

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
)	
Plaintiff,)	
)	
and)	
)	
KARL SMITH, DeLEON PIGGEE,)	
FRANK EARL, III, TORRIS WILLIAMS,)	
JOSEPH JONES, and DAVID BELL.)	
)	CIVIL ACTION NO.
)	4:03CV01393-CEJ
Plaintiff-Intervenors,)	JURY TRIAL REQUESTED
)	
v.)	
)	
FEDEX FREIGHT EAST, INC., formerly known as AMERICAN FREIGHTWAYS, INC.)	
)	
)	
Defendant.)	
)	

ANSWER TO COMPLAINT OF PLAINTIFF-INTERVENORS

Defendant FedEx Freight East, Inc., formerly known as American Freightways, Inc., answers the Complaint of Plaintiff-Intervenors Karl Smith, DeLeon Piggee, Frank Earl, III, Torris Williams, Joseph Jones, and David Bell as follows:

FIRST DEFENSE

Defendant did not intentionally discriminate against Karl Smith, DeLeon Piggee, Frank Earl, III, Torris Williams, Joseph Jones, David Bell or any other African-American employee at its St. Louis Terminal because of their race. Defendant denies all of the wrongdoing

alleged in the Plaintiff-Intervenors' Complaint. The Complaint fails to state a claim for which relief may be granted

SECOND DEFENSE

1 With regard to Paragraph of the Complaint Defendant admits Karl Smith is an African-American male citizen. Defendant is without sufficient information to know whether he resided in St. Francis, Missouri at "all relevant times."

2 With regard to Paragraph 2 of the Complaint Defendant admits DeLeon Piggee is an African-American male citizen. Defendant is without sufficient information to know whether he resided in St. Louis County, Missouri at "all relevant times."

3 With regard to Paragraph 3 of the Complaint Defendant admits Frank Earl, III is an African-American male citizen. Defendant is without sufficient information to know whether he resided in St. Louis County, Missouri at "all relevant times."

4. With regard to Paragraph 4 of the Complaint Defendant admits Torris Williams is an African-American male citizen. Defendant is without sufficient information to know whether he resided in St. Louis County, Missouri at "all relevant times."

5. With regard to Paragraph 5 of the Complaint Defendant admits Joseph Jones is an African-American male citizen. Defendant is without sufficient information to know whether he resided in East St. Louis, Illinois at "all relevant times."

6. With regard to Paragraph 6 of the Complaint Defendant admits David Bell is an African-American male citizen. Defendant is without sufficient information to know whether he resided in Lovejoy, Illinois at "all relevant times."

7 With regard to Paragraph 7 of the Complaint, Defendant FedEx Freight East, Inc. is a Delaware corporation doing business in the Eastern District of Missouri, including St. Charles County, and maintains an office in St. Charles, Missouri

8. Paragraph 8 of the Complaint is admitted

9 Paragraph 9 of the Complaint is admitted.

10. With regard to Paragraph 10 of the Complaint, Defendant admits only that venue in this Court is proper for Plaintiffs' claims. Defendant, however, denies all of the allegations of wrongdoing.

1 Paragraph 11 of the Complaint is denied.

12 Paragraph 12 of the Complaint, and its subparts a-1, is denied.

13 Paragraph 13 of the Complaint is denied.

14 Paragraph 14 of the Complaint is denied.

15 Paragraph 15 of the Complaint is denied. Every time any of the Plaintiff-Intervenors complained about any sort of discrimination or harassment, Defendant investigated the allegation and took appropriate corrective action.

16. With regard to Paragraph 16 of the Complaint, Defendant admits Karl Smith was hired by Defendant as a part-time Dock Associate in August 1998 and became a full-time Dock Associate in March 1999. Defendant also admits Karl Smith has been out on long term disability leave since approximately November 2001 Mr. Smith is still employed by the Company today.

17. With regard to Paragraph 18 of the Complaint, Defendant admits DeLeon Piggee was hired by Defendant as a part-time Dock Associate in October 1998 and became a

full-time Dock Associate in March 2000. Defendant also admits it considered him to formally resign his employment effective May 7, 2003, several months after he stopped coming to work.

18. With regard to Paragraph 18 of the Complaint, Defendant admits Torris Williams was hired by Defendant as a part-time Dock Associate on November 15, 1999 and became a full-time Dock Associate on March 20, 2000.

19. With regard to Paragraph 19 of the Complaint, Defendant admits Frank Earl was hired as a part-time Dock Associate on February 21, 2000 and became a full-time Dock Associate on May 7, 2000.

20. With regard to Paragraph 20 of the Complaint, Defendant admits Joseph Jones was hired as a part-time Dock Associate on September 28, 1999 and was made a full-time Dock Associate on March 20, 2000. His employment was terminated on November 20, 2001 for attendance violations.

Paragraph 21 of the Complaint is denied.

22. Paragraph 22 of the Complaint is denied.

23. Paragraph 23 of the Complaint, including its subparts a-c, is denied.

24. Paragraph 24 of the Complaint is denied.

Paragraph 25 of the Complaint is denied.

26. With regard to Paragraph 26 of the Complaint, Defendant admits it measures the number of pounds of freight its associates handles per hour and that some freight shipments, by their nature, take longer to handle than others. Defendant, however, denies this is the sole means by which the work performance of Dock Associates is evaluated. Defendant further denies it gave Plaintiff-Intervenors more difficult shipments to handle because of their race.

27. Paragraph 27 of the Complaint is denied.
28. Paragraph 28 of the Complaint is denied.
29. Paragraph 29 of the Complaint is denied.
30. Paragraph 30 of the Complaint is denied.
31. Paragraph 31 of the Complaint is denied.
32. Paragraph 32 of the Complaint is denied.
33. Paragraph 33 of the Complaint is denied.
34. Paragraph 34 of the Complaint is denied.
35. Paragraph 35 of the Complaint is denied.
36. Paragraph 36 of the Complaint is denied.
37. With regard to Paragraph 37 of the Complaint, Defendant admits that, prior to the implementation of its formal “Driver Development Course” in or about January 2000, it had a driver training program called the “Dock to Driver” program for employees who wanted to become eligible for a City Driver position. Defendant also admits employees who were interested in participating in the Dock to Driver program training had to sign their name on a sign-up sheet to be considered.
38. With regard to Paragraph 38 of the Complaint, Defendant admits the Dock to Driver program required selected participants to, among other things, hostle, and apprentice with a City Driver and obtain a commercial drivers license (“CDL”). Defendant also admits “hostling” means moving trailers within Defendant’s yard for loading and unloading.
39. Paragraph 39 of the Complaint is denied.

40. With regard to Paragraph 40, Defendant admits Plaintiff-Intervenor Williams needed additional training before Defendant would allow him to drive one of its trucks over the road.

41. Paragraph 41 of the Complaint is denied.

42. With regard to Paragraph 42 of the Complaint, Defendant admits Karl Smith, DeLeon Piggee and Torris Williams, as well as Plaintiff-Intervenors Frank Earl and Joe Jones applied to participate in the Company's Driver Development Course ("DDC"). All five of these Plaintiff-Intervenors were accepted into the DDC upon their first application.

43. Paragraph 43 of the Complaint, including its subparts a-d, is denied.

44. Paragraph 44 of the Complaint is denied.

45. Paragraph 45 of the Complaint is denied.

46. With regard to Paragraph 46 of the Complaint, Defendant admits that in early 2000 Defendant began a driver training program called the "Driver Development Course" that, basically, required selected participants to complete approximately 9 weeks for classroom instruction and driving practice/training provided by company drivers, and obtain a Class "A" commercial drivers license.

47. To the extent Paragraph 47 of the Complaint so implies, Defendant denies it told Plaintiff-Intervenors Karl Smith and DeLeon Piggee that ability to participate in the Driver Development Course would be based solely on seniority. Defendant also denies it told Mr. Smith and Mr. Piggee they would be enrolled in the first DDC class offered. Defendant notes, however, Plaintiff Piggee was enrolled in the first DDC class offered at the St. Louis customer center.

48. Paragraph 48 of the Complaint is denied. On his job application with AF, Plaintiff-Intervenor Frank Earl indicated he was interested in a Dock Associate position, not a driver position. While he did indicate he had a Commercial Driver's License, he did not provide any information about it.

49. Paragraph 49 of the Complaint is denied. On his job application with AF, Plaintiff-Intervenor Torris Williams indicated he was interested in a Dock Associate position, not a driver position. Furthermore, while his application did list various minor traffic violations for which he had been cited over the years, it did not list any driving experience.

50. With regard to Paragraph 50 of the Complaint, Defendant admits Karl Smith, DeLeon Piggee and Torris Williams, as well as Plaintiff-Intervenors Frank Earl and Joe Jones applied to participate in the Company's Driver Development Course ("DDC"). All five of these Plaintiff-Intervenors were accepted into the DDC upon their first application.

Paragraph 51 of the Complaint is denied.

With regard to Paragraph 52 of the Complaint, Defendant admits it required Frank Earl and Torris Williams to complete the Company's Driver Development Course before allowing them to become City Drivers.

Paragraph 53 of the Complaint is denied.

54. Paragraph 54 of the Complaint, including its subparts a-c, is denied.

55. Paragraph 55 of the Complaint is denied.

56. Paragraph 56 of the Complaint is denied.

57. Paragraph 57 of the Complaint is denied.

58. Paragraph 58 of the Complaint is denied.

59. Paragraph 59 of the Complaint is denied.

Paragraph 60 of the Complaint is denied.

61. Paragraph 61 of the Complaint is denied.
62. Paragraph 62 of the Complaint is denied.
63. Paragraph 63 of the Complaint is denied.
64. Paragraph 64 of the Complaint is denied.
65. Paragraph 65 of the Complaint is denied.
66. Defendant is without sufficient information to admit or deny the allegation contained in Paragraph 66 of the Complaint. Plaintiff-Intervenor Karl Smith complained to management that another employee had threatened him. Management immediately investigated Mr. Smith's allegations but found no conclusive proof one way or the other.

67. With regard to Paragraph 67 of the Complaint Defendant admits Plaintiff Karl Smith told Defendant that another co-worker had threatened him.

68. Paragraph 68 of the Complaint is denied.
Paragraph 69 of the Complaint is admitted.
70. Paragraph 70 of the Complaint is admitted.
71. With regard to Paragraph 71 of the Complaint, Defendant admits Plaintiff Piggee received a Class "A" CDL after completing the company's Driver Development Course.

72. Paragraph 72 of the Complaint is denied.
73. Paragraph 73 of the Complaint is denied.
74. Paragraph 74 of the Complaint is denied.
75. Paragraph 75 of the Complaint is denied.
76. With regard to Paragraph 76, Defendant Plaintiff Williams enrolled in the Driver Development Course and hosted after that course was introduced.

- 77 Paragraph 77 of the Complaint is denied.
- 78. Paragraph 78 of the Complaint is denied.
- 79. Paragraph 79 of the Complaint is denied.
- 80. Paragraph 80 of the Complaint is denied.
- 81 Paragraph 81 of the Complaint is denied.
- 82. With regard to Paragraph of the Complaint, Defendant admits Torris Williams completed the Driver Development Course in approximately January 2001 and, shortly afterwards, obtained his Class "A" CDL.

83 With regard to Paragraph 83 of the Complaint Defendant admits Torris Williams was not formally classified as a "City Driver" until after January 2001 Defendant, however, denies that it withheld Williams from any city driver routes as those routes are won by bid.

- 84. Paragraph 84 of the Complaint is denied.
- 85 Upon information and belief Paragraph 85 of the Complaint is denied.
- 86. With regard to Paragraph 86 of the Complaint, Defendant admits its attendance policy could allow for excused absences where care of a close family member is necessary.

- 87. Paragraph 87 of the Complaint is denied.
- 88. Paragraph 88 of the Complaint is denied.
- 89. Paragraph 89 of the Complaint is denied.
- 90. Paragraph 90 of the Complaint is denied.

91 With regard to Paragraph 91 of the Complaint, Defendant admits Joseph Jones hurt his shoulder at work on June 20, 2001. Defendant denies Mr. Jones missed any work because of that injury.

92. With regard to Paragraph 92 of the Complaint, Defendant admits that after numerous attendance violations, Joe Jones was given a final written warning that any future attendance violation would result in his termination.

93 Paragraph 93 of the Complaint is admitted.

94. Paragraph 94 of the Complaint is denied.

95 Paragraph 95 of the Complaint is denied.

Paragraph 96 of the Complaint is denied.

97. Paragraph 97 of the Complaint is admitted.

98. With regard to Paragraph 98 of the Complaint, Defendant admits Plaintiff Bell applied for a driving job with Defendant on January 31, 2000 and that he had a Class A CDL at that time. Defendant is without sufficient information to admit or deny whether he had 19 years of driving experience with a Class A CDL.

Paragraph 99 of the Complaint is denied.

Paragraph 100 of the Complaint is denied.

101 Paragraph 101 of the Complaint is denied.

Paragraph 102 of the Complaint is denied.

Paragraph 103 of the Complaint is denied.

104. Paragraph 104 of the Complaint is denied.

Paragraph 105 of the Complaint is denied.

Paragraph 106 of the Complaint is denied.

Paragraph 107 of the Complaint is denied.

Paragraph 108 of the Complaint is denied.

Paragraph 109 of the Complaint is denied.

110. Paragraph 110 of the Complaint is denied.

111 Paragraph 111 of the Complaint is denied.

Paragraph 112 of the Complaint is denied.

113. Paragraph 113 of the Complaint is denied.

Paragraph 114 of the Complaint is admitted.

115. Paragraph 115 of the Complaint is denied.

Paragraph 116 of the Complaint is denied.

117. Upon information and belief, Paragraph 117 of the Complaint is denied.

Upon information and belief, Paragraph 118 of the Complaint is denied.

Upon information and belief, Paragraph 119 of the Complaint is denied.

Upon information and belief, Paragraph 120 of the Complaint is denied.

121 Paragraph 121 of the Complaint is denied.

Paragraph 122 of the Complaint is denied.

Paragraph 123 of the Complaint is denied.

Paragraph 124 of the Complaint is denied.

Paragraph 125 of the Complaint is denied.

Paragraph 126 of the Complaint is denied.

127. Paragraph 127 of the Complaint is denied.

Paragraph 128 of the Complaint is denied.

The remainder of the Complaint is simply a Prayer for Relief and does not require admission or denial.

All allegations of the Complaint not expressly admitted herein are denied.

THIRD DEFENSE

All or part of the Complaint is barred due to the appropriate limitations periods.

FOURTH DEFENSE

Some of the discriminatory “wrongdoing” alleged does not rise to the level of actionable “adverse employment actions.”

FIFTH DEFENSE

Any adverse employment actions that were taken by Defendant against the Plaintiff-Intervenors were based on legitimate, non-discriminatory and non-retaliatory reasons unrelated to race, color, national origin or participation in protected activities.

SIXTH DEFENSE

The damages and relief sought are subject to statutory maximums and are limited by the Constitution.

SEVENTH DEFENSE

All or some of the Complaint allegations are beyond the scope of the underlying Charges of Discrimination filed by DeLeon Piggee, Torris D. Williams, David L. Bell, Sr., Karl A. Smith, Frank Earl, III and Joe Jones.

EIGHTH DEFENSE

The Plaintiff-Intervenors failed to exhaust their administrative remedies.

NINTH DEFENSE

Defendant exercised reasonable care to prevent and promptly correct any alleged discrimination and Plaintiff-Intervenors unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to avoid harm otherwise.

TENTH DEFENSE

The Plaintiff-Intervenors failed to mitigate their damages.

ELEVENTH DEFENSE

All or part of the Complaint may be barred under the doctrines of laches, unclean hands, estoppel or waiver. These defenses may likewise limit the relief sought.

TWELVETH DEFENSE

All or some of the Plaintiff-Intervenors' claims are barred by the EEOC's lawsuit against Defendant.

Date: January 26, 2004.

Respectfully submitted,

/s/William A. Blue, Jr.

William A. Blue, Jr. (TN B.P.R. No. 10378)

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CERTIFICATE OF SERVICE

I certify that on January 26, 2004, the foregoing was sent to the following by postage pre-paid U.S. Mail:

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Equal Employment Opportunity Commission
Robert A. Young Federal Building
1222 Spruce St., Room 8.100
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Jerome Dobson
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/s/ William A. Blue, Jr.

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