

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GERALD PRICE)	CASE NO.: 5:04 CV 2070
228 28TH STREET NW)	
BARBERTON, OHIO 44203)	JUDGE DOWD
)	
Plaintiff,)	
)	
vs.)	PLAINTIFF GERALD PRICE S
)	SECOND AMENDED
CARTER LUMBER COMPANY)	<u>COMPLAINT</u>
1763 WADSWORTH ROAD)	(Jury Demand Endorsed Herein)
NORTON, OHIO 44203)	
)	
)	
Defendant.)	

INTRODUCTION

1. The Plaintiff alleges a Title I violation of the Americans With Disability Act of 1990 (ADA).
2. Plaintiff further alleges violation of 4112 of the Ohio Revised Code.
3. Plaintiff further alleges intentional infliction of emotional distress in regards to his termination.
4. The Plaintiff is seeking reinstatement, monetary damages, and injunctive relief.

5. EEOC has filed a separate claim under case number 5:04 CV 1824.

JURISDICTION

6. Jurisdiction is evoked under 28 U.S.C. 1331, 1343, and 1367.
7. Jurisdiction is further allowed under the ADA act of 1990.

PARTIES

8. Gerald Price is a US Citizen residing in Barberton, Ohio.
9. Defendant, Carter Lumber Company, is an Ohio Corporation. (Hereinafter called Carter.)
10. Carter is an employer under the meaning of the act. Carter has an excess of 250 employees.

STATEMENT OF THE FACTS

11. Plaintiff states that he was hired on or about March 10, 1998 in the position of back up truck driver and yard/sales person. Plaintiff states that his job performance was excellent. In fact Plaintiff was known for performing duties that were outside his job description for the betterment of Defendant s business.
12. Plaintiff states that suddenly and without notice, on or about December 11th or 12, 2002 he as hospitalized with renal and kidney failure. Plaintiff was released from the hospital on or about December 16, 2002 and immediately, on the way home, informed Collins of his physical condition.
13. Plaintiff informed Defendant s Supervisor and Manager Jim Collins (Mr. Collins) that he was on a dialysis schedule of 5:00 p.m. to 9:00 p.m. on Tuesdays, Thursdays, and Saturdays. This dialysis schedule would only require

Plaintiff to miss two hours of overtime.

14. Plaintiff states that in December of 2002 his doctor had given Plaintiff limited medical restrictions to avoid heavy lifting. Plaintiff states that he could still perform the essential functions of his job with reasonable accommodations.
15. Plaintiff states that on or about January 25, 2003 he advised his supervisor, Mr. Collins, that he was released to go back to work with the minor medical restriction of no heavy lifting. Plaintiff states that he could perform all the essential functions of his job with a minor accommodation of assisting in lifting heavy objects through a work dolly or co-worker.
16. Plaintiff states that the practice, at Defendant s business in the past, has always been that employees assisted each other in lifting heavy objects. No employees in the past have been required to lift heavy objects on their own. No employees in the past have been laid off or terminated or denied recall for asking for assistance with lifting objects.
17. Plaintiff states that on or about January 25, 2003 Defendant s Supervisor, Mr. Collins, advised Plaintiff that he was going to be laid off because of lack of work.
18. Plaintiff states that he was the only person laid off. Plaintiff further states that the layoff was discriminatory based upon Plaintiff s disability. Plaintiff was advised he was only going to be laid off and recalled when work picked up. However, on information and belief, Defendant Collins, on behalf of the company, had no intentions of recalling Plaintiff due to discrimination in regards to Plaintiff s

disability.

19. Plaintiff further states that he would stop in Defendant s store, at least two to three times per week, from early January, 2003 through April or May, 2003. Plaintiff constantly asked Collins when he was going to be called back to work. However, Collins kept advising Plaintiff that he would be called back to work when things picked back up. Plaintiff states the reason given by Collins were false and discriminatory based upon Plaintiff s disability.
20. Plaintiff states that in April or May, 2003, after seeing new workers being hired, Plaintiff again confronted Collins, who finally indicated that Plaintiff was not going to be recalled because Carter would not work around his dialysis treatments.
21. Plaintiff states that he was not recalled because of discrimination in regards to his disability.
22. Plaintiff states that he filed a complaint with EEOC. Plaintiff states that on or about February 18, 2004 EEOC found probable cause.
23. Plaintiff states that the action of the Defendants, on or about January 25, 2003, in laying off Plaintiff because of his disability was discriminatory. Plaintiff further states that the actions of the Defendant, in failing to recall Plaintiff, is a further act of discrimination based upon Plaintiff s disability.

FIRST CAUSE OF ACTION

24. Plaintiff incorporates the Statement of the Facts into the First Cause of Action as if fully rewritten herein.

25. Plaintiff states that the actions of the Defendant, in laying off Plaintiff and then the failure of Defendants to recall Plaintiff, is clearly a violation of ADA.
26. **Wherefore**, Plaintiff demands reinstatement, compensatory damages of \$300,000, punitive damages of \$100,000, attorney fees, cost and any other relief this Court may deem is fair and equitable.

SECOND CAUSE OF ACTION

27. Plaintiff incorporates the Statement of the Facts and the First Cause of Action into the Second Cause of Action as if fully rewritten herein.
28. Plaintiff further states that the act of the Defendant, in laying off Plaintiff, and further the failure to recall Plaintiff is a further violation of Ohio Revised Code 4112 in that said action of Defendant is clearly based upon Plaintiff s disability.
29. **Wherefore**, Plaintiff demands compensatory damages of \$1,000,000, punitive damages of \$1,000,000, attorney fees, cost, and any other relief this Court may deem is fair and equitable.

THIRD CAUSE OF ACTION

30. Plaintiff incorporates the Statement of the Facts and the First and Second Causes of Action into the Third Cause of Action as if fully rewritten herein.
31. Plaintiff states that Defendant s actions are outrageous. Plaintiff states that the Defendants actions are clearly a violation of law.
32. Plaintiff states that the actions of the Defendant are unconscionable.
33. Plaintiff states that as a result of said actions he suffered serious, emotional distress.

34. **Wherefore**, Plaintiff demands for intentional infliction of emotional distress, compensatory damages of \$1,000,000, punitive damages of \$1,000,000, attorney fees, cost and any other relief this Court may deem is fair and equitable.

Respectfully submitted,

SLATER, ZURZ & GILBERT

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed on December 8, 2005. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Edward L. Gilbert
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