

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

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

FEB 24 2006

MATTHEW J. DYKMAN
CLERK

CIV. No: 04-1118 JP/DJS

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

DHL EXPRESS (USA), INC., and AIR ONE
TRANSPORT GROUP, INC., d/b/a AIR ONE
TRANSPORT OF NEW MEXICO, LLC and
AIR ONE TRANSPORT OF NEW MEXICO, LLC

Defendants,

And

DEBRA SMITH,

Plaintiff in Intervention,

v.

DHL EXPRESS (USA), INC., and AIR ONE
TRANSPORT GROUP, INC., d/b/a AIR ONE
TRANSPORT OF NEW MEXICO, LLC and
AIR ONE TRANSPORT OF NEW MEXICO, LLC,

Defendants.

The United States Equal Employment Opportunity Commission (the "Commission" or "EEOC") filed this action against DHL Express (USA), Inc., f/k/a Airborne Express, Inc., (hereinafter "DHL") to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. ("Title VII") and the Civil Rights Act of 1991, 42 U.S.C. §1981a. In the Complaint and Amended Complaints, the Commission alleged that Charging Party Debra Smith, as

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an employee of Airborne Express, was subjected to unwelcome comments and conduct by employees of Airborne Express and Air One, which created a hostile work environment for Ms. Smith because of her sex, female. Finally, the Commission alleged that Airborne Express subjected Ms. Smith to retaliatory discipline and failed to promote her because she opposed the unlawful employment practices of Defendants.

To resolve the claims of the Commission in this lawsuit, the parties have agreed that the defendants Air One and DHL shall each separately agree to entry of a Consent Decree. This Consent Decree applies solely to defendant DHL.

This consent decree does not constitute an admission of liability by DHL. DHL expressly denies that it discriminated or retaliated against Ms. Smith on any basis under Title VII. DHL admits that it merged its business operations with defendant Airborne Express and for purposes of this lawsuit, it is the successor corporation.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

It is hereby **ORDERED, ADJUDGED AND DECREED:**

1. This decree resolves all claims of the commission against DHL on behalf of Debra Smith, including claims for back pay, compensatory and punitive damages, interest, injunctive relief, and attorneys' fees and costs arising out of the issues in this lawsuit.

INJUNCTION

2. DHL, its managers, officers, employees, and successors, are permanently enjoined for the duration of the decree from discriminating against any employee in New Mexico because of his or her sex, including subjecting employees or individuals to sexual harassment. This

injunction will remain in effect for the duration of the decree at any facility operated by DHL in New Mexico.

3. DHL, its managers, officers, employees, and successors, are permanently enjoined for the duration of the decree from retaliating against any employee in New Mexico or individual in New Mexico because the employee or individual has (a) opposed practices made unlawful by Title VII or a state equal employment opportunity statute, (b) filed a charge of discrimination, including sexual harassment, (c) assisted or participated in the filing of a charge of discrimination, including sexual harassment, (d) assisted or participated in an investigation or proceeding under Title VII or a state equal employment opportunity statute, or (e) files an internal complaint of discrimination. This injunction will remain in effect for the duration of the decree at any facility operated by DHL in New Mexico.

RELIEF TO CHARGING PARTY

4. In accordance with this decree, DHL shall pay the total amount of \$175,000 payable to DEBRA SMITH as damages and attorneys' fees and costs with \$20,000 less applicable tax withholding allocated to lost wage and the balance for attorneys' fees and costs.

5. DHL shall pay the settlement amount described in Paragraph 4 of this decree within fourteen (14) days of entry of the Consent Decree by the Court. The Consent Decree will be filed with the Court upon the parties' execution of all documents necessary to complete settlement. Within five (5) days of issuance of the business check(s) to Ms. Smith and her attorneys, DHL shall submit a copy of the checks and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, Albuquerque Area Office, 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189.

6. In response to any employment inquires or reference checks concerning Debra Smith, DHL shall provide only her dates of employment, last position held, and final salary. DHL shall not engage in any disparagement of Ms. Smith in response to any inquiries about her. This provision shall remain in force for so long as Debra Smith uses DHL as a reference and is not limited to the three-year duration of this decree.

7. DHL shall not take any action against Debra Smith, any witness in this proceeding or any other individual in retaliation for filing a charge of employment discrimination or for participating, assisting or testifying in this action.

DEFENDANT'S CORRECTIVE POLICIES AND PRACTICES

8. DHL shall institute and carry out policies and practices in its New Mexico facilities that will provide a work environment free from sex discrimination and retaliation, including policies, procedures and practices to prevent sexual harassment of their employees and other individuals, and that allow employees and other individuals to raise concerns or complaints about matters made unlawful by Title VII, whether alleged, perceived or actual without retaliation. To assist DHL in their efforts to provide a work environment free of sex discrimination, sexual harassment and retaliation in its New Mexico facilities, DHL shall take the actions provided for in Paragraphs 9 through 12.

9. Within sixty (60) days of the entry of this decree, DHL shall review any existing policies on sex discrimination, including sexual harassment and retaliation, which apply to its New Mexico facilities, and make any changes necessary so that their policies and procedures comply with Title VII. Should DHL not currently have an existing policy prohibiting sexual harassment or retaliation, DHL shall implement an effective anti-retaliation policy and anti-harassment policy and procedure to receive employee complaints of harassment based on sex.

After reviewing and making any necessary revisions to its policies, DHL shall distribute within thirty (30) days, the revised sexual harassment and non-retaliation policies and complaint procedures to each of its current full and part-time employees in New Mexico, and to each new employee in New Mexico hired for the duration of this decree. The policy and procedure statements that are provided to DHL employees in New Mexico should be designed to present easily understood, convenient, consistent, confidential and reliable procedures for reporting incidents of sexual harassment and retaliation in DHL facilities. These procedures, at a minimum, shall include provisions incorporating the following:

A. Within thirty (30) days of the entry of this decree, and for the duration of this decree, DHL shall designate a Human Resources Representative who will serve as the investigative person for sexual harassment or retaliation issues in New Mexico and DHL shall post in all New Mexico facilities the identity of the Human Resources Representative, which shall remain posted for the duration of the decree;

B. For the duration of this decree, complaints of sexual harassment or retaliation in New Mexico will be accepted in writing or orally and all complaints will be taken seriously and investigated;

C. Only those who have an immediate need to know, including the person identified in A above, the alleged target of harassment or retaliation, the alleged harasser(s) or retaliator(s) and any witnesses, may find out the identity of the complainant;

D. During an investigation of a sexual harassment complaint of an employee or other individual, the person identified in A above shall endeavor to immediately interview all affected individuals and potential witnesses to the alleged harassment;

E. All parties contacted in the course of an investigation will be advised that any retaliation or reprisal against an individual who is an alleged target of harassment or retaliation, who has made a complaint, or who has provided evidence in connection with a complaint, will not be tolerated and could result in disciplinary action;

F. The person identified in A shall receive or will have received a minimum of three (3) hours of training about sexual harassment that is separate from the training provided in paragraph 11 D, and will have the responsibility for expeditiously investigating all complaints;

G. The person identified in A above will recommend remedial measures, if appropriate, based upon the results of the investigation, and DHL will promptly consider and act upon such recommendation;

H. The person identified in A above will maintain a file on the original complaint(s) and any follow-up investigation; and

I. DHL managers, officials, or employees who engage in sexual harassment or retaliation, who fail to cooperate with company-sponsored investigations of sexual harassment or retaliation, or who refuse to implement remedial measures will be advised that they may be sanctioned severely by suspension without pay or dismissal.

10. DHL shall post within thirty (30) days of the entry of this consent decree, and continuously for a period of thirty six (36) months in a prominent place in the workplace of their New Mexico facilities, the Notice attached to this decree as Exhibit A. This Notice shall be the same type, style and size as in Exhibit A. DHL shall also distribute within thirty (30) days of the entry of this consent decree, the Notice attached to this decree as Exhibit A, to each of its employees in New Mexico.

11. DHL shall provide training on sex discrimination, sexual harassment, and retaliation in its New Mexico facilities according to the following terms:

A. DHL shall provide its New Mexico employees with at least three (3) training sessions during the term of this decree. All DHL employees at facilities owned or operated by DHL in New Mexico, including supervisors and managers, shall attend the training. New employees at DHL shall receive the training within six (6) months of beginning employment. Duplicative sessions or videotaped sessions may be held to accommodate staffing needs. DHL shall be responsible for all costs associated with this training.

B. During the first year of the decree, the first training shall be conducted within one hundred and twenty (120) days of the entry of this decree. Additional training shall be conducted at least once each remaining year of this decree.

C. DHL shall select a member of DHL's legal department, Human Resources Representative or outside consultant who is qualified in employment law to provide the training referred to in this decree. DHL shall provide the trainer's name, resume and the date of the scheduled training to the Regional Attorney of the Equal Employment Opportunity Commission, Albuquerque Area Office, thirty (30) days before the first scheduled training. For the second and third years of this decree, DHL shall provide the same information thirty (30) days before the subsequent scheduled training. The Commission shall have fifteen (15) days from the date of the receipt of the information described above to accept or reject the proposed trainer/consultant.

D. The training shall include a minimum of three (3) hours of instruction. All personnel designated in Paragraph 11 A shall both register and attend the training. The registry of attendance shall be retained by DHL at least for the duration of the decree.

E. The training, at a minimum, shall include the subjects of: what constitutes sex discrimination, including sexual harassment and retaliation; that sex discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment and retaliation violates Title VII; how to prevent sex discrimination and retaliation; how to provide a work environment free from sex discrimination, sexual harassment, and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to sex discrimination, sexual harassment or retaliation in the workplace.

F. Immediately following the training sessions, DHL's highest ranking managerial official in the facility shall speak to the employees about: (1) potential discipline that can be taken against supervisors, managers and employees who commit acts of sex discrimination or retaliation or who allow sex discrimination or retaliation to occur in the workplace, (2) the importance of maintaining an environment free of sex discrimination and retaliation, and (3) the employer's policies regarding sex discrimination, sexual harassment and retaliation. This time shall not be counted toward the three-hour minimum training required in 11 D.

G. The Commission, at its discretion, may designate Commission representatives to attend any of the training sessions described above.

REPORTING BY DEFENDANT AND ACCESS BY EEOC

12. DHL shall report in writing and in affidavit form to the Regional Attorney of the Commission's Albuquerque Area Office at 505 Marquette NW, Suite 900, Albuquerque, New Mexico 87102-2189, beginning six (6) months from the date of the Entry of this Decree, and thereafter every six (6) months for the duration of the decree the following information:

A. Any changes, modifications, revocations, or revisions to its policies and procedure which concern or affect the subject of sex discrimination, sexual harassment and retaliation.

B. The number of people who, during the six months preceding the report, have brought allegations of sex discrimination, sex harassment, or retaliation arising from activities in DHL's facilities in New Mexico against DHL or its personnel, including, but not limited to management officials, vendors or employees. The nature of the complaint, investigatory efforts made by DHL, and the corrective action taken, if any, shall be specified.

C. The registries of persons attending each of the seminar-training sessions required in Paragraphs 9 and 11 of this decree and a list of current employees on the day of the seminar-training session.

D. An affidavit by DHL stating: (1) the Notice required in Paragraph 10 of this decree was posted and the location where it was posted, and (2) it has complied with Paragraphs 9, 10, and 11 of this decree.

E. Copies of any video presentations DHL has utilized to comply with the requirements of this decree, if any.

13. The Commission upon reasonable notice shall have the right to enter and inspect the premises of DHL's facilities in New Mexico to ensure compliance with this decree and federal anti-discrimination laws.

COSTS AND DURATION

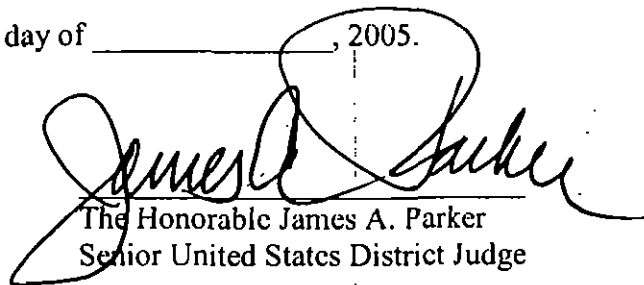
14. Each party shall bear its costs and attorneys' fees incurred as a result of this action through the entry of this decree.

15. The duration of this decree shall be three (3) years from its entry. This Court shall retain jurisdiction of this action for the duration of the decree, during which the Commission may petition this Court for compliance with this decree. Should the Court determine that DHL has not complied with this decree, appropriate relief, including extension of this decree for such period as may be necessary to remedy its non-compliance, may be ordered.

16. This decree shall expire by its own terms at the end of three (3) years after entry, without further action by the parties.

17. The parties agree to entry of this decree subject to final approval by the Court.

ENTERED AND ORDERED this ____ day of _____, 2005.



The Honorable James A. Parker
Senior United States District Judge

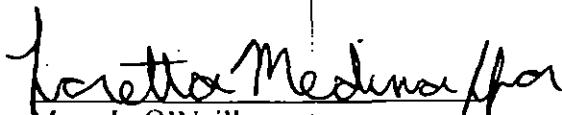
APPROVED AND CONSENTED TO:

James L. Lee
Deputy General Counsel

Gwendolyn Young Reams
Associate General Counsel

EQUAL EMPLOYMENT OPPORTUNITY
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DATED:



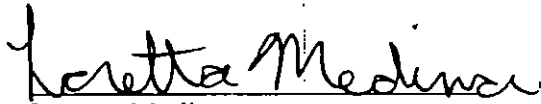
Mary Jo O'Neill
Regional Attorney

DATED:

2/16/06

EQUAL EMPLOYMENT OPPORTUNITY
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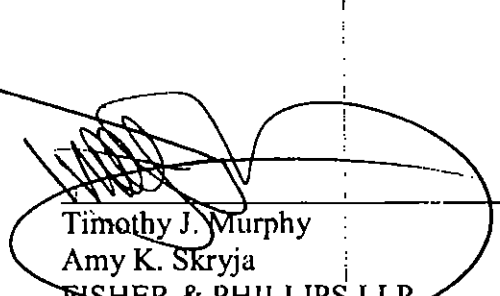
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NOTICE TO ALL DHL EMPLOYEES

It is unlawful under the federal law (Title VII of the Civil Rights Act of 1964) and state law to discriminate against an employee on the basis of sex in hiring, firing, compensation or other terms, and conditions or privileges of employment, including sexual harassment. It is also unlawful under federal and state law to retaliate against any individual who complains of harassment.

DHL prohibits all forms of sex discrimination, including sexual harassment. Prohibited sexual harassment includes, but is not limited to, the following conduct:

- a. unwelcome touching of a sexual nature;
- b. unwelcome comments, including comments regarding intimate body parts, or clothing and discussion of sexual jokes or sexual behavior;
- c. unwelcome requests for dates, sexual favors and propositions;
- d. unwelcome distribution in the workplace of cartoons, pictures or drawings of a sexual nature; and
- e. unwelcome display of pornographic material in the workplace.

DHL shall not discriminate on the basis of sex and shall not retaliate against any employee who opposes a practice made unlawful under federal law, files, assists or participates in the filing of a charge of discrimination or participates in any investigation under Title VII, or who files a grievance alleging discrimination.

If you believe you are being sexually harassed, discriminated against based on sex or retaliated against, you should report this to your Human Resources Representative at _____ or contact the:

- 1) Equal Employment Opportunity Commission (EEOC), 505 Marquette,
Suite 900, Albuquerque, New Mexico 87102, (505) 248-5201.

or

- (2) The New Mexico Department of Labor, Human Rights Division, 1596
Pacheco St., Suite 103, Santa Fe, New Mexico 87505, (505) 827-6838 or
1-800-566-9471.

EXHIBIT A