

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

2005 JUL 27 PH 2: 52

*g* LORETTA G. WHYTE  
CLERK

EQUAL EMPLOYMENT OPPORTUNITY )  
COMMISSION, )

Plaintiff )

v. )

THE KANSAS CITY SOUTHERN )  
RAILWAY COMPANY, )  
Defendant )

CIVIL ACTION NO.  
05-2668

SECTION R

MAG. 5

AMENDED COMPLAINT AND JURY DEMAND

NATURE OF THE ACTION

This action is brought under Title VII of the Civil Rights Act of 1964, as amended, 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"); and (5) Roberta Brown ("Brown") (sometimes hereinafter referred to collectively as the "Identified Aggrieved Parties"). The Plaintiff Equal Employment Opportunity Commission ("EEOC" or "Commission") alleges that Defendant discriminated against 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.

\_\_\_ Fee \_\_\_\_\_  
\_\_\_ Process \_\_\_\_\_  
 Dktd \_\_\_\_\_  
\_\_\_ CtRmDep \_\_\_\_\_  
\_\_\_ Doc. No. \_\_\_\_\_

**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 Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

2. The employment practices alleged to be unlawful were at all material times 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. The EEOC 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 Sections 706(f)(1) and (3) of Title VII, 42 U.S.C. § 2000e-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 continuously has been an employer engaged in an industry affecting commerce under Sections 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 engaged in unlawful employment practices in New Orleans, Louisiana and in Shreveport, Louisiana in violation of Sections 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 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. **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 has 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 discriminatory practices 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 above were done with malice or reckless indifference to the federally protected rights of the Identified Aggrieved Parties and all persons in like or related circumstances.

**PRAYER FOR RELIEF**

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining the Defendant, its officers, managers, successors, assigns, and all persons in active concert or participation with it, from engaging in racial discrimination by unlawful disciplinary actions, discriminatory 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.

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 non-pecuniary losses resulting from the unlawful practices complained of in paragraph 7 above, including compensatory damages of 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.

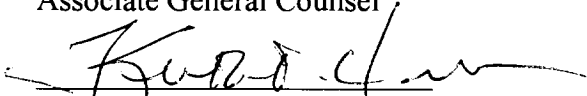
H. Award the Commission its costs of this action.

**JURY TRIAL DEMAND**

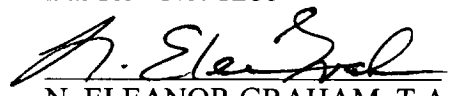
The Commission requests a jury trial on all questions of fact raised by its complaint.

ERIC S. DREIBAND  
General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

  
KEITH T. HILL  
Regional Attorney

MICHELLE T. BUTLER  
Supervisory Trial Attorney  
Bar Roll No. 1286

  
N. ELEANOR GRAHAM, T.A.  
Senior Trial Attorney  
Bar Roll Number 16946

GREGORY T. JUGE  
Senior Trial Attorney  
Bar Roll Number 20890  
Senior Trial Attorney

**U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**  
New Orleans District Office  
701 Loyola Avenue, Suite 600  
New Orleans, Louisiana 70113  
Telephone: (504) 589-3844 (Hill)  
(504) 589-6942 (Butler)  
(504) 589-6922 (Graham)  
(504) 589-2663 (Juge)

Facsimile: (504) 589-2805  
**COUNSEL FOR PLAINTIFF, U. S.  
EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION**

**REGISTERED AGENT FOR SERVICE OF PROCESS:**

**CT CORPORATION SYSTEM  
8550 UNITED PLAZA BLVD.  
BATON ROUGE, LA 70809**