

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED

AUG - 5 2004

Michael N. Milby, Clerk of Court

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

CASH & GO, LTD.,

Defendant.

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CIVIL ACTION NO.

COMPLAINT
JURY TRIAL DEMAND

C-04-416

NATURE OF THE ACTION

This is an action under the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to restrain the unlawful payment of wages to employees of one sex at rates less than the rates paid to employees of the opposite sex, to collect back wages due to employees as a result of such unlawful payments, and to correct unlawful employment practices on the basis of sex, female. As alleged with greater particularity below, Plaintiff the United States Equal Employment Opportunity Commission ("EEOC" or "Commission"), alleges that Defendant Cash & Go, Ltd. ("Defendant"), paid and are paying, female employees wages which were and are less than wages paid to comparable male employees who perform or performed the same or substantially equal work. The EEOC further alleges that Defendant discriminated against Connie Damron by discharging her because of her sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

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 Sections 15(a)(3), 16(c) and 17 of the Fair Labor Standards Act of 1938 (“FLSA”), as amended, 29 U.S.C. §§ 215(a)(3), 216(c) and 217, to enforce the requirements of the Equal Pay Act of 1963 (“EPA”), codified as Section 6(d) of the FLSA, 29 U.S.C. §206(d). This action is further authorized and instituted pursuant to Section 706(f) (1) and (3) of Title VII of the Civil Rights Act of 1964, as amended (“Title VII”), 42 U.S.C. §§ 2000e-3(a), 2000e-5(f)(1) and (3) 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 committed within the jurisdiction of the United States District Court for the Southern District of Texas, Corpus Christi Division.

PARTIES

3. Plaintiff EEOC is the agency of the United States of America charged with the administration, interpretation and enforcement of the EPA and Title VII, and is expressly authorized to bring this action by Sections 15(a)(3), 16(c) and 17 of the FLSA, 29 U.S.C. §§ 215(a)(3), 216(c) and 217, as amended by Section 1 of Reorganization Plan No. 1 of 1978, 92 Stat. 3781, and Public Law 98-532 (1984), 98 Stat. 2705, by Section 704(a), 706(f) (1) and (3) of Title VII, 42 U.S.C. §§ 2000e-3(a), 2000e-5(f)(1) and (3) and by Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

4. At all relevant times, Defendant Cash & Go, Ltd., has continuously been a limited partnership doing business in the State of Texas and the City of Corpus Christi, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Cash & Go, Ltd. has continuously been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

6. At all relevant times, Defendant Cash & Go, Ltd. acted directly or indirectly as an employer in relation to employees and has continuously been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

7. At all relevant times, Defendant Cash & Go, Ltd. continuously employed employees engaged in commerce or in the production of goods for commerce within the meaning of Sections 3(b), (i) and (j) of the FLSA, 29 U.S.C. §§ 203(b), (i) and (j), or has continuously been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(r) and (s) of the FLSA, 29 U.S.C. § 203(r) and (s), in that said enterprise has continuously been engaged in the business of selling financial services at financial services kiosks inside convenience stores in the State of Texas, and is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000.00.

STATEMENT OF CLAIMS

8. More than thirty days prior to the institution of this lawsuit, Connie Damron filed a charge against Cash & Go, Ltd., with the Commission alleging violations of the EPA and Title VII. All conditions precedent to the institution of this lawsuit have been fulfilled.

Title VII - Wages

9. Since at least April 2000, Defendant has engaged in unlawful employment practices at its Texas, facilities in violation of Sections 703(a)(1) of Title VII, 42 U.S.C. §2000e-2(a)(1), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a. Specifically, Defendant subjected

Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli “Sally” Ortega, who worked as Area Managers, to discrimination by paying lower wages to the female employees than it paid to male employees in the same position or performing the same or substantially similar work, based on their sex, female, in violation of Section 703(a)(1) of Title VII.

10. The effect of the practice complained of in paragraph 9 above has been to deprive Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli “Sally” Ortega, of equal employment opportunities and otherwise adversely affect their status as employees because of their sex, female.

11. The unlawful employment practice complained of in paragraph 9 above was, and is, intentional.

12. The unlawful employment practice complained of in paragraph 9 above was, and is, done with malice and/or with reckless indifference to the federally protected rights of Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli “Sally” Ortega.

EPA - Wages

13. Since at least April 2000, Defendant has violated Sections 6(d)(1) and 15(a)(2) of the FLSA, 29 U.S.C. §§ 206(d)(1) and 215(a)(2), by paying lower wages to the female Area Managers, than it paid to the male employees in the same establishment for substantially equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

14. As a result of the actions complained of in paragraph 13 above, Defendant has unlawfully withheld, and are continuing to withhold, the payment of wages due to Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli "Sally" Ortega.

15. The unlawful practice complained of in paragraph 13 above was, and is, willful.

Title VII - Disparate Discipline

16. On or about December 11, 2002, Defendant engaged in unlawful employment practices in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1) by discharging Connie Damron because of her sex, female.

17. The effect of the practice complained of in paragraph 16 above has been to deprive Connie Damron of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to practices made unlawful by Title VII.

18. The unlawful employment practice complained of in paragraph 16 above was intentional.

19. The unlawful employment practice complained of in paragraph 16 above was done with malice or with reckless indifference to the federally protected rights of Connie Damron.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Defendant, its officers, successors, assigns and all persons in active concert or participation with it, from paying lesser wages to female employees than male employees because of their sex, and from discriminating within any of their establishments between employees on the basis of sex, by paying wages to employees of one sex at

rates less than the rates at which they pay wages to employees of the opposite sex for substantially equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions;

B. Order Defendant to institute and carry out policies, practices, and programs that provide equal employment opportunities for women and which eradicate the effects of its past and present unlawful employment practices including, but not limited to, raising the level of compensation for female Area Managers to the level received by male Area Managers;

C. Order Defendant to make whole Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli "Sally" Ortega, by providing appropriate lost wages with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described in paragraphs 9 and 13 above;

D. Order Defendant to make whole Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli "Sally" Ortega, by providing compensation for past and future pecuniary losses resulting from the unlawful practices in violation of Title VII complained of in paragraph 9 above in amounts to be determined at trial;

E. Order Defendant to make whole Connie Damron, and a class of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli "Sally" Ortega, by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices in violation of Title VII complained of in paragraph 9 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of civil rights in amounts to be determined at trial;

F. Order Defendant, to pay Connie Damron, and a group of similarly situated female employees including Kitty Hash, Linda Mendieta and Aracelli “Sally” Ortega, punitive damages for its intentional, malicious and reckless conduct, as described above, in amounts to be determined at trial;

G. Grant a judgment requiring Defendant to pay appropriate back wages in amounts to be determined at trial and an equal sum as liquidated damages to employees whose wages are being unlawfully withheld as a result of the acts in violation of the Equal Pay Act complained of in paragraph 13 above, including, but not limited to, Connie Damron, Kitty Hash, Linda Mendieta, Aracelli “Sally” Ortega and a class of similarly situated female employees;

H. Order Defendant to make whole Connie Damron by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of the unlawful employment practices described in paragraph 16 above, including but not limited to reinstatement;

I. Order Defendant to make whole Connie Damron by providing compensation for past and future pecuniary losses resulting from the unlawful practices complained of in paragraph 16 above in amounts to be determined at trial;

J. Order Defendant to make whole Connie Damron by providing compensation for past and future non-pecuniary losses resulting from the unlawful practices complained of in paragraph 16 above, including but not limited to emotional pain, suffering, inconvenience, loss of enjoyment of life, humiliation, and loss of civil rights in amounts to be determined at trial;

K. Order Defendant to pay Connie Damron punitive damages for its malicious and reckless conduct, as described in paragraph 16 above, in amounts to be determined at trial;

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

M. Award the Commission its costs of this action.

JURY TRIAL DEMAND

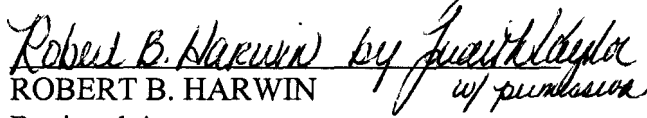
The Commission requests a jury trial on all questions of fact raised by its complaint.


Respectfully submitted,


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