

CT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JERROLD GOLDBERG, KENNETH E.)
HULTEEN, GLENN GENTILE, and)
WILLIE JILES,)

Plaintiffs,)

v.)

DURHAM TRANSPORTATION d/b/a/)
DURHAM SCHOOL SERVICES,)
A SUBSIDIARY OF NATIONAL EXPRESS)
GROUP; and MADELINE COOLEY,)
INDIVIDUALLY,)

Defendants.)

No. 02 C 1125
Judge Milton I. Shadur
Magistrate Judge Nolan

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs in the above-captioned action have alleged that Defendants Durham Transportation d/b/a Durham School Services (“Durham”) and Madeline Cooley (“Cooley”) engaged in unlawful discrimination and harassment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 *et seq.* (“Title VII”), in their assignment of charters, routes and extra work to non-African-American employees employed at Durham’s Skokie, Illinois base between July 2001 and June 2002. Defendants Durham and Cooley have denied Plaintiffs’ allegations and affirmatively allege that no discrimination or harassment occurred.

After substantial discovery, the parties participated in a mediation for the purpose of attempting to settle their disputes. The mediation was successful. Plaintiffs and Defendants have agreed to a proposed Settlement Agreement as a full settlement of those disputes and this legal action. On November 6, 2004, the parties jointly filed a motion seeking Court approval of the proposed Settlement Agreement.

The Court finds that Defendants have satisfied this Court's Order with respect to mailing the Notice of Proposed Settlement of Class Action and Notice of Fairness Hearing to all Class Members in a timely manner. The Court further finds that the Class Members have been provided due and sufficient notice of the Proposed Settlement and the Fairness Hearing as required by due process and Rule 23 of the Federal Rules of Civil Procedure. The Court notes that no objections to the Proposed Settlement have been filed with the Court as of the date of this Order.

A hearing on the parties' Joint Motion seeking Court approval of the Proposed Settlement Agreement was conducted by the Court on December 8, 2004. During said hearing the Court instructed the parties to make various changes to the Proposed Settlement Agreement and the Notice of Proposed Settlement of Class Action and Notice of Fairness Hearing.

On December 23, 2004, the parties filed their Amended Settlement Agreement and Amended Notice of Proposed Settlement of Class Action and Notice of Fairness Hearing with the Court. The amended documents accurately incorporated the changes mandated by the Court on December 8, 2004. A copy of the Amended Settlement Agreement as filed is attached to the Parties' Joint Motion as Exhibit 1.

Following review of the entire record in this matter and a hearing on the parties' Joint Motion seeking Court approval of the Proposed Settlement Agreement on January 7, 2005, the Court issued its Order Preliminarily Approving Proposed Settlement and Settlement Agreement. Within said Order, the Court set deadlines for: (1) mailing the Notice of Proposed Settlement of Class Action and Notice of Fairness Hearing, as amended on December 23, 2004; and (2) filing objections and responses thereto; and scheduled the Fairness Hearing for March 23, 2005.

Solely for purposes of the settlement, Plaintiffs and Defendants have agreed that the settlement of this case should proceed as a Fed.R.Civ.Proc. 23(b)(2)/(b)(3) class action, as described below, so that this settlement will constitute a final and complete adjudication of the parties' and the Class Members' rights, liabilities, and obligations as set forth in the proposed Settlement Agreement, as amended on December 23, 2004.

BASED ON THE ABOVE STIPULATIONS, STATEMENTS OF COUNSEL FOR THE PARTIES AND THE ENTIRE RECORD BEFORE THE COURT, THE COURT FINDS AS FOLLOWS:

The parties have conditionally agreed to a proposed Settlement Agreement. It appears to the Court that the proposed Settlement Agreement is the result of extensive arm's-length negotiations between the parties after lengthy and extensive litigation, including very substantial formal and informal discovery and other exchanges of information and discussions. After reviewing the terms of the proposed Settlement Agreement, in the context of the record in this action and the controlling legal authority, the Court finds that the proposed Settlement Agreement is sufficiently reasonable, adequate and fair, and consistent with relevant federal and state law.

IT IS THEREFORE ORDERED THAT:

1. The proposed Settlement Agreement and the settlement it embodies are hereby **FINALLY APPROVED.**
2. The Class has been certified pursuant to Federal Rule of Civil Procedure 23(b)(2). No opt outs shall be allowed from the portions of the Settlement Agreement providing such equitable and declaratory relief. For the purposes of the Settlement Agreement and the monetary relief it provides, the Class has been certified pursuant to Federal Rule of Civil Procedure

23(b)(3) and consists of: all non-African-American bus drivers who worked out of Durham's Skokie base between July 2001 and June 2002 who received fewer routes, or fewer charters, and/or fewer extra work assignments because of Durham and Cooley's, allegedly discriminatory policies and actions, except for those persons who have previously opted out.

3. Should any reviewing court on direct appeal and/or on writ of certiorari to the Supreme Court of the United States from a direct appeal to the United States Court of Appeals for the Seventh Circuit refuse to approve the Settlement Agreement or require modifications to the Settlement Agreement, the Settlement Agreement shall be null and void, inadmissible and unusable in any future proceeding and the Settlement Agreement shall not be considered binding, unless Plaintiffs and Defendants each expressly and voluntarily approve, in writing, to any such modification by this Court or the reviewing court.

4. Should the Settlement Agreement be voided pursuant to its terms, or should the Settlement Agreement for any other reason be terminated, fail to become effective in accordance with its terms, or otherwise not consummated, the Settlement Agreement shall be null and void, inadmissible and unusable in any future proceeding and the Settlement Agreement shall not be considered binding.

5. Settlement Procedures.

a. Defendant Durham shall maintain the Settlement Fund for payment of claims of each Class Member who submits timely and properly completed Claim and Release forms.

b. Defendant Durham, not less than thirty-one (31) days or more than forty-one (41) days following the issuance of this Order, shall prepare and mail to each Class Member, at their last known address, a Class Member Packet containing the following: (1) Class Member

Proof of Claim Form (attached hereto as Attachment #1); (2) Class Member Agreement and Release (attached hereto as Attachment #2); (3) Notice of Instructions to Class Members (attached hereto as Attachment #3); and (4) a postage prepaid return envelope addressed to Robert D. Younger, McMahon, Berger, Hanna, Linihan, Cody & McCarthy, 2730 N. Ballas Road, Suite 200, St. Louis, MO 63131. Defendant Durham shall file with this Court and serve all parties with the appropriate Certification of Mailing said Class Member Packet.

c. Each Class Member shall have up to and including May 3, 2006, in which to return properly completed Class Member Proof of Claim and Class Member Agreement and Release forms.

d. Durham shall mail a settlement check to each individual Class Member who submits a timely and properly completed Class Member Proof of Claim form and a timely and properly completed Class Member Agreement and Release form within ten (10) days of receipt of said forms.

e. All unclaimed Funds remaining in the Settlement Fund as of May 16, 2006, shall be donated by Defendant Durham as a charitable contribution to Special Olympics no later than June 16, 2006. Certification of any such charitable donation shall be filed with this Court and served on all parties by Defendant Durham.

f. On or before January 23, 2006, Defendant Durham shall serve on Plaintiffs' attorneys the information detailed within ¶ 26 of the Settlement Agreement. Plaintiffs' attorneys shall have until February 2, 2006, to request, in writing, that a second Class Member Packet be sent to each Class Member who has not received a settlement check. Defendant Durham shall, if requested, mail second Class Member Packets on or before February 15, 2006.

g. Defendant Durham shall make all other payments required by the Settlement Agreement in a timely manner.

h. Defendant Durham shall pay the costs, if any, of administering the Settlement Fund, of mailing Class Member Packets and settlement checks necessary to accomplish full compliance with this Order.


6. It shall be the sole responsibility of each Class Member to notify Class Counsel if the Class Member changes his or her address. Failure of a Class Member to keep Class Counsel informed of his or her address may result in his or her request for monetary payment being denied.

7. This Court shall retain jurisdiction of Plaintiffs' cause of action during the duration of the implementation of the terms of this Order and the Settlement Agreement in its entirety solely for the purpose of entering all orders necessary to implement the relief provided herein and within the Settlement Agreement.

8. Should anyone challenge this Order through appeal or otherwise, all deadlines and times set forth herein as well as within the Settlement Agreement shall be tolled and shall not begin to run until the challenge is complete.

9. Pursuant to Rule 41 Federal Rules of Civil Procedure, all of Plaintiffs' claims, individual as well as class claims, are hereby dismissed with prejudice each party to bear its own costs. Attorney fees will be paid pursuant to the Settlement Agreement.

SO ORDERED, in Chicago, Illinois this 23 day of March, 2005.


UNITED STATES DISTRICT JUDGE
MILTON I. SHADUR

Copies to Counsel of Record

Attachment 1

CLASS MEMBER PROOF OF CLAIM FORM

Comes now [name] , being duly sworn and upon his/her oath, states as

follows:

1. My name is [name] .

2. My current address is [address] .

3. I am over the age of 18 and competent to provide the information herein.

4. I am not an African-American.

5. I was employed by Durham Transportation as a bus driver at its Skokie, Illinois base for some portion of the time period between July 2001 through June 2002.

6. I received the Notice informing me of the class action lawsuit styled Jerrold Goldberg, et al. v. Durham Transportation d/b/a Durham School Services, et al., Case No. 02 C 1125, pending in the United States District Court for the Northern District of Illinois, Eastern Division, on or about May 6, 2003.

7. I was aware of my right to request that I be excluded from the class and voluntarily chose to remain in the class.

8. I contend that between July 2001 and June 2002, I received fewer routes, or fewer charters, and/or fewer extra work assignments (or a combination of those things) because of Durham and Cooley's allegedly discriminatory policies and actions.

9. I will execute the Class Member Agreement and Release form and I am making a claim for a portion of the Settlement Fund.

I HEREBY SWEAR UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE
AND ACCURATE.

Date

Signature

THIS FORM MUST BE SIGNED, DATED AND RETURNED TO:

**Durham School Services
c/o McMahon, Berger, Hanna,
Linihan, Cody & McCarthy
2730 N. Ballas Road, Suite 200
St. Louis, MO 63131**

PRIOR TO [one year from mailing], 2005.

THE SUBMISSION OF LATE FORMS WILL VOID YOUR OPPORTUNITY FOR PAYMENT.

Attachment 2

CLASS MEMBER AGREEMENT AND RELEASE

THIS AGREEMENT AND RELEASE ("Agreement") is made and entered into this ____ day of _____, 200__, by and between _____, an individual, on behalf of herself/himself, her/his heirs, successors, assigns, agents, and attorneys (collectively referred to herein as "Releasor") and Durham Transportation d/b/a Durham School Services, a subsidiary of National Express Group, its subsidiaries, affiliates, parent or related corporations ("Durham") and Madeline Cooley ("Cooley") (collectively referred to herein as "Defendants").

WHEREAS, there is presently pending in the United States District Court for the Northern District of Illinois, Eastern Division, styled Jerrold Goldberg, et al. v. Durham Transportation d/b/a Durham School Services, et al., Case No. 02 C 1125;

WHEREAS it is the desire of the parties, among other things, to resolve all claims encompassed in the above-entitled litigation, as well as any and all claims which have been brought or which might have been brought by Releasor.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and the sufficiency of which hereby are acknowledged, the parties hereto agree as follows:

1. CONSIDERATION.

A. In consideration for this Release, Durham shall pay to Releasor eight hundred six dollars and forty-six cents (\$806.46) from the Settlement Fund pursuant to the "Settlement Agreement."

B. In consideration for this Release, Releasor agrees to provide and Durham and Cooley will accept the forbearance defined in Paragraph 2 below.

2. RELEASE. For and in consideration of the foregoing, Releasor does hereby and forever release, acquit, discharge, and hold harmless Durham, together with its past and present officers, directors, agents, employees, representatives, subsidiaries, divisions, successors, assigns, affiliated, related and/or parent corporations, and all past and present officers, directors, agents, shareholders, employees and representatives of each such affiliated, related or parent corporation, and Cooley from any and all claims or causes of action arising out of employment with Durham which are asserted or that could be asserted in the above cause of action, whether known or unknown, which allegedly occurred at any time in the past up to and including the date of execution of this Agreement.

3. CONFIDENTIALITY. Releasor is required to maintain confidentiality of the amount of the sum awarded. Such information may always be provided to Releasor's attorney, tax or financial advisor or members of Releasor's immediate family.

4. NO ADMISSION. Releasor acknowledges that the payment by Durham of the consideration is a settlement of a disputed claim; that neither the payment thereof, nor the

settlement of the Complaint is to be taken nor construed as an admission of guilt or liability on the part of Durham or Cooley or responsibility for alleged wrongdoing of any kind; and that Durham and Cooley deny all liability to Releasor for any claims which he or she may have asserted.

5. **FULL AGREEMENT.** This Agreement (combined with the Settlement Agreement entered by the parties in the Complaint) constitutes the entire agreement between the parties concerning the subject matters hereof and supersedes and replaces any and all other understandings, obligations, representations and/or agreements, whether written or oral, express or implied, between the parties. Neither this Agreement nor any of its terms may be amended, modified or waived except in writing duly executed by the parties hereto.

6. **GOVERNING LAW.** This Agreement shall be governed by and construed according to the laws of the State of Illinois.

7. **COMPLIANCE WITH LAW.** Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between any provision of this Agreement and any present or future statute, law, governmental regulation or ordinance contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event, the affected provisions of this Agreement shall be curtailed and restricted only to the extent necessary to bring them within legal requirements.

8. **REVIEW BY COUNSEL.** RELEASOR HEREBY ACKNOWLEDGES AND AGREES THAT HE OR SHE HAS READ THIS AGREEMENT; HAS REVIEWED IT WITH COUNSEL OR HAS ELECTED VOLUNTARILY NOT TO DO SO, HAS HAD A REASONABLE PERIOD FOR DELIBERATION AND FULLY UNDERSTANDS AND KNOWINGLY ACCEPTS ALL OF ITS TERMS.

Name

Date

THIS FORM MUST BE SIGNED, DATED AND RETURNED TO:

**Durham School Services
c/o McMahan, Berger, Hanna,
Linihan, Cody & McCarthy
2730 N. Ballas Road, Suite 200
St. Louis, MO 63131**

PRIOR TO _____, 200__.

THE SUBMISSION OF LATE FORMS WILL VOID YOUR OPPORTUNITY FOR PAYMENT.

ATTACHMENT 2

Attachment 3

NOTICE AND INSTRUCTIONS

The United States District Court, Northern District of Illinois, the Honorable Milton I. Shadur, has approved the Class Action Settlement Agreement reached in the matter of Goldberg, et al. v. Durham Transportation d/b/a Durham School Services, et al., Case No. 02 C 1125.

Pursuant to the Settlement Agreement you are being provided the following documents:

1. Class Member Proof of Claim form; and
2. Class Member Agreement and Release form.

If you desire to receive your portion of the class action settlement funds, you must complete and return both forms no later than May 3, 2006.

Your fully completed forms must be received by Robert D. Younger, McMahon, Berger, Hanna, Linihan, Cody & McCarthy, 2730 N. Ballas Road, Suite 200, St. Louis, MO 63131, on or before May 3, 2006. A postage paid envelope is enclosed for your convenience.

Failure to submit these fully completed forms in a timely manner will void your opportunity for payment.

Any questions should be directed to: Class Counsel Aaron B. Maduff, Maduff & Maduff, 1 E. Wacker Drive, Suite 2122, Chicago, IL 60601, (312) 276-9000; or William W. Thomas, Futterman & Howard, 122 S. Michigan Avenue, Suite 1850, Chicago, IL 60603, (312) 427-3600.

DO NOT DIRECT ANY QUESTIONS TO THE COURT

ATTACHMENT 3