

FILED
 CHARLOTTE, N.C.
 IN THE UNITED STATES DISTRICT COURT
 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
 ASHEVILLE DIVISION
 U.S. DISTRICT COURT
 W. DIST. OF N.C.

JEFFREY HEMPHILL,)
)
Plaintiff,)
)
v.)
)
SARA LEE CORPORATION,)
)
Defendant.)

CIVIL ACTION

NO: 1:99 cv 86-J

COMPLAINT

I. INTRODUCTION AND JURISDICTION

1. This is an action seeking legal, equitable and declaratory relief under the Civil Rights Act of 1866, 42 U.S.C. §1981, ("Section 1981"), and the common law and public policy of the state of North Carolina. Plaintiff contends that he was subjected to racial harassment and terminated from his job with the defendant because of his race and color in violation of Section 1981 and the public policy of the state of North Carolina.

2. Jurisdiction of the court is invoked pursuant to 28 U.S.C. §1343, this being a proceeding seeking to enforce rights and remedies secured by Section 1981.

3. Jurisdiction is further invoked pursuant to 28 U.S.C. §§2201 and 2202. This being an action for declaratory judgment declaring illegal the acts of defendant complained of herein violating rights secured to the plaintiff by Section 1981.

4. Jurisdiction is further invoked pursuant to 28 U.S.C. §1367, this being an action also challenging defendant's unlawful acts under the common law and public policy of North Carolina.

II. PARTIES

5. Plaintiff, Jeffrey Hemphill, is an African-American citizen and resident of Transylvania County, Pisgah Forest, North Carolina.

6. Defendant, Sara Lee Corporation is a company which during times relevant to this matter, was doing business in Forest City, North Carolina, namely the production of textile products. Sara Lee Corporation, Forest City facility produced tee shirts.

III. FACTS

7. Sara Lee Corporation employed the plaintiff, Jeffrey Hemphill, on December 1, 1986 at the Jamestown Road facility in Morganton, North Carolina as a BRB operator and material handler. Plaintiff transferred to the maintenance department of the Forest City facility in January 1988. Initially, plaintiff was an apprentice maintenance technician. Upon completion of the apprentice program, he worked in the position of technician IV.

8. Throughout his employment in the Forest City facility, plaintiff was subjected to racial harassment from his co-workers. The white employees made racially offensive comments, told racially offensive jokes and made racial slurs. Plaintiff complained to management. Management made excuses by saying that the co-workers did not mean what they said. The actions by defendant's agents ratified the behavior of its white employees.

9. In November 1995, plaintiff was issued a written reprimand because he had been issued parking tickets by defendant's security guards. Plaintiff's car had been broken into while parked on defendant's property. In an attempt to avoid future break-ins, plaintiff parked his car near the guard station. Plaintiff's car was ticketed. Similarly situated white employees who had been issued parking tickets were not issued written reprimands for having parking tickets.

10. In November 1995, plaintiff was given a written reprimand for taking too long on break. Similarly situated whites, with whom he had been on break, did not receive write-ups.

11. In November 1995, Plaintiff called to request two vacation days. Upon his return to work, plaintiff was given a written warning because he called in as had been acceptable practice. Plaintiff was informed that the policy had been changed. Similarly situated white employees continued to call in to request time off after the plaintiff was informed that he could no longer do so. Similarly situated white employees were not disciplined for calling in to request time off.

12. On May 8, 1996, when plaintiff was scheduled to have his final written warning removed, he was written up for being out of his department. Plaintiff worked in the maintenance department and performed work in all departments in the plant. Similarly situation white employees were not disciplined for being out of the maintenance department.

9. In November 1995, plaintiff was issued a written reprimand because he had been issued parking tickets by defendant's security guards. Plaintiff's car had been broken into while parked on defendant's property. In an attempt to avoid future break-ins, plaintiff parked his car near the guard station. Plaintiff's car was ticketed. Similarly situated white employees who had been issued parking tickets were not issued written reprimands for having parking tickets.

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12. On May 8, 1996, when plaintiff was scheduled to have his final written warning removed, he was written up for being out of his department. Plaintiff worked in the maintenance department and performed work in all departments in the plant. Similarly situation white employees were not disciplined for being out of the maintenance department.

IV. FIRST CLAIM FOR RELIEF

13. The plaintiff realleges Paragraphs 1 through 12 above.

14. The defendant discriminated against the plaintiff on the basis of his race and color by subjecting him to a racially hostile working environment. Plaintiff endured jokes and comments with names such as “coon” and “nigger.”

15. The above actions were taken with the intent and purpose of discriminating against the plaintiff because of his race and color. Defendant’s actions were undertaken willfully, wantonly and with reckless disregard to plaintiff’s rights. Defendant’s actions complained of herein violate 42 U.S.C. §1981 and the common law and public policy of the state of North Carolina as proscribed in N.C.G.S. §143-422.2.

V. SECOND CLAIM FOR RELIEF

16. The plaintiff realleges Paragraphs 1 through 15 above.

17. Defendant discriminated against the plaintiff on the basis of his race and color by subjecting him to a difference in terms and conditions. Plaintiff received reprimands for acts which similarly situated whites were not disciplined. The written reprimands led to plaintiff being placed on final written warning.

18. The above actions were taken with the intent and purpose of discriminating against the plaintiff because of his race and color. Defendant’s actions were undertaken willfully, wantonly and with reckless disregard to plaintiff’s rights. Defendant’s actions complained of herein violate 42 U.S.C. §1981 and the common law and public policy of the state of North Carolina as proscribed in N.C.G.S. §143-422.2.

VI. THIRD CLAIM FOR RELIEF

19. The plaintiff realleges Paragraphs 1 through 18 above.

20. Defendant discriminated against the plaintiff on the basis of his race and color by terminating him for his employment.

VII. FOURTH CLAIM FOR RELIEF

21. Plaintiff realleges Paragraphs 1 through 20 above.

22. Defendant retaliated against plaintiff by terminating him from his employment.

23. The above actions were taken with the intent and purpose of retaliating against the plaintiff for complaining about defendant's discriminatory practices.

Defendant's actions were undertaken willfully, wantonly and with reckless disregard to plaintiff's rights. Defendant's actions complained of herein violate Section 1981, 42 U.S.C. §1981, and the common law and public policy of the state of North Carolina as prescribed in N.C.G.S. §143-422.2.

VIII. DAMAGES

24. As a result of the discrimination and retaliation claimed herein, plaintiff has suffered loss of past, present and future earnings, loss of fringe benefits, loss of retirement benefits, loss of status, and mental anguish and distress, including extreme worry, humiliation, loss of sleep and other monetary losses.

25. By reason of defendant's extreme and outrageous conduct and as a proximate result thereof, the plaintiff has suffered and has been damaged in his economic relations, and has suffered other losses in an amount in excess of \$10,000.00.

26. Plaintiff has been and continues to be irrevocably injured by the discriminatory actions complained of herein. The injuries which plaintiff suffered are and will continue to be irrevocable until enjoined by this court. Plaintiff has no other adequate or complete remedy other than this proceeding to have the practice of the defendant complained of herein remedied.

VIII. JURY TRIAL DEMANDED

27. Plaintiff hereby demands a trial by jury.

IX. PRAYER FOR RELIEF

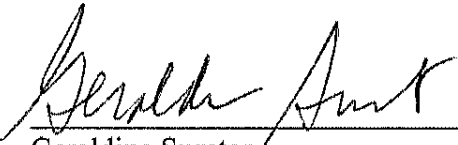
WHEREFORE, plaintiff prays that the discrimination and retaliation alleged herein be remedied in full and that the court, after a jury trial:

- (1) Declare the actions complained of herein to be illegal;
- (2) Issue an injunction enjoining the defendant, its agents, its employees, successors, attorneys and those acting in concert or participation with the defendant and at its direction from engaging in the unlawful practices set forth herein and any other employment practice shown to be in violation of 42 U.S.C. §1981 and the common law and public policy of North Carolina;
- (3) Direct that the defendant take such steps as may be appropriate to correct the hostile work environment so that plaintiff could return to an environment free of racial harassment. Return plaintiff to a job comparable to one which he would have held with pay and conditions of employment as he would have received, had there been no discrimination by the defendant on the basis of race and color and retaliation;

- (4) Award the plaintiff compensatory damages, including damages for mental anguish, pain and suffering, harm to plaintiff's economic opportunities, back pay, front pay and future loss of earnings with cost of living adjustments, interest, fringe benefits, and retirement benefits;
- (5) Award the plaintiff compensatory damages to which he is entitled for the violation of the public policy and common law of the state of North Carolina;
- (6) Award the plaintiff compensatory damages to which he is entitled for harm to his economic relations;
- (7) Award the plaintiff punitive damages for the egregious, willful and wanton conduct of defendant;
- (8) Award plaintiff his costs and expenses in this action, including reasonable attorneys fees, costs and other litigation expenses; and
- (9) Grant such other and further relief as may be just and necessary to afford complete relief to the plaintiff.

This the 7th day of May, 1999

Respectfully Submitted,



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