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 U.S. DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 EL PASO DIVISION

Filed 4-7-03  
 Clerk, U. S. District Court  
 Western District of Texas  
 By MS.  
 Deputy

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF TEXAS  
 EL PASO DIVISION**

**EQUAL EMPLOYMENT  
 OPPORTUNITY COMMISSION,**

**Plaintiff,**

**v.**

**UNION PACIFIC  
 RAILROAD COMPANY,**

**Defendant.**

**and**

**DeMARCO HOWARD,**

**Plaintiff/Intervenor,**

**v.**

**UNION PACIFIC  
 RAILROAD COMPANY,**

**Defendant.**

**CIVIL ACTION NO. EP-02-CA-0445-DB**

**DeMARCO HOWARD'S  
 COMPLAINT IN INTERVENTION**

**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964, Title I of the Civil Rights Act of 1991, and the Civil Rights Act of 1866, 42 U.S.C. § 1981, to correct and award damages for Defendant's unlawful employment practices based on race, and to provide appropriate relief to Plaintiff/Intervenor Demarco W. Howard ("Plaintiff/Intervenor"), identified in the Complaint filed herein by the Equal Employment Opportunity Commission ("EEOC"), who was adversely affected by these unlawful employment practices. The EEOC initiated this action and Plaintiff/Intervenor

alleges that Defendant Union Pacific Railroad Company (hereafter "Defendant Union Pacific") discriminated against him because of his race (Black/African-American).

#### 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 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, 42 U.S.C. §1981(a).

2. The unlawful employment practices alleged herein were committed within the jurisdiction of the United States District Court for the Western District of Texas, El Paso Division.

#### PARTIES

3. Plaintiff EEOC is the 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) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. Plaintiff/Intervenor is a citizen of the State of Texas and is a real party in interest. Specifically, Plaintiff/Intervenor is the person who suffered the discrimination which is the basis of the EEOC's lawsuit against Defendant Union Pacific.

5. At all relevant times to this lawsuit, Defendant Union Pacific has continuously been a Delaware Corporation doing business in the State of Texas and the City of El Paso, and has continuously had at least 15 employees.

6. At all relevant times to this lawsuit, Defendant Union Pacific 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).

STATEMENT OF CLAIMS

7. More than thirty days prior to the institution of this lawsuit, DeMarco W. Howard filed a charge with the Commission alleging violations of Title VII by Defendant Union Pacific. All conditions precedent to the institution of this lawsuit have been fulfilled.

8. Since at least August 25, 1999, Defendant Union Pacific has engaged in unlawful 42 U.S.C. § 2000e-2(a)(1) as follows:

- a. Defendant Union Pacific discharged DeMarco W. Howard, who is African-American, because of his race; and
- b. Defendant Union Pacific continued its discriminatory practice of denying DeMarco Howard the right to employment and reinstatement through 2001.

9. The effect of the unlawful employment practices complained of in paragraph eight (8) above have been to deprive DeMarco W. Howard of equal employment opportunities, and otherwise adversely affect his status as an employee and citizen, because of his race. Additionally, the effect of these practices have been to deprive DeMarco W. Howard the right to make and enforce contracts, and denial to the full and equal benefit of all laws and proceedings enjoyed by white citizens.

10. The unlawful employment practices complained of in paragraph eight (8) above were intentional.

11. The unlawful employment practices complained of in paragraph eight (8) above were done with malice or with reckless indifference to the federally protected rights of DeMarco W. Howard.

PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff/Intervenor respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendant Union Pacific, its officers, successors, assigns, and all persons in active concert or participation with it, from engaging in any employment practice which discriminates on the basis of race, including but not limited to, discharging its African-American employees because of their race, and any other employment practice which discriminates on the basis of race;
- B. Order Defendant Union Pacific to institute and carry out policies, practices, and programs which provide equal employment opportunities for African-Americans, and which eradicate the effects of its past unlawful employment practices.
- C. Order Defendant Union Pacific to make whole DeMarco W. Howard, by providing appropriate backpay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including, but not limited to, frontpay;
- D. Order Defendant Union Pacific to make whole DeMarco W. Howard, by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraph seven above, including but not limited to job search expenses and medical expenses not covered by the Employer's employee benefit plan, in amounts to be determined at trial;
- E. Order Defendant Union Pacific to make whole DeMarco W. Howard by providing compensation for past and future nonpecuniary losses resulting from the unlawful employment practices complained of in paragraph eight (8) above, including but not limited to, emotional pain and suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to be determined at trial;

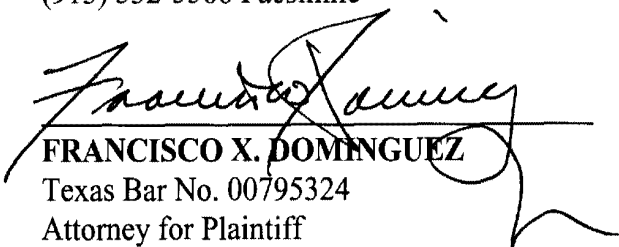
- F. Order Defendant Union Pacific to pay DeMarco W. Howard punitive damages for its malicious and reckless conduct described in paragraph eight (8) above, in amounts to be determined at trial;
- G. Grant such further relief as the Court deems necessary and proper in the public interest; and
- H. Award Plaintiff/Intervenor his costs of this action and reasonable and necessary attorney's fees.

JURY TRIAL DEMAND

Plaintiff/Intervenor requests a jury trial on all questions of fact raised by his complaint.

Respectfully submitted,

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Texas Bar No. 00795324  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2003 a copy of the above and foregoing instrument was served on the following:

**Linda C. Schoonmaker, Esq.**

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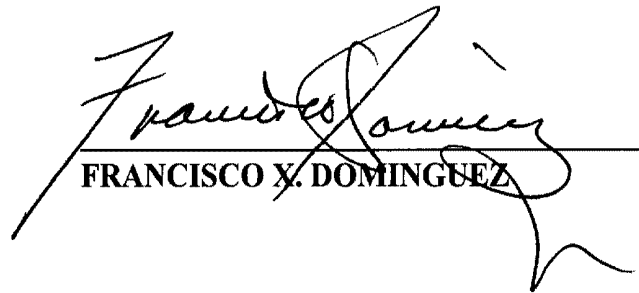
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