

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JERROLD GOLDBERG, KENNETH E. )  
HULTEEN, GLENN GENTILE, and WILLIE )  
JILES, )

Plaintiffs, )

v. )

DURHAM TRANSPORTATION d/b/a )  
DURHAM SCHOOL SERVICES, A )  
SUBSIDIARY OF NATIONAL EXPRESS )  
GROUP; and MADELINE COOLEY, )  
individually, )

Defendants. )

No. 02 C 1125

Judge Milton I. Shadur

**DOCKETED**

**APR 09 2003**

**FILED**

APR 05 2003

MICHAEL W DOBBINS  
CLERK, U.S. DISTRICT COURT

**SECOND AMENDED CLASS COMPLAINT**

Plaintiffs JERROLD GOLDBERG (“Goldberg”) and KENNETH E. HULTEEN (“Hulteen”), individually and on behalf of all others similarly situated, and Plaintiffs GLENN GENTILE (“Gentile”), and WILLIE JILES (“Jiles”), individually, by their attorneys Futterman & Howard Chtd. and Maduff & Maduff, for their complaint against DURHAM TRANSPORTATION d/b/a DURHAM SCHOOL SERVICES (“Durham”) and MADELINE COOLEY (“Cooley”), allege and state as follows:

**INTRODUCTION**

1. This action results from racial discrimination in employment occasioned by the acts of Madeline Cooley, Base Manager of Durham School Services, who was responsible for assigning school bus routes, charters, and extra work assignments to Durham drivers, including the named Plaintiffs, from Durham’s Skokie, Illinois base. Prior to Cooley’s arrival, charters, school bus routes, and extra work assignments were assigned based first on customer requests,

37

then on driver seniority. Cooley, an African-American, began upon commencing her duties in July 2001 to reduce and/or eliminate the routes and charters of non-African-American drivers, including Goldberg and Hulteen.

2. When Goldberg and Hulteen objected to Cooley's actions, Jiles and Gentile supported them in that objection. This support extended to supporting Goldberg's filing of a complaint with the United States Equal Employment Opportunity Commission ("EEOC"). In retaliation, Cooley began reducing and eliminating bus routes and charters for Jiles and Gentile; began systematically harassing and eliminating bus routes and charters for non-African-American drivers, including Goldberg and Hulteen; and either terminated, or conspired to terminate, Goldberg based on false accusations of an accident. Thereafter, Goldberg, Jiles, and Gentile filed complaints with the EEOC for retaliation. Hulteen also filed a complaint with the EEOC alleging racial discrimination. Hulteen, Jiles, and Gentile were then also terminated or had their charters reduced to a negligible number per month.

3. From the time Cooley assumed her duties at the Skokie Base until it closed in June 2002, non-African-American drivers who expressed support for the seniority and request system in place before Cooley's arrival lost preferable routes and had their charter assignments and so-called "extra work" assignments (paid non-route and non-charter work assigned at the discretion of the Base Managers) curtailed dramatically. Cooley upended the seniority and request system of assigning routes, charters, and extra work and replaced it with a system where African-American drivers, regardless of seniority or customer preference, received a substantial majority of desirable routes, charters, and extra work. Cooley, through racial intimidation, also

created a hostile work environment for non-African-American drivers who expressed concern about Cooley's actions as well as African-American drivers who expressed support for them.

4. On information and belief, the Skokie base was closed in about June 2002.

#### **THE PARTIES**

5. Jerrold Goldberg is a citizen of the state of Illinois, residing within the territorial limits of the United States District Court for the Northern District of Illinois, Eastern Division. Goldberg is non-African-American. He is an "employee" for the purposes of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

6. Kenneth E. Hulteen is a citizen of the state of Illinois, residing within the territorial limits of the United States District Court for the Northern District of Illinois, Eastern Division. Hulteen is non-African-American. He is an "employee" for the purposes of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

7. Willie Jiles is a citizen of the state of Illinois, residing within the territorial limits of the United States District Court for the Northern District of Illinois, Eastern Division. Jiles is African-American. He is an "employee" for the purposes of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

8. Glenn Gentile is a citizen of the state of Illinois, residing within the territorial limits of the United States District Court for the Northern District of Illinois, Eastern Division. Gentile is African-American. He is an "employee" for the purposes of Title VII of the Civil

Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

9. Durham Transportation d/b/a Durham School Services is a subsidiary of National Express Group and is a corporation licensed and doing business within the territorial limits of the United States District Court for the Northern District of Illinois, Eastern Division. On information and belief, Durham employs more than 500 persons. Durham is an "employer" under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e(b), as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166. Durham is engaged in an industry affecting commerce and employs more than fifteen people.

10. Madeline Cooley a/k/a Madeline Conway a/k/a Madeline Cooley-Conway (hereafter "Cooley") is an individual who, upon information and belief, lives within the territorial jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division. At all times relevant hereto until about June 2002 when the Skokie base closed, Cooley was Durham's Skokie Base Manager and had responsibility and authority to assign routes, charters, and extra work to drivers. On information and belief, after the Skokie base closed, Cooley began and continues similar responsibilities at Durham's Evanston, Illinois base. Cooley is African-American.

#### **JURISDICTION AND VENUE**

11. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1331 in that this action arises under the laws of the United States, specifically Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.*, amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, and Section 1981, 42 U.S.C. §1981. This Court also has jurisdiction of this action pursuant to 28

U.S.C. §1343(a)(4). Venue is proper in this judicial district under 42 U.S.C. §2000e-5(f)(3) in that alleged unlawful employment practices were committed in this judicial district. Venue is also proper in this district pursuant to 28 U.S.C. §§1391(b)(1) and (2) in that a substantial part of the events giving rise to the claim took place here, and in that Durham's Skokie Base is located in this district.

12. All conditions precedent to this action have been fulfilled. On November 7, 2001, Goldberg filed a charge of discrimination against Durham with the EEOC Chicago office for racial discrimination in employment. On November 14, 2001, Jiles and Gentile filed charges of discrimination with the EEOC's Chicago office for retaliation stemming from their support of Goldberg's attempts to redress his grievances. Goldberg filed a second charge of retaliation with the EEOC's Chicago office on November 14, 2001. Hulteen filed a charge of discrimination against Durham with the EEOC's Chicago office for racial discrimination in employment in January 2002, and amended his charge in August 2002. Plaintiffs have received their Notices of Right to Sue for all charges filed with the EEOC.

#### **CLASS ALLEGATIONS**

13. Goldberg and Hulteen bring the allegations set forth in Counts I, II, III, and IV below individually and as a class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of a class consisting of those non-African-American persons employed at Durham's Skokie base at any time between July 2001 and June 2002 who received fewer routes, or charters, and/or extra work assignments because of Durham and Cooley's discriminatory policies and actions.

14. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a) for the following reasons:

- a. The class for whose benefit the action is brought is so numerous that joinder is impracticable.
- b. There are questions of law or fact common to the class involving Defendants' discriminatory behavior toward Plaintiffs. The same discriminatory procedures were used as to school bus route and charter assignments at Durham's Skokie Base. For example, Defendants' practice of assigning charters and routes to African-American drivers on the basis of race regardless of their seniority or client preference was consistent for all routes and charters assigned from the Skokie Base. Durham's centralized management approved of all route and charter assignment systems utilized in its various bus bases, including the race-based system implemented by Cooley at the Skokie Base. Other common questions include whether Defendants fostered a racially hostile environment at the Skokie Base, whether Defendants denied Plaintiffs route, charter, and extra work assignments on the basis of race, and to what relief Plaintiffs are entitled.
- c. The claims of the Plaintiffs are typical of the claims of class members.
- d. Plaintiffs will fairly and adequately protect the interests of the class and have retained counsel competent and experienced in employment discrimination class actions.

15. The class as defined herein is certifiable under Fed. R. Civ. P. 23(b)(3) in that common questions predominate over any questions affecting only individual class members. The

same discriminatory promotion practices were used as to all route and charter assignment to non-African-American drivers from the Skokie Base. A class action in this instance is superior to other available methods for the fair and effective adjudication of this controversy.

### **JURY DEMAND**

16. Plaintiffs and the class demand a trial by jury.

### **SUBSTANTIVE ALLEGATIONS**

17. Durham is a bus company operating out of bases in Evanston and Chicago, Illinois. From at least 2000 through about June 2002, Durham operated a bus base in Skokie, Illinois. From these bases, on information and belief, Durham has two kinds of business – school routes and charters. On the school routes, drivers are paid a fixed amount per route. On the charter routes, drivers are paid a percentage of the charter fee. Because Durham negotiates each charter fee individually with each client, some charters produce more money than others and, as a result, are worth more to the driver.

18. Cooley was hired by Durham as the Base Manager for its Skokie Base in about July 2001. Prior to the hiring of Cooley, drivers were assigned charters rotating based first upon client requests for a particular driver, and then by moving down a list in order of seniority, based on drivers availability demonstrated through biweekly signups. Upon information and belief, routes and extra work were assigned based on seniority and availability before Cooley assumed her duties.

19. When Cooley was hired, non-African-American drivers began to be denied charter bus runs, daily school bus routes, and extra work assignments to which these drivers were

entitled by seniority or customer request. The assignments, and wages therefrom, were instead assigned by Cooley to African-American drivers.

20. Under the system in place before Cooley was hired, Goldberg was taking approximately 6.5 charters per week and making approximately \$700 per week, which was reduced by two-thirds ( $\frac{2}{3}$ ); Hulteen was taking approximately 5 charters per week and making approximately \$700 per week which was reduced by two-thirds ( $\frac{2}{3}$ ); Jiles was taking approximately 5 charters per week and making approximately \$600 per week; and, Gentile was taking approximately 4 charters per week and making approximately \$500 per week.

21. Goldberg is a non-African-American individual hired by Durham in about January 1999 as a bus driver and terminated by Durham on or about November 8, 2001. Between January 1999 and July 2001 (when Cooley was hired), Goldberg had a clean record – no disciplinary action had been taken against him for misconduct.

22. Hulteen is a non-African-American individual hired by Durham in approximately January 1996 as a bus driver and terminated by Durham with the closing of the Skokie base in about June 2002. Between January 1996 and July 2001 (when Cooley was hired), Hulteen had a clean record – no disciplinary action had been taken against him for misconduct.

23. Jiles is an African-American male hired by Durham in about January 1999 as a bus driver. Prior to the hiring of Cooley, Jiles received praise from his supervisors and peers for his work performance.

24. Gentile, an African-American male, was hired by Durham in about January 1999 and terminated by Durham on or about December 6, 2001. Gentile's job performance throughout his employment with Defendant was satisfactory.

25. In approximately July 2001, Cooley began denying Goldberg and Hulteen charter bus runs, daily school bus routes, and extra work assignments to which they were entitled by seniority and/or request.

26. In approximately July 2001, Cooley also began denying other non-African-American drivers charter bus runs, daily school bus routes, and extra work assignments to which they were entitled by seniority and/or request.

27. When non-African-American drivers, including Goldberg and Hulteen, began to complain about their treatment concerning charter assignments, Cooley began a systematic campaign of verbal harassment against these drivers.

28. On or about August 31, 2001, Goldberg complained to Cooley that he felt he was being subjected to race discrimination concerning the charter assignments.

29. On or about October 2, 2001, Cooley suspended Goldberg for objecting to her failure to tell him of available routes. No drivers at the Skokie base had been suspended for this reason prior to the arrival of Cooley.

30. As a result of these actions, on or about November 7, 2001, Goldberg filed his first charge with the EEOC.

31. Beginning on or about October 3, 2001, Goldberg was subjected to false accusations of misconduct by Cooley, including an untrue allegation that his bus was involved in an accident which he failed to report in approximately November 2001.

32. Beginning on or about October 3, 2001, Jiles and Gentile began expressing support for the complaints of non-African-American co-workers, including Goldberg, concerning racial discrimination. Immediately thereafter, Cooley and Durham (through its agent Cooley)

began denying Jiles and Gentile charter bus runs to which they were entitled by seniority or request. Jiles began to receive fewer and less financially remunerative and desirable charter assignments. Gentile was assigned less desirable school bus routes and began to receive lower wages than other African-American employees who did not openly or otherwise support their non-African-American co-workers.

33. After Cooley's arrival, African-American drivers who did not support their non-African-American co-workers in those workers' efforts against race discrimination were not suspended or disciplined as severely as Jiles and Gentile, after engaging in more egregious offenses.

34. Gentile was present at the scene of an accident on November 3, 2001 and witnessed a bus hit a vehicle. Because Gentile was familiar with Goldberg's bus, he was able to recognize that the bus involved in the accident was not the bus driven by Goldberg. The bus in the accident had a different shape and number than Goldberg's bus.

35. When Cooley accused Goldberg of having this accident and failing to report it, Gentile came forward and specifically noted that the bus involved in the accident could not have been Goldberg's bus. After coming forward, Gentile was ridiculed, and again suffered a reduction in desired routes and charters.

36. On or about November 14, 2001, Gentile filed a charge of retaliation with the EEOC's Chicago office based on Defendants acting against him for having supported his non-African-American co-workers in their complaints of discrimination and, more significantly, for having supported Goldberg in the false charge that Goldberg had failed to report an accident in which he was allegedly involved. When Cooley became aware that Gentile had filed his EEOC

charge of discrimination, she decreased his work, and actually terminated his employment on or about December 6, 2001.

37. On or about November 14, 2001, Jiles filed a charge of retaliation with the EEOC based on having supported his non-African-American co-workers in their complaints of discrimination and, more significantly, for having supported Goldberg in the false charge that Goldberg had failed to report an accident in which he was allegedly involved. When Cooley became aware that Jiles had filed an EEOC charge, she decreased his work to one charter per week.

38. Goldberg was terminated by Durham on or about November 8, 2001.

39. Hulteen began receiving dramatically fewer assignments for charter runs after Cooley was hired as the Skokie Base Manager. The numbers of charters per week he received fell from approximately five per week to one or less per week by January 2002.

40. In January 2002, Hulteen filed a Charge of Discrimination with the EEOC alleging that Cooley regularly treated non-African-American drivers less favorably than African-American drivers.

41. After Hulteen filed his complaint with the EEOC, Cooley's hostility toward him increased markedly. After January 2002, on at least two occasions, Cooley subjected Hulteen to disciplinary actions for events that either did not happen or for which he had no responsibility.

42. Plaintiffs have, on numerous occasions, attempted to address the discrimination with Durham, moving through the hierarchy and finally ending with the corporate offices in Austin, Texas, but Durham has refused to address the situation.

43. Cooley created, and Durham ratified and allowed to perpetuate, an atmosphere at the Skokie Base whereby non-African-American employees were discriminated against solely on the basis of race. African-American workers who supported their non-African-American counterparts or who expressed support for the seniority and request system in place before Cooley's arrival also faced a hostile work environment, engineered and perpetuated by Cooley and Durham.

**COUNT I**  
**RACIAL DISCRIMINATION IN EMPLOYMENT**  
**IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**AGAINST DEFENDANT DURHAM TRANSPORTATION**  
**ON BEHALF OF NON-AFRICAN-AMERICAN PLAINTIFFS**

44. Goldberg, Hulteen, and the Plaintiff class restate and allege paragraphs 1-43.

45. By reducing and/or eliminating employment for non-African-American employees, Durham has subjected Goldberg and Hulteen and the Plaintiff class to discrimination in the terms and conditions of their employment based upon race in violation of Title VII of the Civil Rights of 1964, 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

46. Durham engaged in these discriminatory practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights.

47. As a result of these unlawful employment practices, Goldberg, Hulteen and the Plaintiff class have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

48. In light of the egregious nature of the violations and retaliation against Goldberg, Hulteen, and the Plaintiff class, Durham's conduct is willful and malicious, warranting the imposition of punitive damages.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Determine that this claim should proceed as a class claim on behalf of the class described above, and, if appropriate, authorize proper notice to the class;
- b. Enter a declaratory judgment, finding and declaring that Durham has discriminated against Goldberg and Hulteen and other similarly situated class members in violation of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e *et seq.*;
- c. Award Plaintiffs and the Plaintiff class compensatory and other damages in an amount to be determined herein, including post-judgment and pre-judgment interest;
- d. Award Plaintiffs and the Plaintiff class punitive damages;
- e. Award Plaintiffs and the Plaintiff class their costs and attorneys' fees, including expert witness fees; and,
- f. Award Plaintiffs and the Plaintiff class such other relief as is just and proper.

**COUNT II**  
**RACE-BASED DISCRIMINATION**  
**IN THE MAKING AND PERFORMANCE OF CONTRACT**  
**IN VIOLATION OF 42 U.S.C. §1981**  
**AGAINST DEFENDANTS COOLEY AND DURHAM TRANSPORTATION**  
**ON BEHALF OF NON-AFRICAN-AMERICAN PLAINTIFFS**

49. Goldberg, Hulteen, and the Plaintiff class restate and allege paragraphs 1-43.

50. By reducing and/or eliminating employment for non-African-American employees, Cooley and Durham have subjected Goldberg, Hulteen and the Plaintiff class to discrimination in the terms and conditions of their employment contracts based upon race in violation of 42 U.S.C. §1981.

51. Cooley and Durham have engaged in these discriminatory practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights.

52. As a result of these unlawful employment practices, Goldberg and Hulteen and the Plaintiff class have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

53. In light of the egregious nature of the violations and retaliation against Goldberg and Hulteen and the Plaintiff class, Defendants' conduct is willful and malicious, warranting the imposition of punitive damages.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Determine that this claim should proceed as a class claim on behalf of the class described above, and, if appropriate, authorize proper notice to the class;

- b. Enter a declaratory judgment, finding and declaring that Cooley and Durham have discriminated against Goldberg, Hulteen, and other similarly-situated class members in violation of 42 U.S.C. §1981;
- c. Award Plaintiffs and the Plaintiff class compensatory and other damages in an amount to be determined herein, including post-judgment and pre-judgment interest;
- d. Award Plaintiffs and the Plaintiff class punitive damages;
- e. Award Plaintiffs and the Plaintiff class their costs and attorneys' fees, including expert witness fees; and,
- f. Award Plaintiffs and the Plaintiff class such other relief as is just and proper.

**COUNT III**

**RACIAL HARASSMENT IN VIOLATION OF TITLE VII AGAINST DURHAM  
TRANSPORTATION ON BEHALF OF NON-AFRICAN-AMERICAN PLAINTIFFS**

54. Goldberg, Hulteen, and the Plaintiff class restate and allege paragraphs 1-43.

55. Durham (by and through its agent, Cooley), have continuously harassed Goldberg and Hulteen and other similarly-situated class members on account of race by creating a racially hostile work environment for non-African-American employees. Defendant has subjected Goldberg, Hulteen, and other similarly-situated class members to such harassment in violation of Title VII of the Civil Rights of 1964, 42 U.S.C. §2000e *et seq.*, as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166.

56. Defendant has engaged in these harassing practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights.

57. As a result of these unlawful practices, Goldberg and Hulteen and other similarly-situated class members have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

58. In light of the egregious violations and retaliation against Goldberg and Hulteen and other similarly-situated class members, Defendant's conduct is willful and malicious, warranting the imposition of punitive damages.

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Determine that this claim should proceed as a class claim on behalf of the class described above, and, if appropriate, authorize proper notice to the class;
- b. Enter a declaratory judgment finding and declaring that Defendant has discriminated against Plaintiffs in violation of Title VII;
- c. Award Plaintiffs and the Plaintiff class compensatory and other damages in an amount to be determined herein, including post-judgment and pre-judgment interest;
- d. Award Plaintiffs and the Plaintiff class punitive damages;
- e. Award Plaintiffs and the Plaintiff class their costs and attorneys fees, including expert witness fees; and,
- f. Award Plaintiffs and the Plaintiff class such other relief as is just and proper.

**COUNT IV**  
**RACIAL HARASSMENT IN VIOLATION OF**  
**42 U.S.C. §1981 AGAINST DEFENDANT DURHAM TRANSPORTATION**  
**AND DEFENDANT COOLEY**  
**ON BEHALF OF NON-AFRICAN-AMERICAN PLAINTIFFS**

59. Goldberg, Hulteen, and the Plaintiff class reallege paragraphs 1-43.

60. Defendants Cooley (individually) and Durham (by and through its agent, Cooley), have continuously harassed Goldberg and Hulteen and the Plaintiff class on account of race by creating a racially-hostile work environment for non-African-American employees. Defendants have subjected Plaintiffs and the Plaintiff class to such harassment in violation of Section 1981, 42 U.S.C. §1981.

61. Defendants have engaged in these harassing practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights.

62. As a result of these unlawful practices, Goldberg, Hulteen, and the Plaintiff class have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

63. In light of the egregious nature of the violations and retaliation against Goldberg, Hulteen, and the Plaintiff class, Defendants' conduct is willful and malicious, warranting the imposition of punitive damages.

WHEREFORE, Goldberg and Hulteen respectfully request that this Court:

- a. Determine that this claim should proceed as a class claim on behalf of the class described above, and, if appropriate, authorize proper notice to the class;

- b. Enter a declaratory judgment finding and declaring that Defendants have discriminated against Goldberg, Hulteen, and the Plaintiff class in violation of Section 1981;
- c. Award Goldberg, Hulteen, and the Plaintiff class compensatory and other damages in an amount to be determined herein, including post-judgment and pre-judgment interest;
- d. Award Goldberg, Hulteen, and the Plaintiff class punitive damages;
- e. Award Goldberg, Hulteen, and the Plaintiff class their costs and attorneys fees, including expert witness fees; and,
- f. Award Goldberg, Hulteen, and the Plaintiff class such other relief as is just and proper.

**COUNT V**  
**RETALIATION IN VIOLATION OF**  
**TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**  
**ON BEHALF OF PLAINTIFFS GOLDBERG, HULTEEN, GENTILE, AND JILES**  
**AGAINST DURHAM TRANSPORTATION**

64. Goldberg, Gentile, Hulteen, and Jiles reallege paragraphs 1-12, 16-25, and 27-43.

65. On November 7, 2001, Goldberg filed a charge of discrimination against Durham with the EEOC Chicago office for racial discrimination in employment. On November 14, 2001, Jiles and Gentile filed charges of discrimination with the EEOC's Chicago office for retaliation in supporting Goldberg's attempts to redress his grievances.

66. In January 2002, Hulteen filed a charge of discrimination against Durham with the EEOC's Chicago office for racial discrimination in employment.

67. Prior to Cooley's arrival at Durham's Skokie base, Goldberg, Hulteen, Gentile, and Jiles received satisfactory work performance evaluations from supervisors and peers.

68. In retaliation for his filing an EEOC charge, Goldberg was terminated on November 8, 2002.

69. Goldberg filed a second EEOC charge alleging retaliation on November 14, 2001.

70. In retaliation for filing an EEOC charge, Gentile received sharply reduced numbers of bus routes and charters after November 14, 2001. Gentile was terminated by Defendants on December 6, 2001.

71. In retaliation for filing an EEOC charge, Jiles was subjected to altered terms, conditions, and privileges of employment, including decreasing his charters to one per week.

72. Durham was on notice that retaliation charges were pending from other non-African-American drivers when Hulteen filed his EEOC charge alleging racial discrimination.

73. In retaliation for filing an EEOC charge alleging racial discrimination, Hulteen was subjected to altered terms, conditions, and privileges of employment, including decreasing his charters to one per week.

74. During the period described in this Complaint, Goldberg, Hulteen, Gentile, and Jiles were verbally harassed and ridiculed by Durham's agent, Cooley, as well as other Durham staff at the Skokie Base in retaliation for filing EEOC charges.

75. Durham's retaliation against Goldberg, Gentile, Hulteen, and Jiles violates Title VII. Defendant has engaged in these discriminatory practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights.

76. As a result of these unlawful employment practices, Plaintiffs have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

WHEREFORE, Plaintiffs respectfully request the Court to:

- a. Enter a declaratory judgment, finding and declaring that Defendant has discriminated against Goldberg, Hulteen, Gentile, and Jiles in violation of Title VII;
- b. Award Plaintiffs compensatory damages, including post-judgment and pre-judgment interest;
- c. Award Plaintiffs punitive damages;
- d. Award Plaintiffs costs and attorneys fees, including expert witness fees; and,
- e. Award Plaintiffs such other relief as is just and proper.

**COUNT VI**  
**RETALIATION IN VIOLATION OF 42 U.S.C. §1981**  
**ON BEHALF OF PLAINTIFFS GOLDBERG, HULTEEN, GENTILE, AND JILES**  
**AGAINST DURHAM TRANSPORTATION AND DEFENDANT COOLEY**

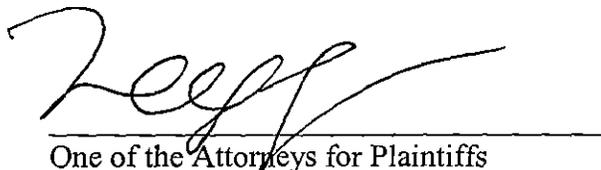
77. Goldberg, Hulteen, Gentile, and Jiles reallege paragraphs 1-12, 16-25, and 27-43.

78. Durham and Cooley's retaliation against Goldberg, Hulteen, Gentile, and Jiles violates Section 1981. Defendants have engaged in these discriminatory practices intentionally, with malice or reckless indifference to Plaintiffs' federally-protected rights. As a result of these unlawful employment practices, Plaintiffs have suffered, in addition to the losses identified below, emotional pain, mental anguish, loss of enjoyment of life, and other losses.

WHEREFORE, Goldberg, Hulteen, Gentile, and Jiles respectfully request the Court to:

- a. Enter a declaratory judgment, finding and declaring that Defendants have discriminated against Goldberg, Hulteen, Gentile, and Jiles in violation of Section 1981;
- b. Award Plaintiffs compensatory damages, including post-judgment and pre-judgment interest;
- c. Award Plaintiffs punitive damages;
- d. Award Plaintiffs costs and attorneys fees, including expert witness fees; and,
- e. Award Plaintiffs such other relief as is just and proper.

Respectfully submitted,



One of the Attorneys for Plaintiffs

Dated: March 5, 2003

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