

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

2005 JUN 29 AM 9:41

LORETTA G. WHYTE
CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,
Plaintiff**

versus

**THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,
Defendant**

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§
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§
§
§

**CIVIL ACTION:
SECTION:
JUDGE:**

05-2668

JURY TRIAL DEMANDED

SECT. RMAG.5

**MAG. NUMBER:
MAGISTRATE:**

COMPLAINT AND JURY DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 ("Title VII" or the "statute"), and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices on the basis of race (Black) and retaliation, and to provide appropriate relief to the following individuals, as well as any others in like and related circumstances: (1) Thomas D. Turner ("Turner"); (2) Jesse J. Frank ("Frank"); (3) Clarence Cargo ("Cargo"); (4) Lester Thomas ("Thomas"); (5) Donald McNeal ("McNeal"); and (6) Roberta Brown ("Brown") (sometimes hereinafter referred to collectively as the "Identified Aggrieved Parties"). The Commission alleges that Defendant discriminated against

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Process _____
X Dkt _____
CtRm:Don _____
Doc. No _____

the Identified Aggrieved Parties on the basis of their race (Black) through unlawful disciplinary actions. The Commission also alleges that Defendant unlawfully retaliated against Clarence Cargo and Roberta Brown for engaging in activity protected by Title VII of the Civil Rights Act of 1964, as amended, in violation of that statute. The Commission's allegations are discussed with greater particularity in paragraph 7 below.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. Section 1981a.

2. Most of the employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the Eastern District of Louisiana. Identified Aggrieved Parties Turner, Frank, Cargo, and Thomas worked for Defendant in New Orleans, Louisiana at the time they suffered the employment actions which are the subject of this lawsuit.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. Section 20003-5(f)(1) and (3).

4. At all relevant times, Defendant, The Kansas City Southern Railway Company (the "Employer" or "Defendant"), has continuously been a Missouri Corporation doing business in the State of Louisiana and the City of New Orleans, and has continuously had at least 15 employees.

Defendant was the employer of all of the Identified Aggrieved Parties at the time of the employment actions challenged herein.

5. At all relevant times, Defendant has continuously been an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

STATEMENT OF CLAIMS

6. More than thirty days prior to the institution of this lawsuit, the Identified Aggrieved Parties filed charges with the Commission alleging violations of Title VII by the Employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

7. Since at least October of 2002, Defendant has engaged in unlawful employment practices in New Orleans, Louisiana, in Shreveport, Louisiana, and Lake Charles, Louisiana, in violation of Section 703(a) and 704(a) of Title VII, 42 U.S.C. § 2000e-2(a) and §2000e-3(a).

Specifically:

- A. **TURNER.** On or about October 23, 2002, Defendant terminated the employment of Turner on the basis of his race (Black), in violation of Title VII.
- B. **FRANK.** On or about February 5, 2003, Defendant suspended Frank for 90 days on the basis of his race (Black), in violation of Title VII.
- C. **CARGO.** On or about May 29, 2003, Defendant suspended Cargo for 45 days on the basis of his race (Black), and/or in retaliation for engaging in protected activity, in violation of Title VII. On or about November 4, 2003, Defendant suspended Cargo because of his race and/or in retaliation for engaging in activity protected by Title VII. On or about January 23, 2004, Defendant terminated the employment of Cargo on the basis of his race, and/or in retaliation for engaging in protected activity, in violation of Title VII.
- D. **THOMAS.** On or about March 12, 2004, Defendant terminated the employment of Thomas on the basis of his race (Black), in violation of Title VII.

E. **MCNEAL.** On or about June 24, 2003, Defendant terminated the employment of McNeal on the basis of his race (Black), in violation of Title VII.

F. **BROWN.** On or about November 25, 2003, Defendant suspended Brown for 30 days on the basis of race (Black) and/or in retaliation for engaging in protected activity, thereby violating Title VII. On or about January 16, 2004, Defendant terminated the employment of Brown in retaliation for engaging in protected activity, in violation of Title VII.

8. The effects of the practices complained of in paragraph 7 above have been to deprive the Identified Aggrieved Parties, and all persons in like or related circumstances, of equal employment opportunities and to otherwise adversely affect their status as employees, because of race and opposition to practices made unlawful under Title VII of the Civil Rights Act of 1964, as amended.

9. The unlawful employment practices complained of in paragraph 7 above were intentional.

10. The unlawful employment practices complained of in paragraph 7 were done with malice or with reckless indifference to the federally protected rights of the Identified Aggrieved Parties.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in racial discrimination, retaliation, and any other employment practices which discriminate on the basis of race and retaliation.

B. Order Defendant to institute and carry out policies, practices, and programs which provide equal employment opportunities for Black persons and for employees who oppose unlawful employment practices, and which eradicate the effects of its past and present unlawful employment practices, including but not limited to training of personnel concerning Equal Employment Opportunity law.

C. Order Defendant to make whole the Identified Aggrieved Parties, and all those individuals in like or related situations, by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices including but not limited to compensatory and punitive damages.

D. Order Defendant to make whole the Identified Aggrieved Parties, and all those individuals in like or related situations, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph 7, including but not limited to job search expenses in amounts to be determined at trial.

E. Order Defendant to make whole the Identified Aggrieved Parties, and all those individuals in like or related situations, by providing compensation for past and future nonpecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including emotional pain, suffering, inconvenience, loss of enjoyment of life and humiliation, in amounts to be determined at trial.

F. Order Defendant to pay the Identified Aggrieved Parties, and all those individuals in like or related situations, punitive damages for its malicious and reckless conduct described in paragraph 7 above, in amounts to be determined at trial.

G. Grant such further relief as the Court deems necessary and proper in the public interest.

H. Award the Commission its costs of this action.

JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

ERIC S. DREIBAND

General Counsel

No Bar Roll Number Assigned

JAMES L. LEE

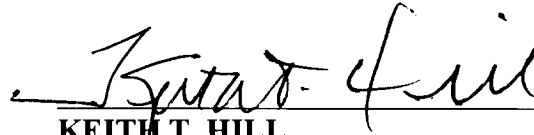
Deputy General Counsel

No Bar Roll Number Assigned

GWENDOLYN YOUNG REAMS

Associate General Counsel

No Bar Roll Number Assigned



KEITH T. HILL

Regional Attorney

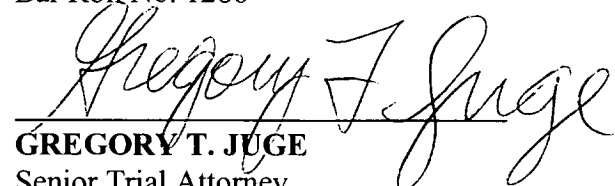
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COUNSEL FOR PLAINTIFF,

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**REGISTERED AGENT FOR
SERVICE OF PROCESS:**

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BATON ROUGE, LA 70809**

CIVIL COVER SHEET

05-2668

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Equal Employment Opportunity Commission
(b) County of Residence of First Listed Plaintiff
(c) Attorney's (Firm Name, Address, and Telephone Number)
N. Eleanor Graham, EEOC, 701 Loyola Avenue, New Orleans, La 70113 (504) 589-6817

DEFENDANTS
The Kansas City Southern Railway Company
La Paul
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)
SECT. RMAG. 5

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
X 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Title VII of the Civil Rights Act of 1974 and Title I of the Civil Rights Act of 1991
Brief description of cause: Title VII - 2000c5(f)(1)

VII. REQUESTED IN COMPLAINT:
X CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: x Yes [] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: 6/28/05
SIGNATURE OF ATTORNEY OF RECORD: N. Eleanor Graham

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE