily basis.

38. Steadham frequently complained over the course of the class period to his supervisors about these racial materials, including without limitation supervisors Jeff Gannon, Jim Hartley, Gary Scarff and Jeff Waite. Steadham informed his supervisors that he was very offended by these racial materials, and requested that these incidents and materials be promptly investigated and dealt with.

39. At times viewing these racially-charged materials was so hurtful to Steadham that he used the rest room in the maintenance room instead of using the men's room, where a major portion of these offensive materials were to be found.

40. On numerous occasions over the course of the class period, notwithstanding the complaints of Steadham and other employees, Defendant failed to take prompt and effective remedial action in response to such complaints. On numerous such occasions the racially offensive materials described above remained in place without removal for several weeks and, on some occasions, months.

41. As a direct and proximate result of Defendant's unlawful employment practices complained of herein, Steadham has suffered, and in the future will suffer, mental suffering, emotional distress, loss of enjoyment of life, humiliation, loss of reputation, intimidation and inconvenience, and other compensable, non-economic injuries.

FIRST CLAIM FOR RELIEF

(Racially Hostile Work Environment in Violation of Section 1981 - Both Intervenors)

42. Intervenors incorporate the allegations set forth in paragraphs 1 through 41 of this complaint as if fully alleged herein.

43. During all times herein relevant, Defendant consistently maintained and condoned a work environment at the Distribution Center which was pervasively and severely hostile to black employees.

44. Intervenors were subjected to a severe and pervasively hostile work environment at the Distribution Center because of their black race and/or color, in violation of Section 1981.

45. This violation was intentional.

46. This violation was willful and wanton, and/or was done with malice or with reckless indifference to Intervenors' federally-protected rights.

WHEREFORE, Intervenors pray for relief as more fully set forth below.

SECOND CLAIM FOR RELIEF

(Racially Hostile Work Environment in Violation of Title VII - Both Intervenors)

47. Intervenors incorporate the allegations set forth in paragraphs 1 through 46 of this complaint as if fully alleged herein.

48. During all times herein relevant, Defendant consistently maintained and condoned a work environment at the Distribution Center which was pervasively and severely hostile to black employees.

49. Intervenors were subjected to a severe and pervasively hostile work environment at the Distribution Center because of their black race and/or color, in violation of Title VII.

50. This unlawful employment practice was intentional.

51. This unlawful employment practice was willful and wanton, and/or was done with malice or with reckless indifference to Intervenors' federally-protected rights.

WHEREFORE, Intervenor prays for relief as more fully set forth below.

THIRD CLAIM FOR RELIEF

(Discriminatory Terms and Conditions of Employment in
Violation of Section 1981 - Intervenor Adams)

52. Adams incorporates the allegations set forth in paragraphs 1 through 51 of this complaint as if fully alleged herein.

53. Defendant discriminated against Adams on the basis of his black race and/or color with respect to the terms and conditions of his employment including, but not limited to, disparate discipline, disparate work assignments and discriminatory denial of training.

54. These violations were intentional.

55. These violations were willful and wanton, and/or were done with malice or with reckless indifference to Adams' federally-protected rights.

56. Defendant's discrimination against Adams in the terms and conditions of his employment was in violation of Section 1981.

WHEREFORE, Adams prays for relief as more fully set forth below.

FOURTH CLAIM FOR RELIEF

(Discriminatory Terms and Conditions of Employment in
Violation of Title VII - Intervenor Adams)

57. Adams incorporates the allegations set forth in paragraphs 1 through 56 of this complaint as if fully alleged herein.

58. Defendant discriminated against Adams on the basis of his black race and/or color with respect to the terms and conditions of his employment including, but not limited to, disparate discipline, disparate work assignments and discriminatory denial of training.

59. These unlawful employment practice were intentional.

60. These unlawful employment practice were willful and wanton, and/or were done with malice or with reckless indifference to Adams' federally-protected rights.

61. Defendant's discrimination against Adams in the terms and conditions of his employment was in violation of Title VII.

WHEREFORE, Adams prays for relief as more fully set forth below.

FIFTH CLAIM FOR RELIEF

(Discharge on the Basis of Race In Violation of Section 1981 - Intervenor Adams)

62. Adams incorporates the allegations set forth in paragraphs 1 through 61 of this complaint as if fully alleged herein.

63. Defendant discharged Adams for allegedly engaging in a non-physical altercation with a non-black employee, but only suspended the non-black employee for the same alleged incident.

64. Defendant's proffered reason for involuntarily discharging Adams was false and pretextual, and was known to Defendant to be false and pretextual.

65. Adams was involuntarily discharged from his employment with Defendant because of his black race and/or color.

66. Defendant's discharge of Adams was intentional.

67. Defendant's discharge of Adams was willful and wanton, and/or was done with malice or with reckless indifference to Adams' federally-protected rights.

68. Defendant's discharge of Adams was in violation of Section 1981.

WHEREFORE, Adams prays for relief as more fully set forth below.

SIXTH CLAIM FOR RELIEF

(Discharge on the Basis of Race In Violation of Title VII - Intervenor Adams)

69. Adams incorporates the allegations set forth in paragraphs 1 through 68 of this complaint as if fully alleged herein.

70. Defendant discharged Adams for allegedly engaging in a non-physical altercation with a non-black employee, but only suspended the non-black employee for the same alleged incident.

71. Defendant's proffered reason for involuntarily discharging Adams was false and pretextual, and was known to Defendant to be false and pretextual.

72. Adams was involuntarily discharged from his employment with Defendant because of his black race and/or color.

73. Defendant's discharge of Adams was intentional.

74. Defendant's discharge of Adams was willful and wanton, and/or was done with malice or with reckless indifference to Adams' federally-protected rights.

75. Defendant's discharge of Adams because of his race and/or color was in violation of Title VII.

WHEREFORE, Adams prays for relief as more fully set forth below.

PRAYER FOR RELIEF

Intervenors respectfully request that this Court enter judgment in their favor and against Defendant, and that it order the following relief against Defendant:

A. Enjoin Defendant from refusing to immediately reinstate Adams to his previous position of Order Selector, with the corresponding salary, benefits, bonuses and company seniority as if Adams had continuously held such a position since 26 March 2007;

B. Award Adams past and future economic damages as allowed by law, in an amount to be determined at trial, including, but not limited to, back pay and lost benefits, front pay and benefits and pecuniary compensatory damages;

C. Award Intervenors past and future non-economic damages, for all claims as allowed by law, in an amount to be determined at trial, including, but not limited to, lost earnings capacity, mental suffering, emotional distress, loss of enjoyment of life, humiliation, loss of reputation, intimidation and inconvenience;

D. Award Intervenors punitive or exemplary damages for all claims as allowed by law, in an amount to be determined at trial;

E. Award Intervenors attorney's fees and costs, including expert witness fees, as allowed by law;

F. Award Intervenors pre-judgment and post-judgment interest; and

H. Award Intervenors such other and further relief as this Court deems just and proper.

JURY TRIAL DEMAND

Intervenors demand a jury trial on all issues of fact raised by their Complaint.

Dated this 27th day of June, 2007.

s/ William J. Martínez
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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 2007, I electronically filed the foregoing COMPLAINT AND JURY DEMAND OF INTERVENORS CHRISTOPHER ADAMS AND JAMES STEADHAM with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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