

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
FILED

MAR 07 2006

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION  
Plaintiff

v.

BLUE FLASH EXPRESS, L.L.C.  
Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

**06 0755**  
JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

1. This is an action under Title VII of the Civil Rights Act of 1964, *as amended*, and Title I of the Civil Rights Act of 1991, *as amended*, to correct unlawful employment practices on the basis of opposing discrimination and to provide appropriate relief to Summer Muraira who was adversely affected by such practices. The Defendant, Blue Flash Express, L.L.C. ("Defendant" or "Blue Flash") unlawfully terminated Ms. Muraira in retaliation for opposing what she believed to be unlawful employment practices, specifically for complaining about the terminal manger's distribution of materials she reasonably believed were racially derogatory and offensive.

JURISDICTION AND VENUE

2. 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. §2000e-5(f)(1) and (3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, *as amended*, 42 U.S.C. §1981A.

3. Venue is proper in this court because the unlawful employment practices alleged below were and are now being committed within the jurisdiction of the United States District Court for the Southern District of Texas, Houston Division.

PARTIES

4. Plaintiff, the Equal Employment Opportunity Commission ("Commission") is an 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), 42 U.S.C. §2000e-5 (f)(1) and (3).

5. Defendant Blue Flash Express, L.L.C. has continuously been and is now doing business in the State of Texas and the City of LaPorte and has continuously had more than 15 employees. Defendant Blue Flash is a Louisiana Limited Liability Corporation that has failed to appoint or maintain a current registered agent in Texas. Blue Flash may be served with process by serving the Office of the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701.

6. At all relevant times, Blue Flash has continuously been an employer engaged in an industry affecting commerce with the meaning of Sections 701(b),(g) and (h) of Title VII, 42 U.S.C. §2000e(b), (g) and (h).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, Summer Muraira filed a charge of discrimination with the Commission alleging violation of Title VII by Blue Flash, her former employer. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least July 2004, Blue Flash has engaged in unlawful employment practices at its La Porte, Texas location in violation of Section 704(a) of Title VII.

9. Ms. Muraira began working for Blue Flash at its La Porte, Texas terminal in November 2002 as the safety coordinator. In her position she had dual supervisors; the safety manager and the terminal manager. She performed her job duties satisfactorily throughout her employment. Although Blue Flash has a progressive discipline policy, Ms. Muraira was never disciplined under that policy. She was never disciplined by the safety manager or the terminal manager about her performance of her duties at any time during her employment. Her personnel file contains no counselings or reprimands.

10. In late July 2004, Terminal Manager distributed an email attachment entitled "An American Sentiment" to several employees. Although he did not give it directly to Ms. Muraira, another employee placed the document on her desk. Additionally, the Terminal Manager gave the materials to an employee in Ms. Muraira's presence and told a third employee who was also present that he could not give it to her because she was not "red neck" enough to appreciate it. He ignored Ms. Muriara entirely. Ms. Muriara is Hispanic. The document was several pages long and contained statements about African-Americans, persons with accents or non-English speakers, immigrants, etc. that Ms. Muriara considered racially derogatory and offensive. Later that day, Ms. Muirara and the safety manager, her supervisor, discussed the contents of the document and that she found it offensive and was upset that it was being distributed by the terminal manager, her other supervisor. The safety manager told her he would investigate the matter and agreed to let her have the remainder of the day off and asked that she return to work the next day.

11. Ms. Muraira was called by the safety manager at her home that evening. He advised her that the terminal manager had been sent home. As instructed she returned to work the next day. Upon her return, she received a call from the safety manager asking her if she would feel uncomfortable working with the terminal manager again if he were brought back to work. Ms. Muraira expressed concern about working with someone who, based on the document he had distributed, clearly believed he was better than she was merely because he was Caucasian. Approximately, an hour later, the safety manager called her and told her that although he disagreed with the decision, he had to let her go. He said he was told to terminate her by the owner of the company and that the reason was supposedly excessive absenteeism and job performance. The safety manager told her he was not aware of any problems with her attendance or job performance. There was no documentation of excessive absenteeism or work performance problems for Ms. Muraira at the time. Nor had there been any discussion with the safety manager about possible discharge of Ms. Muraira prior to her complaint about the terminal manager's distribution of the offensive handout, even though he was her direct supervisor.

12. The effect of the practices complained of above has been to deprive Ms. Muraira of equal employment opportunities and otherwise adversely affect her status as an employee because of her protected activity of opposing employment practices she believed to be discriminatory in violation of Title VII.

13. The unlawful employment practices described above were intentional and were committed with malice or with reckless indifference for the federally protected civil rights of Ms. Muraira.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

14. Grant a permanent injunction enjoining Blue Flash, its officers, successors, assigns and all persons in active concert or participation with it, from engaging in employment practices which discriminate on the basis of opposition to discrimination;

15. Order Blue Flash to institute and carry out policies, practices and procedures which provide equal employment opportunities for women and which eradicates the effects of its past and present unlawful employment practices;

16. Order Blue Flash to make Ms. Muraira whole 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 the unlawful employment practices she was subjected to;

17. Order reinstatement into a comparable position for Ms. Muraira or award front pay in the amounts to be proven at trial if reinstatement is impractical;

18. Order Blue Flash to make Ms. Muraira whole by providing compensation for past and future pecuniary losses resulting from the unlawful practices described above, including out-of-pocket expenses such as job search expenses and insurance expenses in amounts to be proven at trial;

19. Order Blue Flash to make Ms. Muraira whole by paying compensatory damages to Ms. Muraira for her past and future non-pecuniary losses including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses she suffered as a result of the unlawful employment practices described above, in amounts to be proven at trial;

20. Award punitive damages to Ms. Muraira for Blue Flash's malicious and/or reckless conduct described above, in amounts to be proven at trial;

21. Award pre-judgment and post-judgment interest on all amounts recovered as allowed by law;

22. Order all affirmative relief necessary to eradicate the effects of its unlawful employment practices;

23. Award the Commission its costs in this action; and

24. Grant such other and further relief as the Court deems necessary and proper.

JURY TRIAL DEMANDED

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

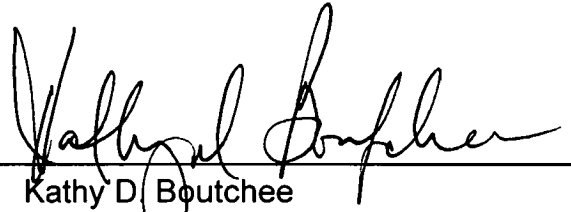
Respectfully submitted,

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

JAMES L. LEE  
Deputy General Counsel

GWENDOLYN YOUNG REAMS  
Associate General Counsel

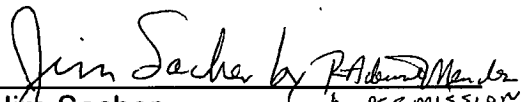
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(Rev. 07/89)

CIVIL COVER SHEET

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 law, except as provided by 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 (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

BLUE FLASH EXPRESS, L.L.C.

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kathy D. Boutchee, Senior Trial Attorney
EEOC-Houston District Office
1919 Smith Street, 7th Floor
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(713) 209-3399

ATTORNEYS (IF KNOWN)

United States Courts
Southern District of Texas
FILED

MAR 07 2006

Michael N. Milby, Clerk of Court

H 06 0755

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- [x] 1 U.S. Government Plaintiff
[x] 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)

- Citizen of This State [ ] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [ ] 3
Incorporated or Principal Place of Business in This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business in Another State [ ] 5 [ ] 5
Foreign Nation [ ] 6 [ ] 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Defendant has engaged in unlawful employment practices in violation of Section 704(a) of Title VII, 42 U.S.C. § 2000e-3 and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981(a). Defendant unlawfully terminated Ms. Muraira in retaliation for opposing what she believed to be unlawful employment practices, specifically for complaining about the terminal manager's distribution of materials she reasonably believed were racially derogatory and offensive.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

Table with 5 columns: CONTRACT, TORTS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

VI. 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 another district (specify)
[] 6 Multidistrict Litigation
[] 7 Judge from Appeal to District Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

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 3-7-06 SIGNATURE OF ATTORNEY OF RECORD Kathy Boutchee by Adewale Menden