

United States District Court, N.D. New York.

D. Drew ABRAMS and Thomas W. Loucks, individually, and on behalf of all other persons similarly situated, Plaintiffs,

v.

GENERAL ELECTRIC COMPANY, Defendant.

No. 95-CV-1734 FJS RWS.

December 7, 1995.

Complaint Class Action Jury Demand

JURY DEMANDED

Plaintiffs, D. Drew Abrams and Thomas W. Loucks, on behalf of himself and of all other members of the Plaintiff Class hereinafter described, by their attorneys, McNamee, Lochner, Titus & Williams, P.C., as and for their Complaint, respectfully allege as follows:

I. JURISDICTION

1. This is a Class action authorized- by and instituted, inter alia, under the Age Discrimination in Employment Act of 1967, as amended (the "ADEA"), 29 U.S.C. §621, et seq. The First and Second Causes of Action are based on 29 U.S.C. §623 (a). As to such causes of action, the jurisdiction of this court is invoked by the plaintiffs pursuant to 29 U.S.C. §626 and 28 U.S.C. §1331.

The Third Cause of Action of the Complaint arises under the New York State Human Rights Law ("HRL"), Article 15, Executive Law §§290-321. The jurisdiction of this court as to the Third Cause of Action is invoked by plaintiffs pursuant to the principles of pendent jurisdiction.

The Fourth, Fifth and Sixth Causes of Action of the Complaint arise under the Employee Retirement Income Security Act ("ERISA"), 29, U.S.C. § 1132(a).

The named plaintiffs and the individual Class members they seek to represent herein also seek declaratory relief pursuant to 28 U.S.C. §2201 and §2202. Written consents to join this action, as and when executed by other individual opt-in plaintiffs, as Class members, will be filed herewith, as and when received, pursuant to Section 216(b) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, et seq.

II. NATURE OF PROCEEDINGS

2. This is an individual and Class action proceeding for: (a) back pay; (b) front pay; (c) liquidated damages; (d) declaratory judgment; (e) compensatory damages as may be provided pursuant to state law; (f) counsel fees; and (g) such other relief as may be necessary to secure to plaintiffs Loucks and Abrams and the Class they seek to represent redress from employment discrimination based on age.

III. PARTIES

3. Upon information and belief, defendant General Electric Company is a corporation authorized to do business in the State of New York with facilities located in Schenectady, New York. These facilities include a portion of the Industrial and Power Systems (“I&P”) division of the company. General Electric Company is an “Employer” within the meaning of the ADEA.

4. Venue lies in the Northern District of New York under 28 U.S.C. 1391(c).

5. Named plaintiff Loucks is a male citizen born on XX/XX/1944, and presently resides in Amsterdam, New York. Loucks was continuously employed with the defendant since May 1965 in various positions, including most recently that of MRP Planner with I&P. Loucks was involuntarily terminated and laid off by defendant effective May 19, 1995.

6. Named plaintiff Abrams is a male citizen born on XX/XX/1939, and presently resides in Burnt Hills, New York. Named plaintiff Abrams was continuously employed by defendant since August 11, 1969, in various positions including most recently Team Leader Modeling and Labor Input with I&P. Abrams was involuntarily retired effective May 19, 1995.

7. In addition to the plaintiff above mentioned, various persons who are present or former employees of the I&P of General Electric Company and who are similarly situated to the plaintiffs are filing and will file written consents to join this action as Opt-in plaintiffs.

IV. ADMINISTRATIVE PROCEEDINGS

8. On or about June 26, 1995, within the time prescribed by §626(d) of the ADEA, plaintiff Abrams duly filed with the Equal Employment Opportunity Commission (“EEOC”) a charge of age discrimination against defendant under the ADEA.

9. On or about the same date as the aforementioned EEOC charge was filed, the EEOC caused a copy of said charge to be filed with the New York State Division of Human Rights.

10. In substance, the Abrams charge asserts that General Electric Company engaged in wrongful age discrimination against plaintiff Abrams and others similarly situated by wrongfully terminating him and others for age-related reasons. The Abrams charge also alleges that effective on or about March 20, 1995, General Electric Company implemented, authorized, consented to, ratified and approved a pattern, policy and practice which lead to widespread terminations, involuntary retirements and some demotions of workers over 40 years of age employed at the I&P and that the actions of General Electric Company constituted disparate treatment of, and had a disparate impact upon General Electric Company I&P employees, over the age of 40, and said actions and conduct violated the ADEA.

11. On or about June 26, 1995, within the time prescribed by §626(d) of the ADEA Plaintiff Loucks duly filed with the EEOC a charge of age discrimination against defendant under the ADEA.

12. On or about the same date as the aforementioned EEOC charge was filed, the EEOC caused a copy of said charge to be filed with the New York State Division of Human Rights.

13. The McMaster charge alleges that as a result of the widespread lay-offs described in paragraph "10" above, plaintiff Loucks, and others similarly situated, were forced to accept a special early retirement option ("SERO"). The Loucks charge also alleges that General Electric Company, effective on or about March 20, 1995, implemented, authorized, consented to, ratified and approved a pattern policy and practice which lead to such involuntary retirements affecting workers over 40 years of age, and that such conduct constituted disparate treatment of and had a disparate impact upon General Electric Company I&P employees over the age of 40, and such actions and conduct violated the ADEA.

14. Sixty days have elapsed from the filing of the Abrams and Loucks EEOC administrative charges.

15. The EEOC issued right to sue notices to the named plaintiff Abrams on October 25, 1995 and named plaintiff Loucks on _____, 1995. Ninety (90) days have not elapsed from receipt of either notice.

V. STATEMENT OF THE INDIVIDUAL CLAIMS

16. Plaintiffs Abrams and Loucks repeat and reallege each and every allegation of the Complaint hereinbefore pleaded as if set forth fully herein.

17. Since his date of hire in May 1965, and for almost thirty (30) years, plaintiff Loucks was employed by defendant, most recently as MRP Planner. His work record has been consistently satisfactory.

18. On or about May 19, 1995, plaintiff Loucks was terminated by the defendant as part of a mass lay-off for the stated purpose of reducing costs and improving the competitive position of the company.

19. Plaintiff Loucks was qualified for the position of MRP Planner and for other positions in the company at the time of the lay-off.

20. Upon information and belief, many of plaintiff Loucks' job duties were reassigned to workers under 40 years of age.

21. Since his date of hire on August 11, 1969, and for over twenty-five years, plaintiff Abrams was employed by General Electric Company, most recently as a Team Leader Modeling and Labor Input. His work record has been consistently satisfactory.

22. On or about May 19, 1995, plaintiff Abrams was targeted by the defendant as part of a mass lay off and was forced to accept a special Early Retirement Option ("SERO"). Plaintiff Abrams had planned to continue working but knew that unless he accepted the "SERO", he would be terminated.

23. At the time of his lay-off, plaintiff Loucks worked for Dallas Silverthorn along with approximately 190 other employees. As a result of the lay-off, thirteen employees were terminated, of which ten or eleven were over the age of 40.

24. At the time of his lay-off, plaintiff Abrams worked for Michael Kelly, along with approximately 85 other employees. As a result of the lay-off, three employees were terminated, all of which were over the age of 40.

25. Defendant's action in terminating plaintiffs Loucks and Abrams, as herein described was willful and based in determinative part upon the ages of said plaintiffs in violation of rights secured to them by Section 623(a) of the ADEA.

VI. DESCRIPTION AND NATURE OF CLASS ACTION

26. The named plaintiffs bring this Class action on their own behalf, and, pursuant to 29 U.S.C. §216(b), on behalf of all other persons, similarly situated, over the age of 40 who have been adversely affected by defendant's unlawful age discrimination in employment policies and practices. The "Class" which the named plaintiffs seek to represent, and of which the named plaintiffs are themselves members, is composed of and defined as follows: all persons, male and female, in the present or former employ of General Electric Company, now or hereafter

executing and filing written consents to participate and join in this action, pursuant to 29 U.S.C. §216(b), who were on March 20, 1995 (the date of the notice of lay-off):

- a. 40 years of age or over;
- b. employed at the I&P division of defendant in Schenectady, New York;
- c. a member of salaried, exempt workforce;
- d. terminated, laid-off, demoted, subject to job elimination or forced to retire because of such lay-off and not rehired or reemployed since the adverse job action; and
- e. subjected to such adverse employment actions as described in (d) pursuant to or in connection with staff reductions and/or lay-offs announced on or about March 20, 1995, and implemented by General Electric Company on or about May 19, 1995.

27. Plaintiffs are unable to state at this time the exact size of the potential Class but aver that it may exceed 100 persons. Written consents will be filed from opt-in plaintiffs who elect to join the Class as party plaintiffs.

28. As set forth herein, this class action meets the requirements for being maintained and prosecuted as a class action pursuant to 29 U.S.C. §216(b) in that the named plaintiffs and each of the opt-in plaintiffs are all “similarly situated” to one another.

VII. FIRST CAUSE OF ACTION-CLASS ACTION

29. Plaintiffs repeat and reallege each and every allegation of the Complaint hereinbefore pleaded as if set forth fully herein.

30. Commencing in or about March 20, 1995, and continuing to the date hereof, General Electric Company has intentionally and willfully engaged in a series of unlawful acts, practices, policies and procedures in violation of the ADEA. These several practices have been part of a systematic and concerted staff reduction program (“program”) and/or layoff for the stated purpose of reducing expenses by means of lay-offs and terminations.

31. Upon information and belief, defendant's program has reflected, in both purpose and effect, a blatant and willful pattern of age discrimination. These discriminatory activities have included, but have not been limited to, the following:

- a. designing, establishing, implementing and maintaining employee retention and elimination procedures, policies and practices which have been unlawful and discriminatory in purpose and/or impact in terminating from employment qualified persons over the age of 40 because of their age;

b. designing, establishing, implementing and maintaining employee promotion, demotion, transfer and assignment procedures and practices which have been unlawful and discriminatory in purpose and/or impact in depriving qualified persons over the age of 40 because of their age, of the same opportunities as are and were available to persons under the age of 40;

c. establishing, implementing and maintaining other employment policies and practices which have been motivated by financial and cost-cutting considerations which in purpose and/or impact have otherwise adversely affected the employment status of persons over the age of 40.

32. As a consequence of the foregoing, defendant's program has produced both a disparate adverse treatment of and a disparate adverse impact upon employees over the age 40. In particular, the defendant has caused, directly and indirectly, the disproportionate elimination from defendant's job ranks of substantial numbers of employees over the age of 40, including plaintiffs and the Class they represent. The defendant's actions, as described above, also resulted in the demotion and downgrading of an unknown number of other employees over the age of 40.

33. The above described pattern and practices of systematic and concerted discrimination complained of by the plaintiffs as discharged employees of defendant has similarly affected all other members of the Class so that the claims of all such Class members are common and typical to each other.

VIII. SECOND CAUSE OF ACTION-CLASS ACTION

34. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "16" through "25" and paragraphs "26" through "33", inclusive, as though set forth fully herein.

35. Upon information and belief, defendant's policies and practices, as described in paragraph 30(a-c) supra, were predicated on impermissible age-based criteria which disparately impacted upon all exempt salaried employees at defendant's I&P in Schenectady, New York, including plaintiffs, in violation of their rights as secured by §623(a) (1) and (2) of the ADEA.

IX. THIRD CAUSE OF ACTION-CLASS ACTION

36. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "16" through "25" and paragraphs "26" through "35", inclusive, as though set forth fully herein.

37. The actions of defendant, as hereinabove described in the First and Second Causes of action, also constitute respective violations of Sections 296(1) (a) and 296(3-a)(a) of the HRL.

X. FOURTH CAUSE OF ACTION-CLASS ACTION

38. Plaintiff repeats and realleges each and every allegation contained in paragraphs “16” through “25” and paragraphs “26” through “37”, inclusive as more fully set forth herein.

39. As of March 20, 1995, and for some time prior to that date, the defendant General Electric Company maintained an employee pension plan that entitled all employees covered by it to certain pension benefits upon retirement. The pensions for covered employees were calculated according to a formula based on age at retirement, years of employment with the defendant General Electric Company or its predecessors and salary while employed. Under this formula, greater benefits accrued to those employees who retired closest to age sixty-five and with greater seniority, while those who took “early retirement,” as defined in the pension plan, were penalized by a percentage reduction in their overall pension benefits.

40. The plaintiff is a participant in the employee pension plan identified in paragraph 39.

41. The employee pension plan identified in paragraph 39 is a covered plan within the meaning of ERISA, 29 U.S.C. § 1001 et seq.

42. The defendant General Electric Company is plan administrator and plan fiduciary of the aforementioned employee pension plan.

43. Upon information and belief, the defendant General Electric Company terminated certain employees, including plaintiff, because of their age and/or seniority, in order to reduce the defendant's costs in connection with their obligations under the aforementioned employee pension plan.

44. As a result of the plaintiff's termination, plaintiff Abrams was forced to take “early retirement”, as defined in the employee pension plan, in order to maintain eligibility for reasonable health care benefits and plaintiff Loucks did not qualify for retirement benefits. In taking early retirement, plaintiff Abrams was penalized resulting in a reduction of the pension benefits for which he was entitled and plaintiff Loucks was penalized by not qualifying for retirement for which he would have been entitled.

45. In engaging in the foregoing conduct, defendant General Electric Company discharged the plaintiffs for the purposes of interfering with the plaintiffs' attainment of the benefits to which they would have been entitled, all in violation of § 510 of ERISA, 29 U.S.C. § 1140.

46. As a result of the defendant's violation of ERISA, the plaintiffs have suffered damages, including but not limited to, loss of increased retirement benefits, loss of retirement benefits, including but not limited to, the penalized amounts deducted from his pension benefits, lost income, loss of future earnings and loss of substantial additional benefits.

XI. FIFTH CAUSE OF ACTION-CLASS ACTION

47. The plaintiff repeats and realleges each and every allegation contained in paragraphs “16” through “25” and paragraphs “26” through “46” of the Complaint as if fully set forth herein at length.

48. The defendant General Electric Company, in engaging in the aforementioned conduct, breached its fiduciary duties with respect to the severance policy and/or the employee pension plan, in violation of ERISA, 29 U.S.C. § 1101 et seq.

X. PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the Class respectfully request that this court:

(a) Enter a declaratory judgment determining that defendant, by reason of its acts, policies, practices and procedures complained of herein, including those of the Program: (1) has willfully violated and continued to violate the rights of plaintiffs and the Class they represent as secured by the Act and the New York Human Rights Law;

(b) Grant the plaintiffs and the Class they represent an aggregate money judgment, in an amount to be determined at trial, against the defendant for:

(1) back pay, lost fringe benefits, pension benefits and such out-of-pocket pecuniary losses incurred by them to the date hereof, and

(2) forward pay for all lost compensation, fringe benefits, pension benefits and other sums to which such plaintiffs shall be entitled, from and after the date hereof to the date each such plaintiff reaches age 70;

(c) Grant plaintiffs and the Class they represent a further money judgment, as liquidated damages, in an amount to be computed and determined in accordance with sub-paragraph (b) above, as provided for by 29 U.S.C. 216(b), to the extent defendant's violations are established herein to have been willfully done;

(d) Award plaintiffs and the Class they represent an allowance for their costs and disbursements incurred in the prosecution of this action, including reasonable attorneys' fees and interest.

(e) Grant plaintiffs and the Class they represent such punitive damages as may be provided pursuant to the laws of New York.

(f) Grant such compensatory damages including compensation for severe emotional distress, degradation, shame, humiliation and embarrassment, loss of dignity, pain and suffering and loss of earnings in the past, present and future pursuant to New York state law;

(g) Retain jurisdiction over this action until defendant has fully complied with all Orders of this court as may be issued herein and require defendant to file such periodic reports with this court as may be necessary to supervise and evaluate such compliance;

(h) Grant such enhanced future retirement benefits as they would have received had the plaintiffs' worked to their normal retirement ages;

(i) Grant plaintiffs and the Class they represent such additional equitable and legal relief as the court deems just and proper in the circumstances.