

Law Offices of Ravinder S. Bhalla  
Ravinder S. Bhalla, Esq. (RB2870)  
1 Newark Street, Suite 28  
Hoboken, New Jersey 07030  
201-610-9010

**CV-05 3341**

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

**JUL 15 2005**

★ **BROOKLYN OFFICE** ★

**GERSHON, J**

The Sikh Coalition  
396 Broadway, Suite 701  
New York, New York 10013

Center for Constitutional Rights  
Shayana Kadidal, Esq. (SK1278)  
666 Broadway, 7th Floor  
New York, NY 10012

**MATSUMOTO, M.J.**

Attorneys for Plaintiff,  
Kevin Harrington

**UNITED STATES DISTRICT COURT**  
**FOR THE EASTERN DISTRICT OF NEW YORK**

<p>KEVIN HARRINGTON,  Plaintiff,</p> <p>vs.</p> <p>LAWRENCE G. REUTER, individually and in his official capacity, the NEW YORK METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, CORPORATE JOHN DOES 1-5, and JOHN DOES 1-10.</p> <p>Defendants.</p>	<p>Docket #:</p> <p><b><u>COMPLAINT</u></b></p>
--	---

Kevin Harrington, residing in the Bronx, New York, by way of Complaint against Defendants, hereby alleges and states:

**Introduction**

1. Plaintiff, Kevin Harrington ("Harrington"), brings this action for permanent injunctive, declaratory and monetary relief pursuant to the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), Section 296 of the New York State Human Rights Law, the First and Fourteenth Amendments of the United States Constitution and the common laws of the State of New York, to seek redress for acts of unlawful and discriminatory employment practices, policies and actions by Defendants arising from his employment as a Train Operator.

**The Parties**

2. Plaintiff, Kevin Harrington, has been employed by the Defendants for over twenty (20) years as a Train Operator. Mr. Harrington is a citizen of the United States of America and is also a practicing member of the Sikh religious faith. As a Sikh, Mr. Harrington is required to maintain uncut hair and cover it with a turban.

3. Defendant, Lawrence Reuter, is the President of the New York City Transit Authority, and has direct and personal knowledge of and involvement in the allegations contained herein.

4. Defendants, New York Metropolitan Transportation Authority ("MTA") and New York City Transit Authority ("NYCTA"), are public benefit corporations created pursuant to the laws of the State of New York.

5. Defendants are "persons" within the meaning of 42 U.S.C. § 2000e(a) and "employers" within the meaning of 42 U.S.C. § 2000e(b).

**Jurisdiction & Venue**

6. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1343(a)(3), and supplemental jurisdiction for common law violations pursuant to 28 U.S.C. § 1367, as the common law claims form part of the same case or controversy.

7. Plaintiff's action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 1343, 2201 and 2202.

8. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 42 U.S.C. § 2000e-5(f)(3).

**Procedural and Administrative Requirements**

9. Plaintiff has satisfied all of the procedural and administrative requirements set forth in §706 of Title VII (42 U.S.C. § 2000e-5), in particular:

(a) Plaintiff filed a timely Charge of Discrimination with the United States Equal Employment Opportunity Commission ("EEOC") on or about March 23, 2005.

(b) Plaintiff received a "Notice of Right to Sue" from the EEOC on or about May 25, 2005.

(c) The Complaint in this matter is being filed within ninety (90) days of receipt of the Notice of Right to Sue provided to Plaintiff.

**Facts Common to All Counts**

The Sikh Religion

10. The Sikh religion is a monotheistic faith that originated in or around the year 1499 in the northwestern areas of South Asia that are known today as Panjab.

11. Sikhism is a distinct and independent religion and is not affiliated with any other religion. Members of the Sikh religious faith adhere to a specific system of belief and worship that includes a distinct code of conduct and practice. There are approximately over 20 million adherents of Sikhism worldwide.

12. As part of the practice of their religion, Sikhs are forbidden from cutting their hair and are required to wear a turban.

13. The requirement to maintain uncut hair and wear a turban is commonly viewed by members of the Sikh faith to be among the central requirements of the Sikh religion.

Kevin Harrington as an Employee of the Defendants

14. Mr. Harrington has worked for the Defendants for over twenty (20) years.

15. During Mr. Harrington's approximately 20 years as a Train Operator for Defendants, his job mandated clothing and equipment has generally consisted of: a button down vertical striped with an logo on the sleeve, a fluorescent orange vest, blue regulation trousers, ear protectors, and dark colored shoes.

16. During Mr. Harrington's approximately 20 years serving as a Train Operator and prior to his employment with Defendants, he has also worn a turban in accordance with his religious beliefs and practices.

17. Upon information and belief, during these 20 years, Defendants never voiced any objection to his practice of wearing a turban while performing his duties as a Train Operator. To the contrary, over these years, and upon information and belief, Mr. Harrington's supervisors affirmatively told him that they had no objection to his wearing a turban.

18. During these 20 years, Mr. Harrington's religious practice of wearing a turban has in no way, shape or form interfered with the full and proper performance of his job duties as a train operator, or in any way, shape or form impeded his ability to perform his job functions.

Defendants Order Mr. Harrington to Remove His Turban

19. In June 2004, an official of Defendants ordered Mr. Harrington to remove his turban while on the job. The official also told him that if he refused to do so, he would lose his job as a Train Operator and the privileges he had earned based on his years of service, and be reassigned to a position outside the public view.

20. In response, Mr. Harrington requested that Defendants accommodate his religious beliefs and practices.

21. Mr. Harrington also refused to remove his turban, and as a direct and proximate result, in early June 2004 he was punished through reassignment to a position outside the public view. Days later, Defendants rescinded this assignment and placed him back in his position as a Train Operator.

22. Nonetheless, despite an apparent resolution to the dispute, Defendant Reuter wrote a letter to Roger Toussaint, head of Mr. Harrington's union, warning Mr. Harrington and others with seniority who were not able to wear uniform hats because of

religious reasons to choose yard jobs out of public view in the forthcoming selection process.

23. Mr. Harrington resisted Defendant Reuter's retaliatory threat and refused to remove his turban or select a job outside the public view. Rather, he selected to serve as a Train Operator, as he had been for the many years prior to this dispute.

Defendants Institute a New Headgear Logo Policy

24. In October 2004, Mr. Harrington was advised by Defendants that he would be allowed to continue to wear the turban he had been wearing for the last twenty (20) years as a Train Operator.

25. However, Defendants thereafter imposed a brand new demand upon Mr. Harrington, specifically, that he be required to place Defendants' "logo" on his turban. The Defendants threatened to fire Mr. Harrington unless he agreed to place the logo on his turban while performing his job functions.

26. Mr. Harrington advised Defendants that he considered the placement of a logo on his turban a violation of his religious beliefs and practices, and to be in direct conflict with his religious beliefs and practices.

27. Defendants thereafter did not even respond to repeated requests made by Mr. Harrington, through his legal counsel, to enter into a dialogue with Mr. Harrington for the purpose of determining whether Defendants could reasonably accommodate his request to identify an alternative to wearing a logo on his turban.

28. Left with no other choice, facing the loss of his decades long employment and benefits, and facing tremendous emotional and financial distress caused

by the Defendants' conduct towards him, Mr. Harrington reluctantly decided to wear the logo, under protest, and to avoid an involuntary transfer.

**COUNT ONE**

**(42 U.S.C. § 2000e – Failure to Accommodate)**

29. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

30. Mr. Harrington has *a bona fide* religious belief as a member of the Sikh religion in wearing a turban.

31. Mr. Harrington informed Defendants of his religious belief in maintaining uncut hair and wearing a turban.

32. Defendants' repeated directive that Mr. Harrington would not be permitted to wear a turban while performing his job duties as a Train Operator directly conflicted with the practice of his religious beliefs.

33. Defendants' repeated directive that Mr. Harrington be required to place Defendants' logo on his turban while performing his job duties as a Train Operator directly conflicted with the practice of Mr. Harrington's religious beliefs.

34. Mr. Harrington has suffered adverse employment consequences as a direct and proximate result of the Defendants' discriminatory and malicious conduct towards him.

35. Defendants' conduct towards Mr. Harrington constitutes illegal discrimination as proscribed by 42 U.S.C. § 2000e.

36. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**COUNT TWO**

**(42 U.S.C. § 2000e – Disparate Impact)**

37. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

38. Mr. Harrington has been employed by Defendants as a Train Operator for over 20 years. He remains fully qualified for this position and has effectively performed his job duties in the course of his employment.

39. Defendants' adverse conduct towards Mr. Harrington, as described herein, has had an unjustified, adverse and disparate impact on Mr. Harrington and other similarly situated members of the Sikh religion, and constitutes illegal discrimination as proscribed by 42 U.S.C. § 2000e.

40. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**COUNT THREE**

**(42 U.S.C. § 2000e – Disparate Treatment)**

41. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

42. Defendants are responsible for establishing the terms, conditions, policies and practices that bear upon the employment of their employees.

43. Defendants have failed or refused to consistently enforce uniform policies for subway train operators which provided, *inter alia*, either that Defendants' hats were optional or that non-company hats were prohibited. Upon information and



belief, Defendants condoned the wearing of non-company hats in some instances, and also issued hats with no company logo.

44. Defendants have selectively enforced uniform policies to target Sikh employees whose sincerely held religious beliefs and practices require that they wear religious head coverings. As a result of Defendants' discriminatory application and enforcement of these policies, Sikh and other similarly situated employees have suffered adverse employment actions.

45. Defendants' aforementioned conduct amounts to a selective enforcement of uniform policies and the taking of adverse employment actions against Sikhs and other similarly situated employees who are unable to comply with uniform policies for religious reasons.

46. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

#### **COUNT FOUR**

##### **(New York State Human Rights Law § 296 -- Failure to Accommodate)**

47. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

48. Mr. Harrington has *a bona fide* religious belief as a member of the Sikh religion in wearing a turban.

49. Mr. Harrington informed Defendants of his religious belief in maintaining uncut hair and wearing a turban.

50. Defendants' repeated directive that Mr. Harrington would not be permitted to wear a turban while performing his job duties as a Train Operator directly conflicted with the practice of his religious beliefs.

51. Defendants' repeated directive that Mr. Harrington is required to place a logo on his turban while performing his job duties as a Train Operator directly conflicted with the practice of Mr. Harrington's religious beliefs.

52. Mr. Harrington has suffered adverse employment consequences as a direct and proximate result of the Defendants' discriminatory and malicious conduct towards him.

53. Defendants' conduct towards Mr. Harrington constitutes illegal discrimination as proscribed by the New York State Human Rights Law, N.Y. Exec. L. § 296.

54. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

#### **COUNT FIVE**

#### **(New York State Human Rights Law – Disparate Impact)**

55. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

56. Mr. Harrington has been employed by Defendants as a Train Operator for over 20 years. He remains fully qualified for this position and has effectively performed his job duties in the course of his employment.

57. Defendants' adverse conduct towards Mr. Harrington, as described herein, has had an unjustified, adverse and disparate impact on Mr. Harrington and other

similarly situated members of the Sikh religion, and constitutes illegal discrimination as proscribed by the New York State Human Rights Law, N.Y. Exec. L. § 296.

58. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

### **COUNT SIX**

#### **(New York State Human Rights Law – Disparate Treatment)**

59. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

60. Defendants are responsible for establishing the terms, conditions, policies and practices that bear upon the employment of their employees.

61. Defendants have failed or refused to consistently enforce uniform policies for subway train operators which provided, *inter alia*, either that Defendants' hats were optional or that non-company hats were prohibited. Upon information and belief, Defendants condoned the wearing of non-company hats in some instances, and also issued hats with no company logo.

62. Defendants have selectively enforced uniform policies to target Sikh employees whose sincerely held religious beliefs and practices require that they wear religious head coverings. As a result of Defendants' discriminatory application and enforcement of these policies, Sikh and other similarly situated employees have suffered adverse employment actions.

63. Defendants' aforementioned conduct amounts to a selective enforcement of uniform policies and the taking of adverse employment actions against Sikhs and other

similarly situated employees who are unable to comply with uniform policies for religious reasons.

64. As a direct and proximate result of Defendants' improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**COUNT SEVEN**

**(42 U.S.C. § 1983 – First Amendment, U.S. Constitution)**

65. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

66. Upon information and belief, Defendants' policy regarding permissible head coverings for Train Operators is not a policy that is consistently enforced by Defendants.

67. Upon information and belief, Defendants permit Train Operators to wear different types of hats for secular reasons that do not display Defendants' logo. For example, Train Operators are permitted to wear different head coverings in summer and winter months based upon changes in outdoor temperature and/or weather conditions, without Defendants' logo.

68. Additionally, Defendants established a pattern and practice of routinely ignoring and failing to enforce secular violations of uniform policy governing head coverings for Train Operators and other "frontline" employees by permitting such employees to wear hats that are not even issued by Defendants, such as New York Yankees and New York Mets hats, while on active job duty. These hats also do not have the Defendants' logo or other insignia attached to it.

69. Notwithstanding these facts, Defendants are refusing to permit an exemption from its irregularly enforced uniform policy for Mr. Harrington, who has raised a religiously based objection to Defendants' uniform policies.

70. While Defendants tolerate and make *de facto* exemptions from their policy for secular reasons, they have not offered any substantial justification for refusing to provide similar treatment for employees who seek an exemption from their policy for religious reasons.

71. In so doing, Defendants have violated Mr. Harrington's rights under the Free Exercise Clause of the First Amendment of the United States Constitution.

72. As a direct and proximate result of Defendants improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**COUNT EIGHT**

**(Harassment)**

73. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

74. Subsequent to informing Defendants that his *bona fide* religious beliefs prevented him from complying with their demand that he remove his turban while working as a Train Operator and wearing an a logo, Mr. Harrington was subjected to acts of harassment by Defendants.

75. Defendants' conduct towards Mr. Harrington was a direct and proximate result of his religious beliefs and practices, and a form of harassment for the exercise of these beliefs and practices in violation of the common laws of the State of New York.

76. As a direct and proximate result of Defendants improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**COUNT NINE**

**(Retaliation)**

77. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs of the Complaint as if fully set forth herein.

78. Subsequent to informing Defendants that his *bona fide* religious beliefs prevented him from complying with their demand that he remove his turban while working as a Train Operator and wearing a logo, Mr. Harrington, as described herein, was subjected to acts of retaliation by Defendants.

79. Defendants' conduct towards Mr. Harrington was a direct and proximate result of his religious beliefs and practices, and a form of retaliation for the exercise of these beliefs and practices in violation of the common laws of the State of New York.

80. As a direct and proximate result of Defendants improper and illegal conduct, Mr. Harrington has and will continue to suffer harm.

**WHEREFORE**, Plaintiff demands judgment against Defendants:

- (a) Declaring and Adjudging Defendants' conduct alleged in this Complaint to be discriminatory and in violation of Plaintiff's civil rights under Title VII, the laws of the State of New York, and the common law;
- (b) Permanently enjoining Defendants from discriminating against Plaintiff on any basis forbidden by Title VII, the laws of the State of New York, or the common law;


- (c) Ordering the development of a peer mediation employment dispute process through collaboration of labor and management officials, to resolve future disputes at their incipient stages;
- (d) Ordering Defendants to immediately permit Plaintiff to continue his employment as a Train Operator and enjoy all seniority and other benefits entitled thereto, without being required to wear Defendants' logo or other insignia on his turban;
- (e) Ordering that Defendant compensate, reimburse, and make whole the Plaintiff for all the benefits Plaintiff would have received but for Defendants' conduct, including but not limited to pay and benefits;
- (f) Ordering an award for any additional compensatory, consequential damages or punitive damages as the Court may deem just and proper, including pre- and post-judgment interest;
- (g) Ordering an award of attorneys' fees and costs of suit; and
- (h) For such other relief deemed just and equitable by the Court.

Law Offices of  
Ravinder S. Bhalla  
1 Newark Street, Suite 28  
Hoboken, New Jersey 07030  
(201) 610-9010

The Sikh Coalition  
396 Broadway, Suite 701  
New York, New York 10013

Center for Constitutional Rights  
666 Broadway, 7th Floor  
New York, NY 10012

Attorneys for Plaintiff  
Kevin Harrington

By:   
Ravinder S. Bhalla

Dated: July 14, 2005