

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY)
COMMISSION,)
)
Plaintiff,)
)
v.) 06 C 4805
)
ROADWAY EXPRESS, INC.,)
)
Defendant.)
)
KENNETH COMER,)
)
)
Intervening-Plaintiff,)
)
v.)
)
ROADWAY EXPRESS, INC.) Judge Guzman
)
) Magistrate Judge Nolan
Defendant.)

**COMPLAINT IN INTERVENTION
FOR INJUNCTIVE RELIEF AND DAMAGES**

Now comes the intervening-plaintiff, Kenneth Comer, by his attorneys Kinoy, Taren & Geraghty P.C, and hereby complains against the defendant Roadway Express, Inc. as follows:

I. INTRODUCTION

1. This race discrimination case is brought pursuant to Title VII of the Civil Rights Act of 1964 and the Reconstruction Civil Rights Act, 42 U.S.C. § 1981, to redress the defendant’s policy of ignoring and failing to promptly investigate or remedy vicious racial harassment directed at plaintiff and other African-American employees, its failure to adopt EEO

policies that conform to industry-wide standards, its failure to eliminate a racially hostile environment maintained at defendant's Chicago Heights facility and its discriminatory and retaliatory treatment of plaintiff Comer.

The plaintiff herein was subjected to racial epithets and threats, including multiple instances of hangman's nooses displayed at the workplace. At all times relevant to this case, the defendant has had an ineffective anti-harassment policy that requires its employees to make all complaints about harassment in writing to its General Counsel at its corporate offices in Ohio before any action would be taken to redress the problem. As a result, the Chicago Heights facility has been rife with incidents of racial harassment throughout the years.

II. JURISDICTION AND VENUE

2. This court has jurisdiction over defendant pursuant to 28 U.S.C. § 1331 and 1343. Venue is proper in the Northern District of Illinois, Eastern Division since the unlawful practices occurred within this District pursuant to 28 U.S.C. § 1391(b) and (c).

III. PARTIES

3. Roadway Express, Inc., is a corporation doing business in the State of Illinois and the City of Chicago Heights, Illinois. At all relevant times, Roadway has continually had in excess of fifteen (15) employees and has 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).

4. Plaintiff Kenneth Comer is a 42-year-old African-American citizen of the United States. Mr. Comer resides in Merrillville, Indiana. Mr. Comer has been employed as a dockworker for defendant Roadway Express for the past eighteen (18) years at its Chicago Heights facility.

5. Defendant Roadway Express Inc. is a corporation engaged in the business of worldwide ground transportation. Roadway employs over 23,900 employees in 349 service centers, including the service center located in Chicago Heights, Illinois, where the named plaintiff is employed. In December of 2003, Roadway merged with and became a subsidiary of YRC Roadway Inc., a global shipping company. As of 2003, the Chicago Heights Terminal reported that it employed more than 1,650 employees.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES UNDER TITLE VII

6. On April 13, 2003, plaintiff Comer filed a class action administrative complaint alleging that from on or about April 15, 2001 and continuing to that time, he and African-Americans as a class have been subjected to ongoing racial harassment at Respondent's Chicago Heights Terminal. On August 4, 2005, Comer filed a second charge alleging that he was terminated from employment in retaliation for complaining of racial harassment and because of his race.

7. The EEOC investigated Mr. Comer's charges and found reasonable cause to believe that he and a class of Black employees, had been discriminated against because of their race, in that they were subjected to racial harassment. . On September 6, 2006, the EEOC brought suit to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, based upon Mr. Comer's complaint.

V. ROADWAY'S INEFFECTIVE AND INTIMIDATING "ANTI-HARASSMENT" INTERNAL COMPLAINT PROCEDURE

8. At all times relevant hereto, the defendant has maintained an alleged anti-harassment policy that requires its 23,900 employees of Roadway to present any complaints of racial harassment or discrimination in writing to Roadway's Office of General Counsel in Akron, Ohio before any investigation or action to remedy the complaint can take place.

9. Plaintiff Comer has experienced numerous acts of racial harassment, including being subject to vile racial graffiti at the workplace and having hangman's nooses placed at his work site.

10. The defendant's anti-harassment complaint process is designed more to insulate defendant from legal action than it is to uncover acts of harassment. The defendant's policy creates an immediate conflict of interest between the office of legal counsel's duty to protect Roadway from legal liability and its duty to investigate and uncover acts of racial harassment at the workplace.

11. Plaintiff Comer and other African-American employees have been and remain reluctant to communicate their complaints of racial harassment to defendant's attorney in order to obtain any redress for incidents of workplace harassment.

12. During the course of plaintiff's employment at defendant's Chicago Heights facility, he and virtually all other African-American employees were at various times subjected to almost daily racial epithets written in the men's bathroom, including "KKK", "Niggers go back to Africa", "Make America Safe, Kill a Nigger Today" and "swastikas written and carved into the walls.

13. In March of 2002, a hangman's noose was placed on plaintiff Comer's forklift at defendant's workplace.

14. On June 22, 2002, death threats to African-American employees were written in the bathroom of defendant's workplace.

15. In October 2002, a hangman's noose was placed on a Roadway truck where it was discovered by an African-American employee, Fred Thompson. Hours after Thompson complained and gave the noose to his supervisor, the same noose was placed at the work area of two other African-American employees.

16. In October of 2002, a white employee was observed riding a forklift with a hangman's noose dangling from it.

17. In October of 2002, a noose was placed on a jeep intended for Plaintiff Comer's use.

18. In June of 2003, a hangman's noose was placed on a trailer being unloaded by plaintiff Comer.

19. In August of 2003, a noose was placed on a trailer being unloaded by Tyrone Martin.

20. Throughout the above period of time, through and including May of 2004, racist graffiti including KKK references were repeatedly present in the bathroom utilized by African-American dockworkers and others.

21. The above actions constitute severe and pervasive harassment designed to instill fear in Comer and other African-American employees who worked at the Chicago Heights facility. These actions unreasonably interfered with the plaintiff's ability to perform his job.

VI. NOTICE TO DEFENDANT AND FAILURE TO TAKE EFFECTIVE

ACTION

22. In January of 2001, plaintiff and others met with the Respondent's terminal manager to complain about incidents of racial discrimination. Immediately thereafter, vile racial graffiti appeared in the bathroom.

23. In March of 2002, plaintiff Comer complained in writing to the terminal manager about the presence of a hangman's noose in the workplace.

24. From June of 2002 through March of 2003, numerous incidents of racial harassment were brought to the attention of supervisors and the terminal manager by various of the defendant's employees.

25. In November of 2002, a detailed list of racially harassing events, including the noose incidents and racist threats to African-Americans, was forwarded to the Chicago Heights facility Labor Relations Manager, by the plaintiff's union representative.

26. The company did not respond to the above until January 2, 2003 when the Labor Relations Manager informed the union that company policy dictates that allegations of racial discrimination and harassment not be handled locally. The Labor Relations Manager told the union to have the complaining employee, Ken Comer, write a letter to the company's Office of General Counsel. The communications to the union was not sent on to Comer until February 2003.

27. Despite the above incidents and complaints, the defendant never conducted an effective investigation to determine who may have been responsible for the racially hostile acts. Affected employees were not questioned in an effort to determine who had participated in the incidents or to determine whether there were witnesses to the incidents. Law enforcement

authorities were not brought in to investigate, except by plaintiff Comer, despite the presence of racial threats. And no effective measures were undertaken to prevent continued incidents of racial harassment from taking place.

28. In March of 2003, plaintiff Comer made a written complaint to Roadway's Office of General Counsel concerning the racially hostile atmosphere at the facility. Thereafter, the defendant conducted a superficial, ineffective investigation of the incidents and took no effective action to stop the incidents from occurring. As a result, additional acts of racial harassment continued to occur at the workplace through at least May of 2004.

VII. RETALIATION AGAINST KENNETH COMER

29. In April of 2005, Kenneth Comer was terminated from his employment by defendant. The reasons given for Comer's termination were pretextual. Comer was actually terminated because of his race and in retaliation for his good faith assertion of rights protected by Title VII of the Civil Rights Act of 1964.

30. In March of 2006, after arbitration, Comer was ordered reinstated with full back pay.

31. During the period of his forced unemployment, Comer became severely depressed and suffered humiliation, embarrassment and substantial emotional injury.

FIRST CLAIM FOR RELIEF

Racially Hostile Environment in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000 et seq.

32. Defendants have maintained, fostered and tolerated a racially hostile environment

at the Chicago Heights facility, allowing racial harassment to exist throughout the Chicago Heights facility and have failed to take prompt and effective remedial action to prevent such harassment from continuing. Defendants have a policy and practice of refusing to investigate complaints of racial discrimination, refusing to take effective action after discovering racial discrimination, refusing and failing to train employees in ways to avoid racial harassment, refusing to adopt an effective non-discrimination grievance procedure and actively discouraging the filing of complaints or racial harassment and retaliating against those employees who do file such complaints.

33. The action and inaction of the defendant as outlined herein has substantially interfered with the ability of the plaintiff to effectively perform his work and has discouraged Comer and other African-American employees from seeking advancement.

34. The above conduct constitutes illegal, intentional discrimination and retaliation prohibited by 42 U.S.C. § 2000 et seq.

35. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the Plaintiff.

SECOND CLAIM FOR RELIEF

Racially Hostile Environment in violation of the Reconstruction Civil Rights Act 42 U.S.C. § 1981

36. Defendants have maintained, fostered and tolerated a racially hostile environment at the Chicago Heights facility, allowing racial harassment to exist throughout the Chicago Heights facility and have failed to take prompt and effective remedial action to prevent such harassment from continuing. Defendants have a policy and practice of refusing to investigate

complaints of racial discrimination, refusing to take effective action after discovering racial discrimination, refusing and failing to train employees in ways to avoid racial harassment, refusing to adopt an effective non-discrimination grievance procedure and actively discouraging the filing of complaints or racial harassment and retaliating against those employees who do file such complaints.

37. The action and inaction of the defendant as outlined herein has substantially interfered with the ability of the plaintiff to effectively perform his work and have discouraged Plaintiff and other African-American employees from seeking advancement.

38. The above conduct constitutes illegal, intentional discrimination prohibited by 42 U.S.C. § 1981.

39. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the Plaintiff.

THIRD CLAIM FOR RELIEF

Retaliation Against Plaintiff Kenneth Comer in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.

40. The termination of Kenneth Comer's employment by defendant was in retaliation for Comer's opposing practices made unlawful by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-3(a).

41. As a result of defendant's retaliatory actions, Comer was forced to live without income for a substantial period of time, causing both physical and emotional hardship for he and his family.

FOURTH CLAIM FOR RELIEF

Discriminatory Termination of Plaintiff Kenneth Comer in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.

42. The termination of Kenneth Comer's employment by defendant was because of plaintiff's race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-3(a).

43. As a result of defendant's discriminatory actions, Comer was forced to live without income for a substantial period of time, causing both physical and emotional hardship for he and his family.

FIFTH CLAIM FOR RELIEF

Retaliation Against Plaintiff Kenneth Comer in violation of the Reconstruction Civil Rights Act, 42 U.S.C. § 1981.

44. The termination of Kenneth Comer's employment by defendant was in retaliation for Comer's engaging in activity protected by 42 U.S.C. § 1981.

SIXTH CLAIM FOR RELIEF

Discriminatory Termination Plaintiff Kenneth Comer in violation of the Reconstruction Civil Rights Act, 42 U.S.C. § 1981.

45. The termination of Kenneth Comer's employment by defendant was because of plaintiff's race 42 U.S.C. § 1981.

ALLEGATIONS REGARDING RELIEF

46 Plaintiff has no plain, adequate or complete remedy at law to redress the wrongs alleged herein and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiff is suffering and will continue to suffer irreparable injury from defendant's discriminatory acts and omissions.

47. Roadway's actions have caused and continue to cause plaintiff substantial losses in earnings, work experience and other employment benefits as well as emotional injury damages.

48. The acts taken by Roadway as set forth herein were taken maliciously, willfully and/or with reckless indifference to the rights of the plaintiff thus entitling plaintiff to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, intervening plaintiff respectfully requests that, after trial by jury, this court grant him relief as follows:

A. Granting injunctive relief against Defendant enjoining and permanently restraining Defendant from continuing to maintain a racially hostile environment;

B. Directing Defendant to take such immediate action as is necessary to ensure that the effects of the above unlawful employment practices are eliminated;

C. Granting Declaratory relief that the practices complained of herein are unlawful and violate 42 U.S.C. § 1981 and 42 U.S.C. § 2000 et seq.

D. Awarding Plaintiff punitive damages in an amount commensurate with Roadway's ability to pay and to deter future conduct;

E. Awarding Plaintiff compensatory damages for emotional injury damages, humiliation and any and all lost wages and/or benefits;

F. Awarding costs incurred herein, including reasonable attorneys' fees as authorized by 42 U.S.C. § 1988;

G. Award pre-judgment and post-judgment interest as provided by law; and

H. Award such other relief as this Court deems necessary and proper.

Respectfully submitted,

/s Jeffrey L. Taren

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