

In the United States District Court
for the Southern District of Indiana
Indianapolis Division

United States of America,

Civil Action No. _____

Plaintiff,

v.

Indiana Department of Correction,

Defendant.

CONSENT DECREE

This matter is before the Court for entry of this judgment by consent of the parties to effectuate a compromise and settlement of all claims. After review and consideration, the Court believes that entry of this judgment is in the interest of justice.

1. Plaintiff, United States of America ("United States"), commenced the above entitled action in the United States District Court for the Southern District of Indiana, Indianapolis Division, alleging that the Defendant Indiana Department of Correction ("Indiana DOC"), violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by (a) instead of allowing James Lowell AmRhein ("AmRhein") reemployment rights and benefits and other employment benefits protected by USERRA when he returned from active military training in August 2003, suspending him and terminating him, and (b) failing and refusing to take appropriate action to remedy the effects of those violations, including failing and refusing to pay AmRhein for the period he was not allowed to work due to his termination, *i.e.*, from on or about October 2, 2003 to on or about December 2, 2003, or to give AmRhein full seniority and related benefits that he lost as a result of his termination.
2. As a result of settlement discussions, the United States and the Indiana DOC have resolved their differences and have agreed that this action should be settled by entry of this Consent Decree. It is the intent of the parties that this Consent Decree be a final and binding settlement in full disposition of all claims alleged in the Complaint filed in this case.

STIPULATED FACTS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Southern District of Indiana (Indianapolis Division) over the subject matter of this action and of the parties to this case for the purpose of entering this Decree and, if necessary, enforcing this Decree.
4. Venue is proper in this district for purposes of this Decree and any proceedings related to this Decree only. The Indiana DOC agrees that all statutory conditions precedent to the institution of this lawsuit have been fulfilled.

FINDINGS

5. Having examined the terms and provisions of the Consent Decree and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

- o The Court has jurisdiction over the subject matter of the action and the parties to this action.
- o The terms and provisions of this Consent Decree are fair, reasonable, and just. The rights of the Indiana DOC and the United States are protected adequately by this Decree.
- o This Consent Decree conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person. The entry of this Consent Decree will further the objectives of the USERRA and other applicable law and will be in the best interests of the parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-ADMISSION

6. This Decree, being entered with the consent of the United States and the Indiana DOC, shall not constitute an adjudication or finding on the merits of the case and shall not be construed as an admission by the Indiana DOC of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities.

NON-RETALIATION

7. The Indiana DOC shall not take any action against any person which constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENTS

8. The Indiana DOC shall compensate AmRhein for the loss of monetary compensation, seniority and related benefits that AmRhein incurred as a result of not being employed continuously by the Indiana DOC from the time he returned from military training in August 2003 until on or about December 2, 2003, when he was allowed reemployment after his suspension and termination in 2003.

To effectuate this relief, the Indiana DOC shall, within twenty (20) days after the date of the entry of this Decree: (a) submit, via overnight delivery service, to the United States a certified check in care of David P. Avila, Employment Litigation Section, Civil Rights Division, Room 4030, Patrick Henry Building, U.S. Department of Justice, 601 D Street, N.W., Washington, D.C. 20004, made payable to the United States Department of Justice, in the amount of \$4,649.31, which shall consist of \$4,326.08, for AmRhein's lost wages from October 2, 2003, to December 2, 2003, and \$323.23 in interest on those lost wages (the United States will, in turn, pay this amount to AmRhein in accordance with 38 U.S.C. § 4323 (d)(2)(B)); (b) credit AmRhein with any lost seniority and related benefits for the period from August 27, 2003 to December 2, 2003; (c) remove from its records AmRhein's 30 day suspension that commenced August 27, 2003, and AmRhein's subsequent termination of October 2, 2003; and (d) provide the United States, in care of David P. Avila, Room 4030, Patrick Henry Building, 950 Pennsylvania Avenue, N.W., Washington, DC 20530, written information that it has accomplished the requirements of 8(b) and 8(c) above.

MISCELLANEOUS

9. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

10. This Consent Decree constitutes the entry of final judgment, within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in this action. This Court retains jurisdiction over this matter for a period of six (6) months for the purpose of interpreting and enforcing this judgment should that become necessary. After six (6) months, this Decree shall expire of its own accord.

11. This Consent Decree constitutes the entire agreement and commitments of the parties.

EFFECTIVE DATE

12. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

UNITED STATES OF AMERICA

By _____
DAVID P. AVILA (CA Bar No. 227913)
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4030
Washington, DC 20530
Telephone: (202) 353-3638
Facsimile: (202) 514-1005

INDIANA DEPARTMENT OF CORRECTION

By _____
ROBERT D. BUGHER
Chief Legal Counsel for the Indiana Department of Correction
Indiana Government Center South - Room E334
302 West Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-5740
Facsimile: (317) 232-6798

RICHARD M. BRAMER (IN Bar No. 15989-77)
Deputy Attorney General
Indiana Government Center South - Fifth Floor
302 West Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6333
COUNSEL for INDIANA DEPARTMENT OF CORRECTION

IT IS SO ORDERED this _____ day of _____, 2005.

JUDGE, United States District Court
Southern District of Indiana

Distribution:

DAVID P. AVILA (CA Bar No. 227913)
Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4030
Washington, DC 20530

ROBERT D. BUGHER
Chief Legal Counsel for the Indiana Department of Correction
Indiana Government Center South - Room E334
302 West Washington Street
Indianapolis, IN 46204

RICHARD M. BRAMER (IN Bar No. 15989-77)
Deputy Attorney General
Indiana Government Center South - Fifth Floor
302 West Washington Street
Indianapolis, IN 46204