

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

CASE NO.: 8:03-CV-2043-T-27TGW

and

JUAN C. FONSECA, YULY VAZQUEZ-ENRIQUEZ
and HECTOR CEPEDA,

Plaintiff-Intervenor,

v.

CON-WAY TRANSPORTATION
SERVICES, INC.,

Defendant.

CONSENT DECREE

1. This Consent Decree ("Decree") is made and entered into by and between Plaintiff, the Equal Employment Opportunity Commission (hereinafter referred to as the "Commission" or "EEOC"), Plaintiff-Intervenors Hector Cepeda, Juan Fonseca, and Yuly Vazquez-Enriquez and Defendant, Con-Way Transportation Services, Inc., d/b/a Con-Way Southern Express. (hereinafter referred to as "Defendant" or "Con-Way"). The Commission, Plaintiff-Intervenors and Con-Way are collectively referred to herein as "the Parties."

2. On September 30, 2003, EEOC initiated this action against Con-Way under Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991, to correct allegedly unlawful employment practices on the basis of national origin, and to provide appropriate relief to Hector Cepeda, Yuly Vazquez-Enriquez and Juan Fonseca, who were allegedly adversely affected

by such practices. EEOC alleges that Defendants violated Title VII by subjecting Hector Cepeda, Yuly Vazquez-Enriquez and Juan Fonseca, to a hostile work environment by supervisors and co-workers because of their national origin, Cuban. On February 18, 2004, Hector Cepeda, Yuly Vazquez-Enriquez and Juan Fonseca intervened in this action and brought claims of discrimination based on their national origin, Cuban and retaliation under Title VII, as well as under 42 U.S.C. §1981 and the Florida Civil Rights Act of 1992, Section 760.01 *et. seq.*, Fla. Stat. (1997) (“FCRA”).

3. In the interest of resolving this matter, to avoid the cost of litigation, and as a result of having engaged in comprehensive settlement negotiations, the parties have agreed that this action should be finally resolved by the entry of this Decree. This Decree is final and binding on the Parties, their successors and assigns.

4. The Parties agree that this Decree resolves all claims against Con-Way alleged in EEOC Charge Number 151 A2 01939, EEOC Charge Number 151 A2 01940, EEOC Charge Number 151 A2 01942 and the Complaints filed in this action. The Parties further agree that this Decree does not resolve any charges of discrimination that may be pending with the EEOC other than the charges referred to in this paragraph. As of the time of filing of this Decree, there are no other charges pending against Con-Way with the EEOC’s Tampa Area Office.

5. This settlement shall not be construed as an admission of liability by Con-Way and Con-Way expressly denies liability.

NOW, THEREFORE, the Court having carefully examined the terms and provisions of this Decree, and based on the pleadings filed by the Parties, it is **ORDERED, ADJUDGED AND DECREED THAT:**

JURISDICTION

6. This Court has jurisdiction of the subject matter of this action and over the Parties for the purposes of entering and enforcing this Decree.

7. No party shall contest the jurisdiction of this federal court to enforce this Decree and its terms or the right of the EEOC to seek enforcement of the Decree in the event Defendant breaches any of the terms of this Decree.

GENERAL INJUNCTIVE PROVISIONS

8. Con-Way agrees that it will not discriminate against employees or their terms and conditions of employment because of their national origin in violation of Title VII of the Civil Rights Act of 1964, as amended.

9. Con-Way agrees that it will not unlawfully discriminate against any employee in this matter who opposed any of Defendant's practices which the employee believed to be a violation of Title VII; who filed a charge of discrimination with the EEOC alleging violation(s) of such statute; or who cooperated with the EEOC in the investigation or prosecution of this case.

TRAINING

10. Con-Way has established a written policy of compliance with Title VII which is shown in its Code of Business Ethics the pertinent page which is attached hereto as Exhibit A. A complete copy of this policy will be distributed to all its current employees at its Tampa Service Center by May 15, 2005. Con-Way further agrees that all new employees at its Tampa Service Center will be provided a copy of the policy within one week of employment.

11. In order to further ensure the effective implementation of Defendant's anti-discrimination policies, Con-Way will conduct a three (3) hour annual training composed of a one

and a half hour online tutorial, and one and a half hour interactive training session throughout the duration of this Decree for all of its personnel at its Tampa Service Center, with specific emphasis on recognizing national origin discrimination and the proper procedure to be followed if they become aware of national origin discrimination in the workplace and/or if they receive a complaint of such discrimination. Defendant agrees to provide the EEOC with at least two (2) weeks notice before it conducts its training session(s), with the date(s) and location(s) of the training, the identification of the training materials to be used at the training session, and the name and job title of the employees who will be in attendance at the training. The training will be conducted by Con-Way's Training Manager Richard Harper or his replacement, if Mr. Harper is unavailable.

12. Defendant agrees that the training described in paragraph 11 shall be conducted within sixty (60) days of the entry of this Decree, and, should thereafter take place annually in the same quarter as the first training for the duration of this Decree. Defendant further agrees that the training materials used in the training described in paragraph 11 shall be given to all new Tampa Service Center managers and supervisors, who did not attend the annual training, within thirty (30) days of being placed in a management or supervisory position.

LETTERS OF REFERENCE

13. Defendant agrees to give Hector Cepeda, Yuly Vazquez-Enriquez and Juan Fonseca neutral letters of reference signed by Jeff Kerbo, Director of Human Resources attached as Exhibit B, within fifteen (15) calendar days of the entry of this Decree. Further, Defendant agrees that inquiries by prospective employers of Mr. Cepeda, Mr. Vazquez-Enriquez and Mr. Fonseca may be directed to Jeff Kerbo at phone number (817) 358-3655 and/or facsimile number (817) 358-3700,

who will provide a neutral reference and will mention only the position and duration of Mr. Cepeda's, Mr. Vazquez-Enriquez's and Mr. Fonseca's employment with Con-Way.

POSTING

14. The Defendant will post within seven (7) days from the Court's execution of this Decree, a laminated 11" x 14" sized copy of the Notice attached hereto as Exhibit C. Said notice shall be posted at Con-Way's Tampa Service Center for the duration of this Decree in a conspicuous location accessible to all employees (i.e. employee bulletin board or lunch room).

MONITORING

15. The Defendant will retain all Con-Way Tampa Service Center employment records relating in any way to any complaint, allegation and investigation of national origin discrimination for the duration of this Decree as required by federal law.

16. The Defendant will provide the EEOC with the name, address and phone number of any person who reports in accordance with Con-Way's policy attached as Exhibit A that he/she has been subjected to discrimination based on their national origin while working at Con-Way's Tampa, FL facility during the preceding year. Defendant will also state its actions taken in response to each such allegation. The first report shall be submitted no later than July 31, 2005, and thereafter by July 31st annually, throughout the duration of this Decree. The Defendant will provide upon request by the Commission any and all documentation associated with each such complaint.

17. Defendant will certify to the EEOC annually throughout the duration of this Decree that it is in compliance with all aspects of this Decree. The first such certification will be due no later than July 31, 2005, and thereafter by July 31st annually, throughout the duration of this Decree. The certifications required to be submitted to the EEOC pursuant to this Consent Decree shall be

mailed with the notation CON-WAY MONITORING to: United States Equal Employment Opportunity Commission, Attention: Office of the Regional Attorney, 1 Biscayne Tower, Suite 2700, 2 South Biscayne Boulevard, Miami, Fl 33131.

MONETARY RELIEF

18. Defendant shall pay a lump sum in the amount of \$ 240,000.00 in resolution of this litigation. The monies shall be distributed within fifteen (15) calendar days of the entry of this Decree as set forth below in Exhibit D attached hereto.

19. If Defendant fails to tender the above-mentioned payments as set forth in paragraph 18 above, then Defendant's shall pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. Section 6621(b) until the same is paid, and bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendant.

ENFORCEMENT OF DECREE

20. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Decree.

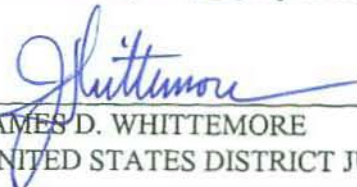
COSTS

21. Each Party shall bear its own costs and fees associated with this litigation.

DURATION OF CONSENT DECREE

22. The duration of this Decree shall be three (3) years from the date of entry of the Decree.

SO ORDERED, ADJUDGED AND DECREED, this 16th day of May, 2005.


JAMES D. WHITTEMORE
UNITED STATES DISTRICT JUDGE

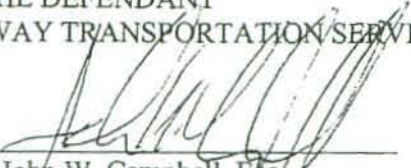
AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by:  Date: 5/4/05
Delner Franklin-Thomas
Regional Attorney
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 530-6001
Facsimile: (305) 536-4494

AGREED TO:
FOR THE PLAINTIFF-INTERVENOR

by:  Date: 4/25/05
James M. Thompson, Esq.
NELSON, BISCONTI & THOMPSON, L.L.C.
718 West Martin Luther King Blvd. Suite 200
Tampa, FL 33603
Telephone: (813) 221-0999
Facsimile: (813) 314-9626

AGREED TO:
FOR THE DEFENDANT
CON-WAY TRANSPORTATION SERVICES, d/b/a CON-WAY SOUTHERN EXPRESS

by:  Date: 4/27/05
John W. Campbell, Esq.
Michael D. Malfitano, Esq.
CONSTANGY, BROOKS, & SMITH, LLC

100 West Kennedy Boulevard, Suite 500
Tampa, FL 33602
Telephone: (813) 223-7166
Facsimile: (813)

EXHIBIT A

CON-WAY'S ANTI-DISCRIMINATION POLICY

EXHIBIT A

EMPLOYMENT PRACTICES

Equal Employment Opportunity

The Company provides equal employment opportunities for all employees and applicants. Unlawful discrimination or harassment on the basis of race, creed, color, ancestry, age, sex (including pregnancy, childbirth, or related medical conditions), religion, national origin, disability, medical condition, family care leave status, veteran status, marital status, sexual orientation, or any other legally protected status is strictly prohibited. This policy of equal employment opportunity applies to recruiting, advertising, initial employment, advancement, transfer, demotion, layoff, termination, rates of pay, selection for training, and other aspects of employment with the Company. This policy is more fully defined in Con-Way's Personnel Policies and Procedures Manual.

Sexual or Racial Harassment

The Company prohibits all forms of sexual harassment, as well as harassment based on race, creed, color, religion, ancestry, age, sex (including pregnancy, childbirth, or related medical conditions), national origin, disability, medical condition, family care leave status, veteran status, marital status, sexual orientation, or any other characteristic protected from discrimination by applicable law.

Sexual harassment consists of unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made a term or condition of employment;
- submission to or rejection of such conduct is used as a basis for employment decisions; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive or hostile work environment.

Sexual harassment can occur between supervisor and employee, between co-workers, or between an employee and someone outside the Company, such as a vendor. Supervisors may not threaten or imply that an employee's response to sexual advances will in any way influence that employee's continued employment or advancement.

Any employee who feels that he or she has been discriminated against or subjected to sexual or other prohibited harassment should report the incident promptly to the Human Resources Department of the Con-Way company they work for or the CNF Ethics Line so that the matter can be investigated and resolved as quickly as possible. Subject to applicable law, any employee who is found to be responsible for harassment, or retaliating against any individual for reporting a claim of harassment or cooperating in an investigation, will be subject to disciplinary action, up to and including termination of employment.

Remember that, regardless of legal definitions, the Company expects employees to interact with each other in a professional and respectful manner. This policy is more fully defined in Con-Way's Personnel Policies and Procedures Manual.

Violence in the Workplace

The Company recognizes that workplace violence is a concern to employers and employees everywhere. The Company is committed to providing a safe, violence-free workplace, and to further this commitment, the Company has adopted a No Threats or Violence in the Workplace Policy. This policy is set out in Con-Way's Personnel Policies and Procedures Manual. This policy strictly prohibits employees, consultants, customers, vendors, visitors, or anyone else on Company property or engaging in a

EXHIBIT B
LETTERS OF REFERENCE



JEFF D. KERBO
Director - Human Resources

April 11, 2005

Re: Yuly Vasquez

To Whom It May Concern:

Yuly Vasquez was employed by Con-Way Southern Express in the classification of Driver / Sales Representative from August 4, 1998 through March 9, 2005.

A handwritten signature in black ink, appearing to read 'Jeff Kerbo', written in a cursive style.

Jeff Kerbo
Con-Way Southern Express
Director – Human Resources



JEFF D. KERBO
Director - Human Resources

April 11, 2005

Re: Juan C. Fonseca

To Whom It May Concern:

Juan Fonseca was employed by Con-Way Southern Express in the classification of Driver / Sales Representative from October 9, 2001 through August 21, 2002.

A handwritten signature in black ink, appearing to read 'Jeff Kerbo', is written over a light blue horizontal line.

Jeff Kerbo
Con-Way Southern Express
Director - Human Resources



JEFF D. KERBO
Director - Human Resources

April 11, 2005

Re: Hector I Cepeda

To Whom It May Concern:

Hector Cepeda was employed by Con-Way Southern Express in the classification of Driver / Sales Representative from April 30, 2000 through November 15, 2002.

A handwritten signature in black ink, appearing to read 'Jeff Kerbo', is written over the typed name.

Jeff Kerbo
Con-Way Southern Express
Director – Human Resources

EXHIBIT C

**NOTICE TO ALL EMPLOYEES
POSTED PURSUANT TO A CONSENT DECREE BETWEEN THE
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
CON-WAY TRANSPORTATION SERVICES, INC., d/b/a CON-WAY SOUTHERN
EXPRESS**

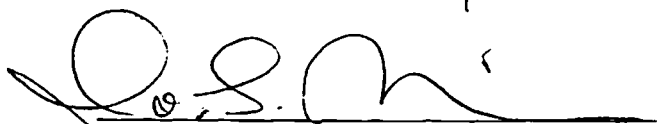
This notice is being posted pursuant to a Consent Decree entered by the Court in U. S. EEOC vs. Con-Way Transportation Services, Inc. d/b/a Con-Way Southern Express, CASE NO: 8:03-CV-2043-T-27TGW. Con-Way Transportation Services, Inc., has agreed that it will not discriminate against employees on a basis of National Origin in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, or sex. Con-Way Transportation services, Inc., will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws.

Furthermore, Con-Way Transportation Services, Inc., assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

This notice shall remain posted for three (3) years from the date signed. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this 11th day of April, 2005



PRESIDENT
CON-WAY SOUTHERN EXPRESS

DO NOT REMOVE BEFORE April 15 2008.

EXHIBIT D

MONETARY DISTRIBUTION

The \$ 240,000.00 monetary relief paid to resolve U.S. EEOC & Fonseca & Vasquez & Cepeda vs. Con-Way Transportation Services, Inc., d/b/a Con-Way Southern Express, CASE NO: 8:03-CV-2043-T-27TGW shall be distributed as follows:

(A) Defendant will pay Juan Fonseca \$13,333.34, which shall be representative of lost wages less appropriate withholdings and payroll taxes. Defendant shall be responsible for the payment of the employer's share of any FICA and FUTA, and will issue a form W-2 for same. Defendant will pay Juan Fonseca \$66,666.66 representing compensatory damages and attorney fees and will issue an I.R.S. form 1099 itemizing same.

(B) Defendant will pay Hector Cepeda \$13,333.34 which shall be representative of lost wages less appropriate withholdings and payroll taxes. Defendant shall be responsible for the payment of the employer's share of any FICA and FUTA, and will issue a form W-2 for same. Defendant will pay Hector Cepeda \$66,666.66, representing compensatory damages and attorney fees and will issue an I.R.S. form 1099 itemizing same.

(C) Defendant will pay Yuly Vasquez Enriquez \$ 80,000.00, representing compensatory damages and attorney fees and will issue an I.R.S. form 1099 itemizing same.

The payments to the individual Plaintiff-Intervenors Ms. Fonseca, Mr. Vasquez-Enriquez, and Mr. Cepeda shall be made by check in their individual name and James Thompson, their attorney and forwarded to James M. Thompson, Esq., NELSON, BISCONTI & THOMPSON, L.L.C., 718 West Martin Luther King Blvd. Suite 200, Tampa, FL 33603, by certified mail with a return receipt requested. A copy of the check(s) shall be forwarded to the attention of Carla Von Greiff, Senior Trial Attorney, U.S. Equal Employment Opportunity Commission, 501 East Polk Street, Suite 1000, Tampa, Florida 33611.