

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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**UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,**

Plaintiff,

TED MAINES,

Intervenor-Plaintiff,

-vs-

Case No. 6:02-cv-1112-Orl-28DAB

FEDERAL EXPRESS CORPORATION,

Defendant.

ORDER

The EEOC brought this action against Defendant Federal Express Corporation ("Federal Express") under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 (Doc. 1), and Intervenor-Plaintiff Ted Maines ("Mr. Maines") intervened and filed a Complaint (Doc. 9) alleging violations of Title VII, the Florida Civil Rights Act, and the Florida Whistleblower Act. This matter is currently before the Court on Intervenor-Plaintiff's Motion for Leave to Seek Punitive Damages Under the Florida Whistleblower Act (Doc. 27, filed March 29, 2004), in response to which Federal Express has filed a memorandum in opposition (Doc. 29, filed April 8, 2004).

In his motion, Mr. Maines asserts that Section 448.103, Florida Statutes, in conjunction with Sections 768.71 and 768.72, Florida Statutes, allows him to seek punitive

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damages on his whistleblower claim. Section 448.103(2) provides in part that on a whistleblower claim, “a court may order relief” including an injunction; reinstatement of the employee to his former position; reinstatement of benefits and seniority; “[c]ompensation for lost wages, benefits, and other remuneration”; and “[a]ny other compensatory damages allowable at law.” § 448.103(2), Fla. Stat. Mr. Maines hangs his hat on this last clause, contending that the punitive damages he seeks qualify as “other compensatory damages allowable at law” because Sections 768.71 and 768.72 provide a substantive right to recover punitive damages.

However, Mr. Maines’s argument is not persuasive. Although this issue had apparently not been specifically addressed in a published opinion at the time Mr. Maines filed his motion six weeks ago, during the pendency of the motion this very argument has been squarely addressed and rejected by another court within this district. In Branche v. Airtran Airways, Inc., No. 8:01-CV-1747-T-30MSS, 2004 WL 859319 (M.D. Fla. Apr. 19, 2004) (Moody, J.), the court examined the plain language of the statutes involved and concluded that punitive damages are not recoverable under the Florida Whistleblower Act.

This Court agrees with the well-reasoned opinion of the Branche court. Sections 768.71 and 768.72 do not create a right to recover punitive damages where one does not otherwise exist. Branche, 2004 WL 859319, at *2 (concluding that Section 768.72 merely “places additional procedural and evidentiary limitations on claims for punitive damages” rather than creating a substantive right thereto). Moreover, the plain language of Section 448.103(2) forecloses recovery of punitive damages. Id. (“Use of the word ‘compensatory’ in Section 448.103(2)(e) clearly indicates that punitive damages and other forms of non-

compensatory damages are unavailable to correct FWA [Florida Whistleblower Act] violations.”); cf. Snapp v. Unlimited Concepts, Inc., 208 F.3d 928, 934 (11th Cir. 2000) (“Punitive damages . . . have nothing to do with compensation. . . . [T]heir purpose is to punish and deter the wrongdoer rather than to compensate the aggrieved party. Therefore, punitive damages would be out of place in a statutory provision aimed at making the plaintiff whole.”). Therefore, Intervenor-Plaintiff’s Motion for Leave to Seek Punitive Damages Under the Florida Whistleblower Act (Doc. 27, filed March 29, 2004) is **DENIED**.

DONE and **ORDERED** in Chambers, Orlando, Florida this 12 day of May, 2004.



JOHN ANTOON II
United States District Judge

Copies furnished to:
Counsel of Record
Unrepresented Party

EA
5-13-04

F I L E C O P Y

Printed: 05/13/2004

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6:02-cv-01112 igc

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