IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, v. YRC, Inc. formerly known as ROADWAY EXPRESS, INC., Defendant. WILLIAM BANDY, TOBY LEE, LUSHAWN SMITH, MARK WILLIAMS CLARENCE STOKES, FRED THOMPSON, CLARENCE ROYSTER, ANTAWON L. MARSHAL, NERVILLE COX and CLEOPHUS MARSHALL individually and on behalf of all others similarly situated, Intervening-Plaintiffs, v. YRC, Inc. formerly known as ROADWAY EXPRESS, INC., Defendant.	)	06 CV 4805 Magistrate Judge Susan Cox

FIRST AMENDED CLASS ACTION COMPLAINT IN INTERVENTION
FOR INJUNCTIVE RELIEF AND PUNITIVE DAMAGES

Now come the plaintiffs, William Bandy, Toby Lee, LuShawn Smith, Mark Williams, Clarence Stokes, Fred Thompson, Clarence Royster, Antawon Marshall, Nerville Cox and Cleophus Marshall, individually and on behalf of all others similarly situated, by their attorneys Kinoy, Taren & Geraghty P.C, and hereby complain against the defendant YRC INC., formerly

known as Roadway Express, as follows:

I. INTRODUCTION

1. This class action race discrimination case is brought pursuant to Title VII of the Civil Rights Act of 1964 and the Reconstruction Civil Rights Act, 42 U.S.C. § 1981, to redress the defendant's practice and policy of ignoring and failing to promptly investigate or remedy racial harassment directed at African-American employees, its failure to adopt EEO policies that conform to industry-wide standards and its failure to eliminate a racially hostile environment. Plaintiffs additionally assert disparate treatment and disparate impact claims with regard to discriminatory job assignments and discipline on the basis of race.

The plaintiffs herein were routinely subjected to racial epithets and threats, including multiple instances of hangman's nooses displayed at the workplace. At all times relevant to this case, the defendant has had an ineffective anti-harassment policy that requires its employees to make all complaints about harassment in writing to its General Counsel at its corporate offices in Ohio before any effective action would be taken to redress the problem. Each of the plaintiffs herein were also disciplined at a rate greater than comparably situated non-Black employees and as a result of the overly subjective policies and practices at YRC with regard to job assignments, regularly were assigned to less desirable jobs than non-Black employees.

II. JURISDICTION AND VENUE

2. This court has jurisdiction over defendant pursuant to 28 U.S.C. § 1331 and 1343. Venue is proper in the Northern District of Illinois, Eastern Division since the unlawful practices occurred within this District pursuant to 28 U.S.C. § 1391(b) and (c). Members of the Plaintiff class reside in Illinois and within the Northern District.

III. PARTIES

3. Intervening Plaintiff William Bandy is a 46-year-old African American citizen of the United States. Mr. Bandy resides in Merrillville, Indiana. Mr. Bandy has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for over twenty (20) years and currently works at its Chicago Heights facility.

4. Intervening Plaintiff Toby Lee is a 31 -year-old African-American citizen of the United States. Mr. Lee resides in Park Forest, Illinois. Mr. Lee has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for the past eleven (11) years at its Chicago Heights facility.

5. Intervening Plaintiff LuShawn Smith is an African-American citizen of the United States. Mr. Smith resides in Richton Park, Illinois. Mr. Smith was employed as a dockworker for defendant Roadway Express (now known as "YRC") for over eleven (11) years at its Chicago Heights facility, until early 2009.

6. Intervening Plaintiff Mark Williams is an African-American citizen of the United States. Mr. Williams resides in Calumet City, Illinois. Mr. Williams has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for the past fourteen (14) years at its Chicago Heights facility.

7. Intervening Plaintiff Clarence Stokes is an African-American citizen of the United States. Mr. Stokes resides in Chicago, Illinois. Mr. Stokes was employed as a dockworker for defendant Roadway Express (now known as "YRC") for twelve (12) years at its Chicago Heights and Elk Grove Village facilities, until September 2007.

8. Intervening Plaintiff Fred Thompson is a 55-year-old African-American citizen of the United States. Mr. Thompson resides in Chicago, Illinois. Mr. Thompson has been employed

as a dockworker for defendant Roadway Express (now known as "YRC") for the past fourteen (14) years at its Chicago Heights facility.

9. Intervening Plaintiff Clarence Royster is a 35-year-old African-American citizen of the United States. Mr. Royster resides in Merrillville, Indiana. Mr. Royster has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for the past fourteen (14) years at its Chicago Heights facility.

10. Intervening Plaintiff Antawon L. Marshall is a 37-year-old African-American citizen of the United States. Mr. Marshall resides in Merrillville, Indiana. Mr. Marshall has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for the past eighteen (18) years at its Chicago Heights facility.

11. Intervening Plaintiff Nerville Cox is an African-American citizen of the United States. Mr. Cox resides in Crown Point, Indiana. Mr. Cox has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for eight (8) years at its Chicago Heights and Elk Grove Village facilities.

12. Intervening Plaintiff Cleophus Marshall is a 34-year-old African-American citizen of the United States. Mr. Marshall resides in University Park, Illinois. Mr. Marshall has been employed as a dockworker for defendant Roadway Express (now known as "YRC") for the past fourteen (14) years at its Chicago Heights facility.

13. Effective October 1, 2008, Yellow Transportation, Inc. and Roadway Express, Inc., merged with YRC as the surviving entity. At the effective time of the merger, YRC was renamed "Yellow YRC Corp." Following the merger, the name Yellow YRC Corp. was changed to "YRC Inc." YRC is a corporation doing business in the State of Illinois and the cities of Chicago Heights and Elk Grove Village, Illinois. At all relevant times, YRC has continually

had in excess of fifteen (15) employees and has been an employer engaged in an industry affecting commerce within the meaning of Sections 701(b),(g) and (h) of Title VII, 42 U.S.C. §~ 2000e(b),(g) and (h).

14. Defendant YRC is engaged in the business of worldwide ground transportation. YRC employs over 23,900 employees in 349 service centers, including the service centers located in Chicago Heights and Elk Grove Village, Illinois, where each of the named plaintiffs are or have been employed. As of 2003, the Chicago Heights Terminal reported that it employed more than 1,650 employees.

IV. CLASS ALLEGATIONS

15. Plaintiffs bring this action individually and pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3) on behalf of all African-American employees of YRC who have been employed as a dockworker at defendant's Chicago Heights and/or Elk Grove Village facilities during the applicable statute of limitations. Each of the representative plaintiffs and class members assert claims arising out of the same unlawful conduct as that alleged in Mr. Comer's and Mr. Stokes' timely EEOC charges[1] and are aggrieved persons pursuant to 42 U.S.C. § 2000e-5(f)(1).

16. The members of the class identified herein are so numerous that joinder of all members is impracticable. YRC currently operates 349 service centers throughout the United States employing approximately 23,900 employees. YRC's records show 198 African-American dockworkers who have been employed at the Chicago Heights and Elk Grove Village terminals since January, 2000. 167 of these dockworkers have affirmatively notified the EEOC that they wish to take part in the instant lawsuit.

17. There are questions of law and fact common to the class, which questions predominate over any questions affecting only individual members. Common questions include,

[1] See paragraphs 24-26, *infra.*

among others: (1) Whether YRC's policy and practice of refusing to investigate complaints of racial harassment or discrimination unless an employee presents a written complaint to the defendant's General Counsel, created, authorized, fostered and tolerated a racially hostile environment; (2) Whether YRC has created and tolerated a racially hostile atmosphere at its Chicago Heights and Elk Grove Village facility for which it is vicariously liable; (3) Whether YRC's purely subjective daily job assignment policy had the intent and/or effect of discriminating against Black employees by assigning them less desirable tasks than non-Black employees; (4) Whether YRC's purely subjective disciplinary policy had the intent and/or effect of discriminating against Black employees by disciplining them at a greater rate and more harshly than non-Black employees; (5) Whether the practices and policies of YRC violate 42 U.S.C. § 1981 and Title VII of the Civil Rights Act, warranting injunctive relief, and punitive damages.

18. The representative Intervening Plaintiffs' claims are typical of the claims of the class. The representative Intervening Plaintiffs were each actively employed by YRC as of the initial filing of the Complaint in Intervention. Each of the representative plaintiffs was subjected to severe and pervasive racial harassment while employed by defendant during the applicable statute of limitations and each has been subject to discriminatory terms and conditions of employment based upon his race.

19. Intervening Plaintiffs will fairly and adequately represent and protect the interests of the members of the class. Each of the Intervening Plaintiffs has retained counsel competent and experienced in complex class actions, employment discrimination litigation and the intersection thereof. Kinoy, Taren & Geraghty P.C. has been certified as class counsel in numerous cases in the Northern District of Illinois and elsewhere including *Moreno v. DFG,*

2003 WL 21183903 (N.D. Il. 2003)(class action under the WARN act); *Miller v. Spring Valley*, 202 F.R.D. 244 (C.D. III. 2001) (class action under Fair Housing Act); *Tracy v. City of Chicago*, 95 C 5714 (collective action under FLSA on behalf of sergeants, lieutenants and captains in the Chicago Police Department); *Johnson et. al v. Reno,* (D.C. Cir.) No. 93-5364 (nationwide Title VII class action brought on behalf of 512 African-American FBI agents alleging racial discrimination in all areas of employment); *Dyer-Neely v. City of Chicago*, 101 F.R.D. 83 (N.D. Ill. 1984) (class action under the federal Rehabilitation Act on behalf of applicants for positions within the Chicago Police Department).

20. Class certification is appropriate pursuant to Fed. R. Civ. P 23(b)(2) because YRC has acted and/or refused to act on grounds generally applicable to the class, making declaratory and injunctive relief proper with respect to Intervening Plaintiffs and the class as a whole. The class members are entitled to injunctive relief to end YRC's common, uniform and unfair racially discriminatory personnel policies and practices and are entitled to punitive damages as a result of defendant's willful, malicious or reckless conduct.

21. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) for punitive damages because common questions of fact and law predominate over any questions affecting only individual members of the class and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The class members have been damaged and are entitled to recovery as a result of YRC's common, uniform and unfair racially discriminatory personnel policies and practices. The propriety and amount of punitive damages are issues common to the class.

V. CLASS CERTIFICATION PURSUANT TO RULE 23(b) (2) FOR INJUNCTIVE RELIEF PURPOSES AND PURSUANT 23(b)(2), 23(d)(2) and (5) and 23(b)(3) FOR CLASS-WIDE PUNITIVE DAMAGES

22. Plaintiffs seek class certification pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, for the purpose of obtaining class-wide injunctive relief to redress the above company-wide racially discriminatory policies, in accordance with *Allen v. International Truck and Engine Corporation,* 358 F.3d 469 **(7**th Cir. 2004); *Jefferson v. Ingersoll Intern Inc.*, 195 F.3d 894 (7th Cir. 1999); *Palmer v. Combined Insurance Company of America*, 217 F.R.D. 430 (N.D. II. 2003).

23. Plaintiffs seek class certification for the purpose of obtaining class-wide punitive damages, pursuant to both Rule 23(b)(2) and 23(d)(2) and (d)(5) and Rule 23(b)(3), as in *Palmer v. Combined Insurance Company of America*, 217 F.R.D. 430 (N.D. Il. 2003).

VI. EXHAUSTION OF ADMNISTRATIVE REMEDIES UNDER TITLE VII

24. On April 16, 2003, former intervener Kenneth Comer filed a class action administrative complaint alleging that from on or about April 15, 2001 and continuing to that time, he and Blacks as a class have been subjected to ongoing racial harassment and discrimination by defendant.

25. The EEOC investigated Mr. Comer's charge and found reasonable cause to believe that racial harassment and discrimination in the terms and conditions of employment against blacks as a class had taken place. On September 6, 2006, the EEOC brought suit to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, based upon Mr. Comer's complaint. Each of the intervening plaintiffs is a member of the class upon whose behalf Comer's EEOC complaint was filed and the EEOC lawsuit was brought.

26. On October 19, 2006, class member Clarence Stokes filed a class action Charge of Discrimination with the EEOC. The EEOC found reasonable cause on this charge and on August 29, 2008, the EEOC filed a second lawsuit against Defendant Roadway entitled *EEOC v.*

Roadway Express, 08 C 5555. This case alleged that Defendant violated Title VII subjecting Clarence Stokes and a class of Black employees to harassment and different terms and conditions because of their race.

VI. YRC'S INEFFECTIVE AND INTIMIDATING "ANTI-HARASSMENT" INTERNAL COMPLAINT PROCEDURE

27. At most times relevant hereto, the defendant maintained an alleged anti-harassment policy that required its 23,900 employees of YRC to present any complaints of racial harassment or discrimination in writing to YRC's Office of General Counsel in Akron, Ohio before any investigation or action to remedy the complaint can take place.

28. To the extent that subsequent EEO policies of the defendant authorized a different discrimination and harassment complaint procedure, said policies were not adequately publicized, distributed or otherwise made known to the Plaintiff class. In addition, said policies were regularly ignored or violated by the Defendant when a complaint was communicated to a supervisory employee.

29. The defendant's anti-harassment complaint process was designed more to insulate defendant from legal action than to uncover acts of harassment and take prompt and effective action to prevent further harassment. The defendant's policy created an immediate conflict of interest between the office of legal counsel's duty to protect YRC from legal liability and its duty to investigate and uncover acts of racial harassment at the workplace.

30. Because of the ineffectiveness of the policies and procedures, Plaintiffs have been and remain reluctant to communicate their complaints of racial harassment to defendant's attorney or to supervisory employees in order to obtain any redress for incidents of workplace harassment.

V. REPRESENTATIVES CLAIMS

A. Failure to Redress Racially Hostile Environments

31. From the start of their employment, continuing through the present time, each of the named plaintiffs and members of the plaintiff class has experienced acts of racial harassment and has otherwise been subject to a hostile racial environment at his or her place of work, including being subject to vile racial graffiti at the workplace and/or having hangman's nooses placed at the worksite, being subject to racial epithets and discriminatory treatment.

32. During the course of Intervening Plaintiffs' employment at defendant's Chicago Heights facility, they and virtually all other African-American employees were at various times subjected to almost daily racial epithets written in the men's bathroom, including "KKK", "Niggers go back to Africa", "Make America Safe, Kill a Nigger Today" , "White Power" and "swastikas" written and carved into the walls.

33. During the course of Intervening Plaintiffs' employment at Chicago Heights and at Elk Grove Village they have been subjected to multiple incidents of racial intimidation and threats, including numerous incidents of hangman's nooses displayed at the worksite and death threats written in the bathrooms.

34. The above actions constitute severe and pervasive harassment designed to instill fear in the African-American employees who work at the Chicago Heights and Elk Grove Village facilities. These actions unreasonably interfere with the plaintiffs' ability to perform their jobs.

B. Notice to Defendant and Failure to Take Effective Action

35. In January of 2001, plaintiffs and others met with the Terminal Manager to

complain about incidents of racial discrimination. Immediately thereafter, vile racial graffiti appeared in the bathroom.

36. In March of 2002, Ken Comer complained in writing to the Terminal Manager about the presence of a hangman's noose in the workplace.

37. From June of 2002 through the present, numerous incidents of racial harassment and discrimination were brought to the attention of supervisors and the Terminal Manager by various of the plaintiffs.

38. In November of 2002, a detailed list of racially harassing events, including the noose incidents and racist threats to African-Americans, was forwarded to the Chicago Heights facility Labor Relations Manager, by the plaintiffs' union representative.

39. The company did not respond to the above until January 2, 2003 when the Labor Relations Manager informed the union that company policy dictates that allegations of racial discrimination and harassment not be handled locally. The Labor Relations Manager told the union to have the complaining employee write a letter to the company's Office of General Counsel.

40. Despite the above incidents and complaints, the defendant never conducted an effective investigation to determine who may have been responsible for the racially hostile acts. Employees were not adequately questioned in an effort to determine who had participated in the incidents or to determine whether there were witnesses to the incidents. Law enforcement authorities were not brought in to investigate despite the presence of racial threats. And no effective measures were undertaken to prevent continued incidents of racial harassment from taking place.

41. In March of 2003, Mr. Comer sent a written complaint to YRC's Office of

General Counsel concerning the racially hostile atmosphere at the facility. Thereafter, the defendant conducted a superficial, ineffective investigation of the incidents and took no effective action to stop the incidents from occurring. As a result, additional acts of racial harassment continued to occur at the workplace.

42. Despite continuing acts of racial harassment, Defendant failed to adequately and effectively train its supervisors and/or employees with regard to anti-harassment policies. Instead, Defendant showed a sexual harassment video to its employees which made little if any mention of issues regarding racial harassment.

43. Despite continuing acts of racial harassment, Defendant failed to initiate effective disciplinary action against employees who engaged in racially offensive conduct or against supervisors who had knowledge of racially offensive conduct and took no action to in response to that knowledge.

44. Various other Intervening plaintiffs have at various times complained to supervisors, foremen, assistant terminal managers, human resource employees and terminal managers about racist activities on the dock.

C. Discriminatory Job Assignments and Segregated Dock Assignments

45. YRC utilizes a subjective policy of allowing foremen to assign the stacking and stripping of trailers to individual dockworkers with no guidelines for determining who is assigned to difficult loads and who is assigned to easy loads. As a result, African-American employees as a class are regularly assigned the least desirable loads by the foremen, the vast majority of whom are non-Black. These loads are euphemistically referred to by both White and Black employees alike as “brotherloads.”

46. On at least one occasion in 2006, plaintiff Cox complained to foreman Matt

Lapperre, asking him "why we are getting such a bad trailer." Lapperre told him, "That trailer is for the Black people."

47. The discriminatory job assignments have lead to lower productivity, greater rates of discipline, including disproportionate amount of suspensions and terminations, greater rates of injury and resulting lost income.

48. Defendant has racially segregated the workforce on the Outbound dock with African-American employees disproportionately assigned to the West end and Caucasian dockworkers disproportionately assigned to the East end of the dock. The West end of the dock has historically received the more difficult freight to strip and stack.

D. Discriminatory Disciplinary System

49. YRC utilizes an overly subjective, disciplinary system that authorizes foremen to give disciplinary letters to employees that they believe have committed workplace infractions. After a certain number of disciplinary letters are received, an employee can be suspended and/or terminated. Foremen, assistant terminal managers and terminal managers are also authorized to withdraw disciplinary letters from an employee's file with no objective standards in place to instruct when to withdraw a disciplinary letter.

50. YRC's disciplinary system has the intent and/or effect of discriminating against African-American employees on the basis of their race. Black employees are given disproportionately more disciplinary letters and receive harsher punishments, including suspensions and terminations, than non-Black employees. In addition, managerial employees are more likely to withdraw a disciplinary letter for a White employee once it has been given than they are for a Black employee.

51. White foremen regularly walk past White employees in the break room and write

up Black employees for not getting back to work. Similar actions regularly take place on the dock, where Black employees receive disciplinary letters for "Misuse of Company Time" while White employees are engaging in the identical conduct.

52. For example, in 2003, a supervisor wrote up Plaintiff Smith for Misuse of Company Time and then walked over to several White employees and told them "I just wrote two Blacks up. You guys have got to look busy."

53. In 2005, foreman Matt Lapperre told a group of White employees to get to work because "We're going to write the niggers some letters."

54. In May of 2005, Bob Sullivan gave plaintiff Toby Lee a "Misuse Letter" for having a one-hour gap in his scans while a similarly situated White employee with a 3-hour gap that same day was not written up. Mr. Lee was temporarily suspended as a result of that discipline.

55. Foreman Michael Connelly has walked past an entire line of White employees who were talking on the job, and given a disciplinary letter to Intervening Plaintiff Toby Lee.

56. In the fall of 2006, foreman Mike Harvey wrote disciplinary letters up on Plaintiffs Mark Williams and Antawon Marshall while ignoring similar conduct on the part of White employees.

57. In February of 2007, two Black employees, along with another White employee, received disciplinary letters for coming to work forty-five (45) minutes late during a snowstorm. A White foreman "pulled" the White employee's letter. The Black employees were unable to get a foreman to remove their letters.

58. On March 25, 2007, a white supervisor ordered plaintiff Bandy and other Black workers to get back to work and then sat down with a group of White workers who were playing

cards, allowing them to remain in the break room for at least ten more minutes.

59. Each of the representative Intervening Plaintiffs has received disciplinary actions, up to and including letters of discipline, suspensions and terminations, that constituted unlawful discrimination based upon race.

FIRST CLAIM FOR RELIEF
Racially Hostile Environment in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C. § 2000 et seq.

60. Defendant has maintained, fostered and tolerated a racially hostile environment at its Chicago Heights and Elk Grove Village facilities, allowing racial harassment to exist throughout and has failed to take prompt and effective remedial action to prevent such harassment from continuing. Defendant has a policy and practice of refusing to investigate complaints of racial discrimination, refusing to take effective action after discovering racial discrimination, refusing and failing to train employees in ways to avoid racial harassment, refusing to adopt an effective non-discrimination grievance procedure and actively discouraging the filing of complaints or racial harassment and retaliating against those employees who do file such complaints.

61. The action and inaction of the defendant as outlined herein has substantially interfered with the ability of the plaintiffs and the plaintiff class to effectively perform their work and has discouraged African-American employees from seeking advancement.

62. The above conduct constitutes illegal, intentional discrimination and retaliation prohibited by 42 U.S.C. § 2000 et seq.

63. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the Plaintiffs.

SECOND CLAIM FOR RELIEF
Racially Hostile Environment in violation of the Reconstruction Civil Rights Act 42 U.S.C. § 1981

64. Defendant has maintained, fostered and tolerated a racially hostile environment at its Chicago Heights facility, and at the Elk Grove Village facility, allowing racial harassment to exist throughout and has failed to take prompt and effective remedial action to prevent such harassment from continuing. Defendant has a policy and practice of refusing to investigate complaints of racial discrimination, refusing to take effective action after discovering racial discrimination, refusing and failing to train employees in ways to avoid racial harassment, refusing to adopt an effective non-discrimination grievance procedure and actively discouraging the filing of complaints of racial harassment and retaliating against those employees who do file such complaints.

65. The action and inaction of the defendant as outlined herein has substantially interfered with the ability of the plaintiffs and the plaintiff class to effectively perform their work and has discouraged African-American employees from seeking advancement.

66. The above conduct constitutes illegal, intentional discrimination prohibited by 42 U.S.C. § 1981.

67. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the plaintiffs.

THIRD CLAIM FOR RELIEF
Intentional Discrimination with Respect to Job Assignments in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. and 42 U.S.C. 1981

68. Defendant has authorized, fostered and maintained a practice and policy of job assignments that is intended to and that does discriminate against Black employees on the basis

of their race.

69. The above conduct constitutes illegal, intentional discrimination and retaliation prohibited by 42 U.S.C. § 2000 et seq.

70. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the plaintiffs.

FOURTH CLAIM FOR RELIEF
Disparate Impact Discrimination with Respect to Job Assignments in Violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.

71. Defendant has authorized, fostered and maintained an overly subjective practice and policy of job assignments that has had the effect of discriminating against Black employees on the basis of their race in violation of 42 U.S.C. § 2000 *et seq.*

FIFTH CLAIM FOR RELIEF
Intentional Discrimination with Respect to Discipline in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq. and 42 U.S.C. 1981

72. Defendant has authorized, fostered and maintained a practice and policy of discipline, including warning letters, suspensions and terminations that is intended to and that does discriminate against Black employees on the basis of their race.

73. The above conduct constitutes illegal, intentional discrimination and retaliation prohibited by 42 U.S.C. § 2000 et seq.

74. The above actions were taken intentionally, willfully and/or with reckless disregard for the rights of the plaintiffs.

SIXTH CLAIM FOR RELIEF
Disparate Impact Discrimination with Respect to Discipline in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.

75. Defendant has authorized, fostered and maintained an overly subjective practice and policy of discipline, including Letters of Discipline, suspensions and terminations that has

had the effect of discriminating against Black employees on the basis of their race in violation of 42 U.S.C. § 2000 et *seq.*

ALLEGATIONS REGARDING RELIEF

76. Plaintiffs and the class they seek to represent have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and the injunctive relief sought in this action is the only means of securing complete and adequate relief. Plaintiffs and the class they seek to represent are suffering and will continue to suffer irreparable injury from defendant's discriminatory acts and omissions.

77. The acts taken by YRC as set forth herein were taken maliciously, willfully and/or with reckless indifference to the rights of the plaintiffs and plaintiff class, thus entitling plaintiffs to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the plaintiff class respectfully request that, after trial by jury, this court grant them relief as follows:

A. Grant certification of the case as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, for the purpose of obtaining class-wide injunctive relief and punitive damages, with the designation of the class requested herein;

B. Grant certification of the case as a class action pursuant to Rule 23(b)(3) for the purpose of determining punitive damages after a determination of class wide liability.

C. Grant injunctive relief against defendant enjoining and permanently restraining defendant from continuing to maintain a racially hostile environment and from continuing to discriminate in job assignments and discipline;

D. Direct defendant to take such immediate action as is necessary to ensure that the

effects of the above unlawful employment practices are eliminated, including but not limited to the appointment of a court appointed monitor;

E. Grant declaratory relief that the practices complained of herein are unlawful and violate 42 U.S.C. § 1981 and 42 U.S.C. § 2000 et seq.

F. Award plaintiffs punitive damages in an amount commensurate with YRC's ability to pay and to deter future conduct;

G. Award costs incurred herein, including reasonable attorneys' fees as authorized by 42 U.S.C. § 1988;

H. Award pre-judgment and post-judgment interest as provided by law; and

I. Award such other relief as this Court deems necessary and proper.

Respectfully submitted,

s/ Jeffrey L. Taren
s/ Miriam N. Geraghty
s/ Joanne Kinoy

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