UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,	)	
Plaintiff,	)	
and	)	
KARL SMITH, DeLEON PIGGEE, FRANK EARL, III, TORRIS WILLIAMS, JOSEPH JONES, and DAVID BELL,	)	Cause No. 4:03CV01393CEJ
Plaintiff-Intervenors,	)	
v.	)	
FEDEX FREIGHT EAST, INC., formerly known as AMERICAN FREIGHTWAYS, INC.,	)	
Defendant.	)	**JURY TRIAL REQUESTED**

COMPLAINT

COUNT I

Race Discrimination in Violation of 42 U.S.C. Section 1981

Come Now plaintiff-intervenors Karl Smith, DeLeon Piggee, Frank Earl, III, Torris Williams, Joseph Jones, and David Bell, by and through their attorneys, and for Count I of their Complaint against defendant Fedex Freight East, Inc. (hereinafter "Fedex"), state as follows:

PARTIES TO COUNT I

1. Plaintiff-intervenor Karl Smith is an African-American male citizen. At all times relevant herein, plaintiff-intervenor Smith resided in St. Francis County, Missouri.

2. Plaintiff-intervenor DeLeon Piggee is an African-American male citizen. At all

times relevant herein, plaintiff-intervenor Piggee resided in St. Louis County, Missouri.

3. Plaintiff-intervenor Frank Earl, III is an African-American male citizen. At all times relevant herein, plaintiff-intervenor Earl resided in St. Louis County, Missouri.

4. Plaintiff-intervenor Torris Williams is an African-American male citizen. At all times relevant herein, plaintiff-intervenor Williams resided in St. Louis County, Missouri.

5. Plaintiff-intervenor Joseph Jones is an African-American male citizen. At all times relevant herein, plaintiff-intervenor Jones resided in East St. Louis, Illinois.

6. Plaintiff-intervenor David Bell is an African-American male citizen. At all times relevant herein, plaintiff-intervenor Bell resided in Lovejoy, Illinois.

7. At all times relevant herein, defendant Fedex is an Arkansas corporation doing business in the Eastern District of Missouri, including St. Charles County, St. Louis County, and the City of St. Louis, Missouri, and defendant maintains an office in St. Charles, Missouri.

8. Defendant Fedex formerly did business in the State of Missouri, including the area encompassed by the Eastern District of Missouri, as "American Freightways, Inc."

JURISDICTION AND VENUE

9. Jurisdiction of this Court for Count I is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, in that the claims presented herein present a federal question of original jurisdiction under the provisions of 42 U.S.C. § 1981.

10. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, in that defendant resides in the Eastern District of Missouri and a substantial part of the events or omissions giving rise to plaintiffs' claims occurred in the Eastern District of Missouri.

FACTS AND CLAIMS COMMON TO ALL PLAINTIFF-INTERVENORS
(HOSTILE RACIAL ENVIRONMENT)

11. At all times relevant herein, there were no African-Americans employed by defendant at its St. Charles, Missouri facility who were supervisors or managers.

12. During plaintiff-intervenors' employment, plaintiff-intervenors were subjected to racial harassment and a racially hostile work environment, including but not limited to:

a. Racial graffiti painted on the bathroom walls of defendant's facility, including but not limited to "niggers" and "niggers are lazy." Such racial graffiti repeatedly appeared on the bathroom walls, even after being painted over.

b. "KKK" written on two crates from a trailer that arrived from another terminal of defendant;

c. Swastika symbols written or painted on the inside of defendant's trailers and on crates unloaded from defendant's trailers;

d. Use of racial epithets and racial slurs by white Operations Manager Ed Laux, such as referring to plaintiff-intervenor Smith as "that lazy jigaboo;"

e. Regular use of racial epithets and racial slurs by white Operations Supervisor Barry Trout, who regularly referred to African-Americans as "coons," "baboons," and other racial terms;

f. The statement "You guys are pathetic, living from pay check to pay check," made by Trout when Trout handed plaintiff-intervenor Smith his pay check;

g. Use of the term "nigger-rig" by two white dock workers;

h. Racial statements made by a white dock worker, including the statement "I don't

have anything against black people, I think everyone should own one;"

i. A statement from a white driver that plaintiff-intervenor Smith was "not smart enough" to learn how to operate the computer;

j. The statement made by a white employee that he wanted "one of his own kind" to review safety and hazardous material issues rather than have them done by plaintiff-intervenor Jones, the employee in charge of such issues;

k. A question to plaintiff-intervenor Smith from a white driver that asked if his parole officer knew if plaintiff was "out;"

l. White managers and supervisors regularly and routinely treated plaintiff-intervenors with hostility, disdain, disrespect, and animosity, and did not do so with regard to similarly situated white employees.

13. Each plaintiff-intervenor either saw the racial graffiti on the bathroom walls and on the crates or trailers or learned about this racial graffiti, and each plaintiff-intervenor either heard one or more of the racial epithets and racial slurs or learned that the above mentioned white employees had made them.

14. Each plaintiff-intervenor found the aforesaid racial graffiti and racial epithets to be racially offensive and to be objectively and subjectively demonstrative of a racially hostile work environment.

15. Plaintiff-intervenors complained to management and to Human Resources about the racial harassment and racially hostile work environment, but defendant did not take timely and effective corrective action to end the racial harassment and racially hostile work environment.

FACTS AND CLAIMS COMMON TO PLAINTIFF-INTERVENORS

SMITH, PIGGEE,WILLIAMS, EARL, AND JONES
(PART-TIME TO FULL-TIME EMPLOYMENT AND DISPARATE TREATMENT)

16. Plaintiff-intervenor Smith was gainfully employed by defendant as a dock worker from August 1998 to December 2001. Plaintiff-intervenor Smith was hired as a part-time dock worker and became a full-time dock worker in March 1999. From December 2001 to the present, plaintiff-intervenor Smith has been on disability leave.

17. Plaintiff-intervenor Piggee was employed by defendant from October 1998 to approximately May 2002. Plaintiff-intervenor Piggee was hired as a part-time dock worker and became a full-time dock worker in March 1999.

18. Plaintiff-intervenor Williams has been employed by defendant from November 1999 to the present. Plaintiff-intervenor Williams was hired as a part-time dock worker and became a full-time dock worker in March 2000.

19. Plaintiff-intervenor Earl has been employed by defendant from February 2000 to the present. Plaintiff-intervenor Earl was hired as a part-time dock worker and became a full-time dock worker in May 2000.

20. Plaintiff-intervenor Jones was employed by defendant from September 1999 to approximately November 20, 2001. Plaintiff-intervenor Jones was hired as a part-time dock hand and became a full-time dock hand in March 2000.

21. Whites hired by defendant as part-time dock workers were given full-time dock worker status much sooner or at a much faster rate than were plaintiffs-intervenors Smith, Piggee, Williams, Earl, Jones, and other African-American employees.

22. The above disparate treatment of plaintiff-intervenors by defendant was because of

their race, and it resulted in significant lost wages and the denial of equal employment opportunities for plaintiff-intervenors Smith, Piggee, Williams, Earl, and Jones.

23. During plaintiff-intervenors' employment as dock workers, defendant distributed the freight shipments and manifests along racial lines, and/or allowed similarly situated white dock works to receive easier dock work, as set forth below:

a. similarly situated white employees primarily unloaded regular freight that was on pallets or was in bulk;

b. plaintiff-intervenors were regularly assigned to unload trailers containing non-palleted or non-bulk hand freight, the most difficult, strenuous, and labor-intensive goods or materials brought into defendant's terminal, such as goods or materials from Hallmark and Kimberly Clark;

c. further, in instances where similarly situated white dock workers obtained easier regular freight jobs and discovered that the pallets or goods in the trailer were in disarray or turned over, defendant allowed the white employees to return the manifest and obtain an easier assignment and plaintiff-intervenors or other African-American employees were assigned to handle these freight shipments.

24. Similarly situated white dock workers were not assigned to unload the difficult shipments with the same frequency or regularity as were plaintiff-intervenors, and these similarly situated white dock workers were given easier dock work on a regular or frequent basis.

25. Because of the disparate work assignments, as set forth above, plaintiff-intervenors worked harder and for longer hours than did similarly situated white employees. Plaintiff-intervenors were not paid overtime or otherwise compensated for the additional hours (beyond

eight hours) that it took to complete the unloading and preparation of the difficult trailers and goods described above.

26. Defendant had established "production ratings" for each dock worker, and these ratings were based on the number of pounds of goods or materials handled per hour. The more difficult goods and material took much longer to handle compared to the palleted and bulk shipped goods and material.

27. Because of the disparate work assignments, as set forth above, plaintiff-intervenors' production rating dropped or declined relative to the similarly situated white dock workers. The production rating of a dock worker impacted on his performance evaluation and continued employment and/or employment opportunities.

28. The disparate treatment of plaintiffs-intervenors Smith, Piggee, Williams, Earl, Jones, and other African-American employees with regard to work assignments on the dock, set forth above, was racially based and was a denial of equal employment opportunities for plaintiff-intervenors and other African-American employees.

29. During plaintiff-intervenors' employment as dock workers, similarly situated white employees were allowed longer breaks and lunch time than were plaintiffs-intervenors Smith, Piggee, Williams, Earl, and Jones.

30. During plaintiff-intervenors' employment as dock workers, defendant assigned them to cleaning up and sweeping the dock area or a more regular or frequent basis than similarly situated white employees.

31. During plaintiff-intervenors' employment as dock workers, defendant scrutinized and monitored their movements, discussions, and work while not engaging in such conduct with

regard to similarly situated white employees.

32. During plaintiff-intervenors' employment as dock workers, defendant limited the number of computer training classes and hours of computer training given to plaintiff-intervenors while defendant provided significantly more computer classes and hours of computer training to similarly situated white employees.

33. During plaintiff-intervenors' employment as dock workers, defendant did not provide training to plaintiff-intervenors in office and related work, such as preparing bills of lading, dock stands, and board operation for strip and load zones. Defendant, however, provided these types of training to similarly situated white employees.

34. The above training in computer skills and other operations or skills was important for advancement and/or job placement to dispatcher and other positions in the company. White employees who received the computer and other training described above were placed into dock stand and dispatch positions as a result of receiving the prior training, while plaintiff-intervenors were denied such employment opportunities.

35. The disparate treatment of plaintiff-intervenors with regard to computer and other training, and the discrimination in job placement and advancement was based on plaintiff-intervenors' race and defendant's actions denied equal employment opportunities to plaintiff-intervenors.

36. During plaintiff-intervenors' employment as dock workers, similarly situated white employees were given greater leniency than were plaintiff-intervenors with regard to being granted time off from work, being tardy, and in receiving reprimands and/or disciplines for attendance.

FACTS AND CLAIMS COMMON TO PLAINTIFFS-INTERVENORS SMITH, PIGGEE, AND WILLIAMS (CITY DRIVER POSITION)

37. Prior to April or May 2000, defendant had a driver training program for employees who desired to become eligible for a City Driver position. To receive the driver training the employee had to sign his name on the sign-in sheet located next to the time clock or in the break room.

38. The above driver training program required the employee to perform forty (40) hours of "hostling," ride and/or drive a city route for one to two weeks with a City Driver, and to pass the Missouri Department of Transportation test and obtain a Commercial Driver's Licence ("CDL"). "Hostling" is the activity of moving trailers in defendant's yard and backing-up the truck to the dock for loading and unloading.

39. Plaintiff-intervenor Williams had a military license to drive a truck and had experience as a truck driver when hired by defendant, and plaintiff-intervenor Williams provided defendant with this information on his job application.

40. Despite the certification and prior truck driving experience possessed by plaintiff-intervenor Williams, defendant ignored this information and insisted that he take and complete the training program as the precondition to becoming eligible to be considered for a City Driver position.

41. Defendant allowed similarly situated white employees with and without prior driving certification to take their DOT test without having to participate in defendant's training program and/or without having to complete it. Defendant even took similarly situated white employees to the DOT testing center to take their test to obtain their CDL.

42. Plaintiff-intervenors Smith, Piggee, and Williams signed up and applied for training to become a City Driver under defendant's driver training program.

43. Defendant took actions against plaintiff-intervenors Smith, Piggee, and Williams to delay, impede, and/or prevent plaintiffs-intervenors from completing the driver training program and to prevent their promotion to a City Driver position, including but not limited to:

a. Not allowing plaintiff-intervenors to perform hostling, and/or taking plaintiff-intervenors off hostling training and ordering them to work the dock instead, while allowing white employees to accumulate sufficient hours hostling within two weeks or less;

b. Allowing white employees to hostle on the clock and paying them for the time spent hostling, while requiring plaintiff-intervenors hostle on their own time without pay;

c. Providing trainers for white employees' hostling activity, while not providing trainers to plaintiff-intervenors;

d. Not crediting or accepting the hostling hours accumulated by plaintiff-intervenors as part of the training time required in the revised training program announced in early 2000.

44. As a result of defendant's actions prior to April or May 2000, plaintiff-intervenors Smith, Piggee, and Williams did not obtain the forty (40) hours of hostling training required by defendant before being allowed to take the CDL test and to thereafter become eligible for promotion to a City Driver position, while similarly situated white employees received the forty (40) hours of hostling training required to take their CDL test and to thereafter become eligible

for promotion to a City Driver position, or defendant waived the full forty (40) hours of hostling for similarly situated white employees as a precondition to taking the CDL test while not doing so for plaintiff-intervenors.

45. Defendant treated plaintiff-intervenors Smith, Piggee, and Williams in the above disparate manner because of plaintiff-intervenors' race, and defendant's actions denied equal employment opportunities to plaintiff-intervenors.

FACTS AND CLAIMS COMMON TO PLAINTIFF-INTERVENORS SMITH, PIGGEE, WILLIAMS, AND EARL (DOCK TO DRIVER PROGRAM)

46. Sometime between March and May 2000, defendant began a driver training program called "Dock to Driver ("DTD"). The DTD program required that employees who desired driver training attend nine (9) weeks of classroom and driver instruction that was provided by existing company drivers, to pass the DOT test, and obtain a Class "A" CDL. Meeting all these requirements enabled the employee to be eligible to apply for a City Driver position.

47. Defendant told plaintiff-intervenors Smith and Piggee that the DTD training would be offered based on seniority, and defendant represented to plaintiff-intervenors Smith and Piggee that they would be enrolled in the first DTD class offered.

48. Plaintiff-intervenor Earl had a class "A" CDL and ten (10) months of truck driving experience prior to being hired by defendant.

49. Plaintiff-intervenor Williams had a military license to drive a truck and had experience as a truck driver when hired by defendant, and plaintiff-intervenor Williams provided defendant with this information on his job application.

50. Plaintiff-intervenors Smith, Piggee, Williams, and Earl signed up for defendant's

DTD program.

51. Contrary to defendant's representations to plaintiff-intervenors Smith and Piggee, defendants did not allow plaintiff-intervenors Smith and Piggee to enroll in or participate in the first DTD class offered, and defendant gave their spots in the first DTD class to similarly situated white employees who had less seniority than plaintiff-intervenors. As a result of defendant's actions, plaintiff-intervenors Smith and Piggee had to wait between seven (7) and nine (9) months to obtain their training under the DTD program.

52. Despite the certifications and prior truck driving experience possessed by plaintiff-intervenors Earl and Williams, defendant ignored this information and insisted that plaintiff-intervenors take and complete the DTD program as the precondition to becoming eligible to be considered for a City Driver position.

53. Defendant allowed similarly situated white employees with prior driving experience or certification to take their DOT test without having to participate in defendant's DTD program and/or without having to complete it and participate in it only for a short time.

54. Defendant took actions against plaintiff-intervenors Smith, Piggee, Williams, and Earl to delay, impede, and/or prevent them from completing the DTD program, including but not limited to:

a. Defendant gave training to similarly situated white employees with less seniority than plaintiff-intervenors before such training was given to plaintiff-intervenors Smith, Piggee, Williams, and Earl;

b. Defendant allowed white participants to obtain on the clock training given in classes conducted by company drivers, but made plaintiff-intervenors Smith,

Piggee, Williams, and Earl obtain at least some of their training on their own time;

c. Defendant did not allow plaintiff-intervenors the same amount of weekly class and training time as similarly situated white employees.

55. As a result of the foregoing, similarly situated white participants completed their training sooner than plaintiff-intervenors Smith, Piggee, Williams, and Earl, obtained their CDL class "A" licence before plaintiff-intervenors, and became City Drivers for defendant before plaintiff-intervenors.

56. Defendant treated plaintiff-intervenors in the disparate manner described above because of their race, and defendant's actions denied equal employment opportunities to plaintiff-intervenors.

SPECIFIC FACTS AND CLAIMS ALLEGED BY PLAINTIFF-INTERVENOR SMITH

57. Defendant did not allow plaintiff-intervenor Smith to complete his training in the program in which he participated prior to implementation of the DTD program, and made him start anew with his training in the DTD program, without any credit or consideration for his previous training.

58. After plaintiff-intervenor Smith competed the DTD program and obtained his class "A" CDL, defendant failed and refused to place him in a City Driver position, and similarly situated white employees were placed in such positions.

59. In April-June 2000, plaintiff-intervenor Smith became aware of one or more opening(s) for the position of dock operations supervisor. Plaintiff-intervenor Smith was qualified for the dock operations supervisor position and he applied for the open dock operations supervisor position. Defendant did not post the open position or positions.

60. On or about June 12, 2000, defendant hired a white employee to fill an open dock operations supervisor position. This white employee had less seniority, less experience, and was less qualified than plaintiff-intervenor Smith for the dock operations supervisor position. Plaintiff was not even given an interview after submitting his application.

61. On information and belief, defendant had other open dock operations supervisory positions that were filled by whites after plaintiff applied for an open position as dock operations supervisor. Plaintiff was never given an interview for any of these open supervisory positions.

62. Defendant failed and refused to promote plaintiff-intervenor Smith to one or more open dock operations supervisor position(s). The failure and refusal of defendant to promote plaintiff-intervenor Smith was because of his race and denied plaintiff-intervenor Smith equal employment opportunities.

63. Defendant also allowed white employees to enter the Leadership Development Program ("LDP"), a training program for employees to become supervisors, while defendant deterred and discouraged plaintiff-intervenor Smith from entering the LDP and placed him in a "pre-LDP" program. In this program, plaintiff-intervenor was required to train on his own time, while white employees in the LDP were allowed to train on the clock and were paid for the time spent training.

64. Defendant did not place similarly situated white employees in a "pre-LDP" program, and plaintiff-intervenor Smith was the only employee to be placed in such a program.

65. Defendant took the above described disparate actions against plaintiff-intervenor Smith because of his race, and defendant's actions denied equal employment opportunities to plaintiff-intervenor Smith.

66. Further, in addition to the racial harassment alleged previously, a white employee made threats on plaintiff-intervenor Smith's life.

67. Plaintiff-intervenor Smith complained to management about the threat made on his life by the white employee.

68. Defendant did not take prompt and effective remedial action to end the racial harassment and hostile work environment, and defendant did not discipline the white employee who made the threat on plaintiff-intervenor Smiths' life.

SPECIFIC FACTS AND CLAIMS ALLEGED BY PLAINTIFF-INTERVENOR PIGGEE

69. Defendant did not allow plaintiff-intervenor Piggee to complete his driver training in the program in which he participated prior to implementation of the DTD program, and made him start anew with his training in the DTD program, without any credit or consideration for his previous training.

70. In October 2000, plaintiff-intervenor Piggee completed the DTD program and graduated at the top of his class.

71. In October 2000, plaintiff-intervenor Piggee received his CDL class "A" licence.

72. Between October 2000 and May 2002, defendant allowed plaintiff-intervenor Piggee to drive only one time as a City Driver. After driving one time as a City Driver, defendant assigned plaintiff-intervenor Piggee back to dock work.

73. Defendant replaced plaintiff-intervenor Piggee as City Driver with a white employee. This white employee had obtained his driver training and CDL before plaintiff-intervenor Piggee because of defendant's racially discriminatory practices, as set forth in paragraphs 41, 43, 44, 45, 47, 51, and 53 through 56.

74. Between October 2000 and May 2002, defendant failed and refused to promote plaintiff-intervenor Piggee to a City Driver position, even though such positions were open and/or were created by defendant for white employees during that time.

SPECIFIC FACTS AND CLAIMS ALLEGED BY PLAINTIFF-INTERVENOR WILLIAMS

75. Defendant did not allow plaintiff-intervenor Williams to complete his driver training in the program in which he participated prior to implementation of the DTD program, and become eligible for obtaining a City Driver position, and defendant made plaintiff-intervenor Williams start anew with his training in the DTD program, without any credit or consideration for his previous training.

76. Plaintiff-intervenor Williams enrolled in the DTD program and continued to hostle after the DTD program was announced.

77. Between June and August 2000, plaintiff-intervenor Williams assumed the job duty of full-time hostler.

78. In September 2000 defendant removed plaintiff-intervenor Williams as full-time hostler on the grounds that he did not have a CDL. After defendant removed plaintiff-intervenor Williams from the full-time hostler job, defendant assigned him back to dock worker.

79. Similarly situated white employees who were full-time hostlers and did not have their CDL's were not removed from their full-time hostler positions.

80. After defendant removed plaintiff-intervenor Williams from the full-time hostler position, a similarly situated white employee without a CDL was placed into the position of hostler.

81. Defendant's actions against plaintiff-intervenor Williams were based on his race

and defendant denied plaintiff-intervenor Williams equal employment opportunities with regard to the full-time hostler position.

82. In January 2001, plaintiff-intervenor Williams completed defendant's DTD program and obtained his CDL, class "A."

83. Defendant did not place plaintiff-intervenor Williams in a City Driver position until after January 2001 and did not give plainitff-intervenor Williams a regular route until August 2003.

84. On information and belief, similarly situated white employees were placed in open City Driver positions and were given regular routes before plaintiff-intervenor Williams as a result of defendant's racially discriminatory practices.

SPECIFIC FACTS AND CLAIMS ALLEGED BY PLAINTIFF-INTERVENOR JONES

85. In July and August 2001 plaintiff-intervenor Jones was unable to be at work for four days because of the illness of a close family member and the duties required of him as the personal representative of a close family member. Plaintiff-intervenor Jones advised defendant of his need to be absent from work prior to taking off work for the four days.

86. Defendant's attendance policy allowed for circumstances and situations similar to that of plaintiff-intervenor Jones to be considered as excused absences with no penalty points assessed for such absences from work.

87. Defendant has given similarly situated white employees excused absence from work for circumstances and situations similar to that of plaintiff-intervenor Jones, and these similarly situated white employees were not charged points on their attendance record for said absences.

88. Defendant charged plaintiff-intervenor Jones with four points of unexcused absence for the four days he was absent in July and August 2001.

89. Defendant had previously assessed plaintiff-intervenor Jones one point on his attendance record when his house burned down in October 2000.

90. Defendant issued plaintiff-intervenor two written warnings for attendance for the above absences, while allowing similarly situated white employees more favorable consideration, including no reprimands or warnings for their work absences.

91. On or about June 20, 2001, plaintiff-intervenor Jones suffered a shoulder injury at work. As a result of the work related injury, plaintiff-intervenor Jones missed time at work.

92. On or about September 10, 2001, defendant placed plaintiff-intervenor Jones on probation for alleged poor work attendance.

93. Defendant terminated plaintiff-intervenor Jones on or about November 20, 2001 for alleged excessive absenteeism.

94. Plaintiff-intervenor Jones had been absent from work because of his work related injury and the related medical treatment for same, and he timely advised defendant the reasons why he could not be at work.

95. Defendant has treated similarly situated white employees who were injured on the job in a more favorable manner than defendant treated plaintiff-intervenor Jones with regard to work attendance, including not taking disciplinary actions or terminating the similarly situated white employees.

96. Defendant treated plaintiff-intervenor Jones in the above disparate manner and terminated him because of his race, and defendant's actions denied equal employment

opportunities to plaintiff-intervenor Jones.

SPECIFIC FACTS AND CLAIMS ALLEGED BY PLAINTIFF-INTERVENOR BELL

97. Plaintiff-intervenor Bell has been employed by defendant from February 17, 2000 to the present.

98. In February 2000, plaintiff-intervenor Bell responded to defendant's advertisement for an open City Driver position. At the time, plaintiff-intervenor Bell had nineteen (19) years driving experience and a class "A" CDL.

99. Defendant hired plaintiff-intervenor Bell in February 2000 as a City Driver, but immediately thereafter placed him into a dock associate position.

100. Defendant kept plaintiff-intervenor Bell in the dock associate position until approximately May 15, 2000, even though he had been hired as a City Driver.

101. Defendant hired white employees and placed white employees into City Driver positions and did not require them to first work as dock associates and/or did not require them to work as dock associates for the same length of time as did plaintiff-intervenor Bell.

102. The above disparate treatment of plaintiff-intervenor Bell was based on his race, and the conduct of defendant denied plaintiff-intervenor Bell the right to receive the same treatment in employment matters that similarly situated white employees received.

103. During the time plaintiff-intervenor Bell worked as a dock associate, white manager Barry Trout monitored his movements on the dock, followed him up and down the dock, scrutinized his work, "rode" him, monitored his breaks and lunch periods, and behaved in a hostile manner towards plaintiff-intervenor Bell.

104. Trout did not engage in the above conduct with regard to similarly situated white employees.

105. The conduct of Trout alleged above was based on plaintiff-intervenor Bells' race and constituted racial harassment and disparate treatment of plaintiff-intervenor Bell.

106. Plaintiff-intervenor Bell complained to Human Resources about the racial harassment and disparate treatment.

107. After plaintiff-intervenor Bell complained, defendant did not take prompt and effective remedial action to end the racial harassment, and the racial harassment continued after plaintiff-intervenor's complaint.

108. Plaintiff-intervenor Bell was given more difficult dock work more frequently than were similarly situated white employees.

109. The disparate treatment and conduct of defendant alleged herein was based on plaintiff-intervenor Bells' race, and defendant' conduct denied plaintiff-intervenor Bell the right to receive the same treatment in employment matters that similarly situated white employees received.

110. In May 2000 defendant placed plaintiff-intervenor Bell in the City Driver position for which he had been hired in February 2000.

111. The approximate three (3) month delay in placing plaintiff-intervenor Bell in the City Driver position resulted in plaintiff-intervenor Bell losing seniority or accrued seniority compared to similarly situated white City Drivers.

112. Plaintiff-intervenor Bells' lost seniority or accrued seniority represents lost employment benefits and opportunities for plaintiff-intervenor Bell, and such losses are

attributable to defendant's racially motivated conduct.

113. During plaintiff-intervenor Bells' employment as a City Driver, plaintiff-intervenor Bell was given more difficult tickets, bills, or stops, such as servicing Walden Books, than were similarly situated white City Drivers and/or for a longer time than were similarly situated white City Drivers. The amount of time and physical labor required to complete deliveries and/or pick up of goods for such stops was significantly greater than other stops given to similarly situated white employees.

114. Defendant evaluated City Drivers, at least in part, by the number of tickets, bills, or stops made per hour.

115. The assignment of plaintiff-intervenor Bell to the more difficult stops, which involved greater time and more labor than stops given to similarly situated white employees, resulted in plaintiff-intervenor Bell having fewer stops per hour and performing more demanding work than similarly situated City Drivers.

116. Defendant's disparate treatment of plaintiff-intervenor Bell was based on his race.

117. In January 2001, defendant docked plaintiff-intervenor Bell one day's pay for allegedly not being able to account for fifteen (15) minutes of his time while driving on January 26, 2001.

118. Plaintiff-intervenor Bell fully accounted for his time on January 26, 2001 by scanning his badge for each delivery he made.

119. In February 2001, defendant docked plaintiff-intervenor Bell one day's pay and placed a written warning in his personnel file for allegedly not reporting to work on February 26, 2001. Defendant made plaintiff-intervenor Bell sign the written warning.

120. On February 26, 2002, plaintiff-intervenor Bell phoned defendant prior to the start of his shift and informed defendant that his car had been stolen and that he had no way into work.

121. Defendant gave similarly situated white City Drivers greater leniency and consideration than plaintiff-intervenor Bell with regard to docking pay and issuing written warnings.

122. Defendant's disparate treatment of plaintiff-intervenor Bell with regard to docked pay and written warnings was based on his race, and by such conduct defendant did not treat plaintiff-intervenor Bell equal to similarly situated white employees in the terms and conditions of employment.

SUMMARY OF PLAINTIFF-INTERVENORS' CLAIMS AND DAMAGES UNDER § 1981

123. Defendant discriminated against plaintiff-intervenors because of their race and intentionally deprived plaintiff-intervenors of the same right to make and enforce contracts as enjoyed by white citizens, in violation of U.S.C. § 1981.

124. Defendant discriminated against plaintiff-intervenors because of their race and intentionally denied plaintiff-intervenors the same rights and privileges of employment as enjoyed by white citizens, including but not limited to the right not to be subjected to a hostile work environment based on plaintiff-intervenors' race, in violation of 42 U.S.C. § 1981.

125. As a result of the actions and conduct of defendant, plaintiff-intervenors have suffered lost income and benefits of employment.

126. As a result of the actions and conduct of defendant, plaintiff-intervenors have suffered emotional distress and mental anguish.

127. As a result of the actions and conduct of defendant, plaintiff-intervenors have

incurred attorney's fees and costs of litigation, and will continue to incur such fees and costs.

128. The conduct and actions of defendant was with evil motive or intent, or was callously indifferent to plaintiff-intervenors' right not to be discriminated against because of their race and to be subjected to a racially hostile work environment, and is conduct for which an award of punitive damages is warranted.

WHEREFORE, plaintiff prays that this Court, after trial by jury, find in favor of plaintiff-intervenors Smith, Piggee, Earl, Williams, Jones, and Bell, and against defendant, and enter judgment for plaintiff-intervenors against defendant in an amount to be determined at trial, for their lost wages and benefits of employment, and prejudgment interest thereupon; for compensatory damages, including damages for emotional distress; for punitive damages; for attorney's fees and costs of litigation; that this Court order the equitable relief to plaintiff-intervenor Smith that he be promoted to an open supervisory position; that this Court order the equitable relief to plaintiff-intervenor Jones that he be reinstated, or in the alternative, be awarded front pay damages, that this Court order injunctive relief enjoining defendant from maintaining a racially hostile work environment and from further illegal discriminatory conduct, and grant such other relief as it deems just and proper.

COUNT II

Race Discrimination in Violation of Title VII

Come Now plaintiff-intervenors Karl Smith, DeLeon Piggee, Frank Earl, III, Torris Williams, Joseph Jones, and David Bell, by and through their attorneys, and for Count II of their Complaint against defendant Fedex, state as follows:

PARTIES TO COUNT II

129. Plaintiff-intervenors reallege and incorporate by reference paragraphs 1 through 8 in Count I, as if fully set forth herein.

130. Plaintiff Equal Employment Opportunity Commission (hereinafter "EEOC") is the agency of the United States of America charged with the administration, interpretation, and enforcement of Title VII of the Civil Rights Act of 1964, as amended, 1991, and is expressly authorized to bring this action pursuant to Section 706(f)(1) and Section 706(f)(3) of that statute.

131. On September 30, 2003, the EEOC filed Cause No. 4:03CV01393CEJ with this Court against defendant and on behalf of plaintiffs Smith, Piggee, Earl, Williams, Jones, Bell, and all African-American employees who were adversely affected by defendant's discriminatory practices and conduct, to correct defendant's unlawful employment practices against African-Americans, and to provide appropriate equitable, injunctive, and other relief to these African-Americans who were adversely affected by such unlawful employment practices.

132. Counsel for plaintiff-intervenors have filed a Motion for Leave to Intervene in the EEOC action, which sets forth the reasons and basis for plaintiff-intervenors to intervene in the EEOC action, and this Complaint is attached to that motion.

JURISDICTION AND VENUE

133. Jurisdiction of this Court for Count II is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343, in that the claims presented herein present a federal question of original jurisdiction under the provisions of 42 U.S.C. § 2000e et seq.

134. Venue in this Court is proper pursuant to 28 U.S.C. § 1391, in that defendant resides in the Eastern District of Missouri and a substantial part of the events or omissions giving

rise to plaintiffs' claims occurred in the Eastern District of Missouri.

FACTS, CLAIMS, AND DAMAGES UNDER TITLE VII

135. Plaintiff-intervenors reallege and incorporate by reference paragraphs 16 through 35, 37 through 45, 59 through 62, 76 through 81, and paragraphs108-109 in Count I, as if fully set forth herein.

136. Prior to filing this action, each plaintiff-intervenor filed timely charges with the Equal Employment Opportunity Commission ("EEOC") alleging race discrimination by defendant, and each plaintiff-intervenor herein has exhausted all administrative procedures and remedies prior to filing this action.

137. At all times relevant herein, defendant is an employer within the meaning of 42 U.S.C. § 2000e(b) in that defendant employed fifteen (15) or more employees in the current or preceding calendar year and engaged in interstate commerce.

138. As a result of defendant's conduct, as alleged herein, plaintiff-intervenors have been discriminated against because of their race, and have been subjected to a racially hostile work environment, in violation of Title VII of the Civil Rights Act of 1964, as amended, 1991, 42 U.S.C. § 2000e et seq.

139. As a result of the actions and conduct of defendant, plaintiff-intervenors have suffered lost income and benefits of employment.

140. As a result of the actions and conduct of defendant, plaintiff-intervenors have suffered emotional distress and mental anguish.

141. As a result of the actions and conduct of defendant, plaintiff-intervenors have incurred attorney's fees and costs of litigation, and will continue to incur such fees and costs.

142. The conduct and actions of defendant was with evil motive or intent, or was recklessly indifferent to plaintiff-intervenors' right not to be discriminated against because of their race and to be subjected to a racially hostile work environment, and is conduct for which an award of punitive damages is warranted.

WHEREFORE, plaintiff-intervenors pray that this Court, after trial by jury, find in favor of plaintiff-intervenors Smith, Piggee, Earl, Williams, Jones, and Bell, and against defendant, and enter judgment for plaintiff-intervenors against defendant in an amount to be determined at trial, for plaintiff-intervenors' lost wages and benefits of employment, and prejudgment interest thereupon; for compensatory damages, including damages for emotional distress; for punitive damages; for attorney's fees and costs of litigation; that this Court order the equitable relief to plaintiff-intervenor Smith that he be promoted to an open supervisory position; that this Court order injunctive relief enjoining defendant from maintaining a racially hostile work environment and from further illegal discriminatory conduct, and grant such other relief that is just and proper.

WEINHAUS, DOBSON, GOLDBERG & MORELAND

By: /s/ Jerome J. Dobson

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CERTIFICATE OF SERVICE

I certify that on December 10, 2003 the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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