

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CLERK-ALBUQUERQUE

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

DHL Express (USA), Inc., f/k/a Airborne Express, Inc.,
and Air One Transport Group, Inc., d/b/a
Air One Transport of New Mexico, L.L.C.

Defendants.

CIV 04-1118 JP/DJS

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

Comes now, Plaintiff, the Equal Employment Opportunity Commission and pursuant to Rule 15(a) of the Federal Rules of Civil Procedure and hereby amends its Complaint filed on September 29, 2004 to include as a Defendant, DHL Express (USA), Inc., a Delaware Corporation which has merged its business operations with Defendant Airborne Express, Inc.

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964, as amended and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Debra Smith, who was adversely affected by such practices during her employment with Airborne Express, Inc., ("Airborne"). The Commission alleges that Debra Smith was subjected to unwelcome sexual comments and conduct by employees of Defendants Airborne and Air One, which created a hostile work environment because of her sex.

female. The Commission further alleges that Defendant Air One Transport of New Mexico, L.L.C. ("Air One"), as a third party and an employer subject to Title VII, unlawfully interfered with Ms. Smith's employment by creating a hostile work environment, which adversely affected the terms, conditions and privileges of Smith's employment with her employer, Defendant Airborne. The Commission also alleges Defendant Airborne subjected Ms. Smith to retaliatory discipline and failed to promote her because she opposed the unlawful employment practices of Defendants.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000e-5 (f)(1) and(3) ("Title VII") and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981a.

2. The employment practices alleged to be unlawful were committed within the jurisdiction of the United States District Court for the District of New Mexico.

PARTIES

3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is the agency of the United States of America charged with the administration, interpretation and enforcement of Title VII, and is expressly authorized to bring this action by Section 706(f)(1) and (3) of Title VII, 42 U.S.C. §2000e-5(f)(1) and (3).

4. At all relevant times, Defendant Airborne has continuously been doing business in the State of New Mexico, including the City of Albuquerque, and has continuously had at least 15 employees.

5. At all relevant times, Defendant Airborne has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

6. At all relevant times, Defendant, DHL Express (USA), Inc., a Delaware Corporation (“DHL”) has:

- a) continuously had at least 15 employees;
- b) continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h); and
- c) merged its business operations with the operations of Defendant Airborne and is therefore, for purposes of this lawsuit a successor corporation who is or may be liable in this action.

7. At all relevant times, Defendant Air One has continuously been doing business in the State of New Mexico, including the City of Albuquerque, and has continuously had at least 15 employees.

8. At all relevant times, Defendant Air One has continuously been and is now an employer engaged in an industry affecting commerce within the meaning of Section 701(b), (g) and (h) of Title VII, 42 U.S.C. §2000e-(b), (g) and (h).

STATEMENT OF CLAIMS

9. More than thirty days prior to the institution of this lawsuit, Debra Smith filed charges with the Commission alleging violations of Title VII by Defendants. All conditions precedent to the

institution of this lawsuit have been fulfilled.

10. At all relevant times, and under a contractual agreement between both Defendants, Air One employees were assigned to work at the Defendant Airborne's Albuquerque facility, the facility where Smith worked.

11. Since at least November 2001, Defendant Airborne has engaged in unlawful employment practices at its Albuquerque, New Mexico facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) because of sex. These practices include:

- a) the harassment of Debra Smith because of her sex, female, which created a hostile work environment; and
- b) the failure to take immediate and appropriate corrective action.

12. As described below, since at least November 2001, Defendant Air One has engaged in unlawful employment practices at Airborne's Albuquerque, New Mexico facility in violation of Section 703(a) of Title VII, 42 U.S.C. §§2000e-2(a) by creating a hostile work environment because of her sex, female, which interfered with Smith's employment opportunities and adversely affected the terms, conditions and privileges of Smith's employment with Defendant Airborne. These unlawful employment practices include:

- a.) interference with Debra Smith's employment opportunities with her employer by subjecting her to offensive comments and conduct because of her sex, female; and
- b) interference with Debra Smith's employment opportunities with her employer by Defendant Air One's failure to take immediate and appropriate corrective

action.

13. Since at least November 2002, Defendant Airborne has engaged in unlawful retaliatory employment practices at its Albuquerque, New Mexico facility in violation of Section 704(a) of Title VII, 42 U.S.C. §§2000e-3(a). These retaliatory practices include:

- a) subjecting Debra Smith to disciplinary action and adverse terms, conditions and privileges of employment after she expressed opposition to and made complaints about unlawful employment practices; and
- b) failing to promote Debra Smith on or about February 2003 because she opposed the unlawful employment practices to which she was subjected.

14. The effect of the practices complained of in paragraphs 11 - 12 above has been to deprive Debra Smith of equal employment opportunities and otherwise adversely affect their status as employees because of her sex, female.

15. The effect of the practices complained of in paragraph 13 above has been to deprive Debra Smith of equal employment opportunities and otherwise adversely affect her status as an employee because of her opposition to unlawful employment practices.

16. The unlawful employment practices complained of in paragraphs 11, 12 and 13 above were intentional.

17. The unlawful employment practices complained of in paragraphs 11, 12 and 13 above were done with malice and/or reckless indifference to the federally protected rights of Debra Smith.

PRAYER FOR RELIEF

Wherefore, the Commission respectfully requests that this Court:

- A. Grant a permanent injunction enjoining Defendants DHL, Airborne and Air One,

their officers, successors, assigns and all persons in active concert or participation with them, from engaging in harassment of employees because of sex and any other employment practice which discriminates on the basis of sex.

B. Grant a permanent injunction enjoining Defendants DHL and Airborne, their officers, successors, assigns and all persons in active concert or participation with it, from engaging in any employment practice which discriminates or retaliates against any individual because of the individual's opposition to perceived unlawful employment practices and/or because the individual filed a charge, testified, assisted, or participated in an investigation or proceeding under Title VII.

C. Order Defendants DHL, Airborne and Air One to institute and carry out policies, practices and programs which provide equal employment opportunities for women and for those who oppose perceived unlawful employment practices and/or file charges, testify, assist or participate in an investigation or proceeding under Title VII, and which eradicate the effects of its past and present unlawful employment practices.

D. Order Defendants DHL and Airborne to make whole Debra Smith by providing appropriate back pay with prejudgment interest, in amounts to be determined at trial, and other affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to rightful place promotion of Debra Smith or front pay in lieu of rightful place promotion or placement.

E. Order Defendants DHL, Airborne and Air One to make whole Debra Smith by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 11,12 and 13 above, in amounts to be determined at trial.

F. Order Defendants DHL, Airborne and Air One to make whole Debra Smith by providing compensation for past and future non pecuniary losses resulting from the unlawful practices complained of in paragraphs 11, 12 and 13 above, including but not limited to, emotional pain, suffering, inconvenience, mental anguish, humiliation, loss of enjoyment of life, and other non pecuniary losses, in amounts to be determined at trial.

G. Order Defendants DHL, Airborne and Air One to pay Debra Smith punitive damages for its malicious and/or reckless conduct described in paragraphs 11, 12 and 13 above, in amounts to be determined at trial.

H. Grant such further relief as the Court deems necessary and proper in the public interest.

I. Award the Commission its costs in this action.

JURY TRIAL DEMANDED

The Commission requests a jury trial on all questions of fact raised by its First Amended Complaint.

DATED this 1st day of December 2004

Respectfully submitted,

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