

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 96-1104-CIV-KING

Magistrate Stephen T. Brown

DOBSON COLLINS, an individual
on behalf of himself and others
similarly situated,

Plaintiffs,

-vs-

FLAGSHIP AIRLINES, INC.,
a Delaware corporation,

Defendant.

FILED BY JH D.C.
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CARLOS JUENKE
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIAMI

ANSWER, DEFENSES AND AFFIRMATIVE DEFENSES

Defendant, FLAGSHIP AIRLINES ("Defendant" or "Flagship"), pursuant to Rule 12, Federal Rules of Civil Procedure, answers plaintiff's Complaint according to the numbered paragraphs as follows:^{1/}

I. PRELIMINARY STATEMENT

1. Denied.
2. No response is required as the allegations of paragraph 2 refer to plaintiff's class allegations which have been dismissed.

^{1/} This answer is filed on behalf of defendant Flagship, the only remaining defendant after the dismissal of Executive Airlines, Inc. as a defendant in this action.

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II. JURISDICTION

3. Admitted.

4. Defendant admits that venue is proper in the Southern District of Florida, but denies the conduct alleged.

III. PARTIES

5. Defendant admits that Flagship employed plaintiff from December 1989 to December 1994 in various capacities but is without knowledge sufficient to form a belief about his current residence and therefore denies those allegations.

6. No response is required as Executive Airlines, Inc. has been dismissed from this action.

7. Defendant admits the allegations of paragraph 7 except denies Flagship operates American Eagle Airlines, Inc.

8. Defendant Flagship denies that American Eagle and Flagship are the same entity or that American Eagle is a defendant in this action.

IV. GENERAL ALLEGATIONS

9. Admitted.

10. Defendant admits that on or about April 12, 1991, plaintiff filed a charge of race discrimination with the Equal Employment Opportunity Commission ("EEOC") naming defendant as the respondent. Defendant denies the remaining allegations of paragraph 10.

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11. Defendant admits that, after already promoting plaintiff pursuant to its normal and customary policies and procedures, Flagship and plaintiff entered into the Negotiated Settlement Agreement which is attached to the complaint as Exhibit "A" and refers to the Agreement for its terms; otherwise paragraph 11 is denied.

12. Defendant refers to Exhibit "A" for its terms; otherwise paragraph 12 is denied.

13. Defendant admits that plaintiff was disciplined in April 1993 for refusing a work assignment, threatening a flight attendant, and causing a flight to be delayed, that plaintiff was given the option of signing a "Letter of Commitment" in lieu of discharge and that plaintiff signed the "Letter of Commitment" attached to the complaint as Exhibit "B" and refers to that letter for its terms; otherwise paragraph 13 is denied.

14. Defendant admits that plaintiff filed, and later unilaterally withdrew, a charge of race discrimination and retaliation with the EEOC on May 13, 1993 and refers to that charge for its terms; otherwise paragraph 14 is denied.

15. Defendant admits that in May 1994, plaintiff was denied overtime when he was the only mechanic to ignore a directive that he not arrive early for an overtime shift without doing any work; otherwise paragraph 15 is denied.

16. Denied.

17. Defendant admits that plaintiff was given a series of "Quality Assurance

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Notifications of Non-Compliance” for his conduct on May 5-6, 1994; otherwise paragraph 17 is denied.

18. Defendant admits that plaintiff was scheduled to work an overtime shift on May 12, 1994 and that plaintiff refused to do the work assigned to him; otherwise paragraph 18 is denied.

19. Defendant admits that Noel Franz directed plaintiff to go home on May 12, 1994 when he refused to perform the work assigned to him and that plaintiff was paid for the time that he was at work on that date; otherwise paragraph 19 is denied.

20. Defendant admits that EEOC Charge No. 150-94-2550 attached to the Complaint as Exhibit “C” was filed and refers to that charge for its terms; otherwise paragraph 20 is denied.

21. Despite thorough investigation and inquiry pursuant to internal procedures, Defendant denies knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 21 and therefore denies same.

22. Despite thorough investigation and inquiry pursuant to internal procedures, Defendant denies knowledge sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 22 and, therefore, denies same.

23. Defendant admits that on November 30, 1994, Collins asked Noel Franz if he could review his personnel file and was observed removing documents from his personnel file that he refused to show his supervisor; otherwise paragraph 23 is denied.

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24. Denied.

25. Defendant admits that Exhibit "D" attached to the complaint was given to plaintiff and refers to that document for its terms.

26. Denied.

27. No response is required as the allegations of paragraph 27 refer to plaintiff's class allegations which have been dismissed.

28. Defendant admits that on or about January 26, 1996, the EEOC issued plaintiff a right-to-sue letter; otherwise paragraph 28 is denied.

V. COUNT I - VIOLATION OF TITLE VII

29. Defendant repeats paragraphs 1-28 of this Answer.

30. Defendant admits that plaintiff is black.

31. Denied.

32. Defendant admits that plaintiff has filed charges of discrimination against defendant, including Charge Number 150-94-2550, the charge at issue in this suit; paragraph 32 is otherwise denied.

33. Defendant admits that representatives of Flagship's legal and human resources departments were aware of plaintiff's having filed an EEOC charge but denies that any persons who took disciplinary action against plaintiff were aware of or motivated by the existence of an EEOC charge.

34. Denied.

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35. Denied.

36. Denied.

37. Denied.

38. Denied.

VII. (sic) COUNT II - VIOLATION OF 42 U.S.C. § 1981

39. Defendant repeats paragraphs 1-28 of this Answer.

40. Defendant admits that plaintiff is black.

41. Denied.

42. Defendant admits that plaintiff has filed charges of discrimination against defendant, including Charge Number 150-94-2550, the charge at issue in this suit; paragraph 42 is otherwise denied.

43. Defendant admits that representatives of Flagship's legal and human resources departments were aware of plaintiff's having filed an EEOC charge but denies that any persons who took disciplinary action against plaintiff were aware of or motivated by the existence of an EEOC charge.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

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IX. (sic) COUNT III - CLASS ALLEGATIONS

49.-61. No responses are required as the allegations of paragraphs 49-61 refer to plaintiff's class allegations which have been dismissed.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred, in whole or in part, by the applicable limitations period.
3. Some or all of Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches.
4. Plaintiff has not met all statutory prerequisites to filing suit.
5. Plaintiff has failed to exhaust his administrative remedies under Title VII.
6. Plaintiff's claims are outside the scope of his administrative charge.
7. All actions taken by Defendant with regard to plaintiff were based on legitimate and reasonable business factors not related to any statutory prohibition invoked by plaintiff.
8. Plaintiff's entitlement to any damages is barred by his failure to mitigate his damages.

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WHEREFORE, Defendant requests judgment in Defendant's favor dismissing Plaintiff's claims and an award of costs and reasonable attorneys' fees as authorized by law.

MORGAN, LEWIS & BOCKIUS LLP
Attorneys for Defendant

By: Terence G. Connor (m)
Terence G. Connor
Florida Bar No. 291153
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CERTIFICATE OF SERVICE

We hereby certify that a true copy of the foregoing was hand-delivered this 28th
day of August, 1996, to Ira J. Kurzban, Esquire, Kurzban, Kurzban, Weinger & Tetzeli, P.A.,
2650 S.W. 27th Avenue, Second Floor, Miami, Florida 33133.

By: Terence G. Connor (m)
Terence G. Connor