

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

2004-9-10 12:58
DM
A04CA337 JN

EQUAL EMPLOYMENT OPPORTUNITY §
COMMISSION, §
§
Plaintiff, §
§
v. §
§
AEP ENERGY SERVICES, INC. d/b/a §
AMERICAN ELECTRIC POWER, §
§
Defendant. §
§

Civil Action No.
COMPLAINT AND
JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age, and to provide appropriate relief to Randall J. Johnson. The Equal Employment Opportunity Commission (the "Commission") alleges that, in December 2002, AEP Energy Services, Inc. d/b/a American Electric Power (hereinafter "AEP"), discharged Randall J. Johnson, then age 54, from his job as a regulatory consultant because of his age.

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 7(b) of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §626(b) (the "ADEA"), which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act of 1938 (the "FLSA"), as amended, 29 U.S.C. §§ 216(c) and 217.

2. The employment practice alleged to be unlawful was committed within the jurisdiction of the United States District Court for the Western District of Texas, Austin Division.

PARTIES

3. Plaintiff, the Commission, is the agency of the United States of America charged with the administration, interpretation and enforcement of the ADEA and is expressly authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as amended by Section 2 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and by Public Law 98-532 (1984), 98 Stat. 2705.

4. At all relevant times, Defendant AEP, has continuously been an Ohio corporation doing business in the State of Texas and the City of Austin, Texas, and has continuously had at least 20 employees.

5. At all relevant times, Defendant AEP has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 11(b), (g) and (h) of the ADEA, 29 U.S.C. §§ 630(b), (g) and (h).

CONCILIATION

6. Prior to institution of this lawsuit, the Commission's representatives attempted to eliminate the unlawful employment practice alleged below and to effect voluntary compliance with the ADEA through informal methods of conciliation, conference, and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

STATEMENT OF CLAIMS

7. On or about December 2002, the Defendant AEP engaged in an unlawful employment practice at its Austin, Texas facility in violation of § 623(a) of the ADEA, 29 U.S.C. § 623(a). Such practice included discharging Randall J. Johnson from his position as a regulatory consultant because of his age during a reduction-in-force. Mr. Johnson was 54 years of age when he was discharged.

8. The effect of the practice complained of in paragraph seven above has been to deprive

Randall J. Johnson of equal employment opportunities and to otherwise adversely affect his status as an employee because of his age.

9. The unlawful employment practice complained of in paragraph seven above was willful within the meaning of Section 7(b) of the ADEA, 29 U.S.C. § 626(b).

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant AEP, its officers, successors, assigns, and all persons in active concert or participation with it, from terminating individuals on the basis of their age and from engaging in any other employment practice which discriminates on the basis of age against individuals 40 years of age and older;

B. Order Defendant AEP to institute and carry out policies, practices, and programs which provide equal employment opportunities for individuals 40 years of age and older, and which eradicate the effects of its past and present unlawful employment practices;

C. Grant a judgment requiring Defendant AEP to pay appropriate back wages in an amount to be determined at trial, and an equal sum as liquidated damages, to Randall J. Johnson, who was adversely affected by the unlawful practice described above. If the trier of fact should find the unlawful employment practice complained of was not willful within the meaning of the ADEA, then the Commission respectfully requests that this Court grant an award of prejudgment interest on the back pay award to Randall J. Johnson;

D. Order Defendant AEP to make whole Randall J. Johnson, who was adversely affected by the unlawful practice described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful practice, including but not limited to reinstatement or front pay in lieu

thereof;

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

F. 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.

Respectfully submitted,

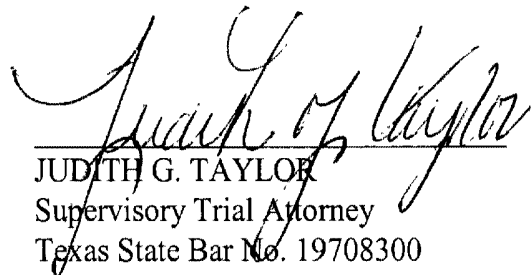
ERIC S. DREIBAND
General Counsel

JAMES L. LEE
Deputy General Counsel

GWENDOLYN YOUNG REAMS
Associate General Counsel



ROBERT B. HARWIN
Regional Attorney
District of Columbia Bar No. 076083



JUDITH G. TAYLOR
Supervisory Trial Attorney
Texas State Bar No. 19708300



JENNIFER RANDALL

Trial Attorney

Colorado State Bar No. 033240

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION

San Antonio District Office

5410 Fredericksburg Rd., Ste. 200

San Antonio, Texas 78229-3555

Telephone: (210) 281-7636

Telecopier: (210) 281-7669

ATTORNEYS FOR PLAINTIFF