

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

OCT 13 2004
CCM
LARRY W. PROFFER, CLERK
CHARLESTON, SC

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

J. W. ALUMINUM COMPANY,

Defendant.

CIVIL ACTION NO.

2: 03-2448-12BG

ENTERED

10/14/04

CONSENT DECREE

The Equal Employment Opportunity Commission (the "Commission") instituted this action 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. The Commission and Defendant agree that the subject matter of this action is proper and hereby stipulate to jurisdiction of the Court over the parties.

The parties have advised this Court that they desire to resolve the allegations in the Complaint without the burden, expense, and delay of further litigation.

It is therefore the finding of this Court, made on the pleadings and the record as a whole, that: (1) the Court has jurisdiction over the parties and the subject matter of this action; (2) the purpose and provisions of Title VII will be promoted and effectuated by the entry of the Consent Decree; and (3) this Consent Decree resolves all matters in controversy between the parties as provided in paragraphs 1 through 20 below.

It is therefore, ORDERED, ADJUDGED AND DECREED as follows:

1. No Discrimination or Harassment. Defendant shall not discriminate against or harass employees on the basis of race or any other protected category within the

meaning of Title VII of the Civil Rights Act of 1964.

2. No Retaliation. Defendant shall not discriminate or retaliate against any person because of opposition to any practice made unlawful under Title VII, or because of the filing of a charge, the giving of testimony or assistance, or the participation in any investigation, proceeding or hearing.

3. Settlement Fund. Defendant shall pay the sum of Two Hundred Twenty Five Thousand and No/100 (\$ 225,000.00) Dollars (hereafter “settlement fund”) in settlement of the claims raised in this action to those aggrieved persons identified by the Commission in accordance with the procedures set forth below.

4. Proposed Distribution. Within sixty (60) days of entry of the “Provisional Order Approving Consent Decree” filed herewith (“Provisional Order”), the Commission shall take steps necessary to identify all individuals entitled to share in the settlement fund (hereafter “aggrieved persons”). The Commission shall identify the aggrieved persons from the pool of Defendant’s current and former employees known to the Commission to be potential aggrieved persons (“potential aggrieved persons”). Within seventy (70) days of entry of this Consent Decree, the Commission shall serve on Defendant and file with the Court, a “proposed distribution list” setting forth the names of all individuals it determined to be aggrieved persons entitled to share in the settlement fund. The proposed distribution list shall not include the amount to be paid to each aggrieved person identified thereon. By correspondence to Defendant served with the proposed distribution list, the Commission shall set forth the amount it proposes each individual identified on the list receive from the settlement fund.

5. Notice to Potential Aggrieved Persons. Within eighty (80) days of the

entry of the Provisional Order, the Commission shall notify all potential aggrieved persons of the signing of the Provisional Order Approving Consent Decree and of the following: (1) the Commission's determination of whether he or she is an aggrieved person entitled to share in the settlement fund; (2) if he or she is entitled to share in the settlement fund, the amount that he or she will receive from the settlement fund; (3) his or her right to object to the settlement; (4) the deadline and procedure for filing objections; and (5) his or her right to be heard at a fairness hearing before the Court. This notification shall be made by regular mail sent to each individual's last known mailing address.

6. Final Order and Final Distribution List. Any objections to the proposed distribution list must be filed with the Clerk of Court within one hundred (100) days of entry of the Provisional Order, with copies sent to the Commission. If no timely objections are filed with the Clerk and served on the Commission, the Commission will move the Court for entry of a "Final Order Approving Consent Decree." ("Final Order"). The Final Order shall effectuate all provisions of this Consent Decree that were not effectuated by the Provisional Order and shall order that the Commission's proposed distribution list (including amounts to be paid to each individual as provided to Defendant pursuant to paragraph 4 above) become the "final distribution list."

If timely objections are filed and served, the Court will hold a fairness hearing at a date and time set by the Court. At the fairness hearing, the Court shall consider all objections timely filed with the Clerk of Court and served on the Commission, and shall make a final and binding determination of the distribution of funds from the settlement fund. Following the fairness hearing, the Court's order relating to the distribution of funds shall be reflected on a "final distribution list." No distribution from the settlement fund shall be made by Defendant until

entry of the Final Order by the Court, which includes a final distribution list approved by the Court.

7. Payments to Aggrieved Persons. Within thirty (30) days of entry of the Final Order, Defendant shall deliver checks by certified mail return receipt requested to each aggrieved person on the final distribution list, at addresses to be provided by the Commission and in the amounts set forth by the Commission pursuant to paragraph 4 above. Defendant shall report each such payment on an IRS Form 1099. Within thirty (30) days of the entry of the Final Order, Defendant shall mail to Lynette A. Barnes, Acting Regional Attorney, Equal Employment Opportunity Commission, 129 West Trade Street, Suite 400, Charlotte, N.C. 28202, a copy of each check and proof of delivery.

8. Handling of Returned Checks/Retained Funds. If any of the payments to aggrieved persons are returned by the postal service as undeliverable, within ten (10) days of the return, Defendant shall notify the Commission of the name of each person whose check was returned undeliverable. The Commission shall have thirty (30) days after receipt of said notice to locate each such person so that the payment(s) may be promptly re-mailed to them by Defendant. Upon receipt of an updated address for re-mailing of a check, Defendant shall re-mail the check within ten (10) days. Within fourteen (14) days after re-mailing the check, Defendant shall mail to Lynette A. Barnes, Acting Regional Attorney, at the above address, a copy of the check and proof of its delivery. If any aggrieved person(s) whose check was returned undeliverable cannot be located by the Commission, the Commission will notify Defendant and Defendant shall retain the funds represented by the check for redistribution as indicated in this paragraph. Within one hundred forty (140) days of entry of the Final Order, all settlement proceeds that were retained by Defendant as a result of undeliverable mail returns (hereafter "retained funds"), shall be

redistributed to the aggrieved persons on the final distribution list (excluding those persons whose settlement monies became part of the retained funds) in amounts that will be specified by the Commission. The Commission shall specify amounts to Defendant for this purpose within one hundred twenty (120) days of the entry of the Final Order. Defendant shall deliver these retained funds checks by certified mail return receipt requested to the persons and amounts indicated by the Commission. Defendant shall report each such payment on an IRS Form 1099. Defendant shall mail to Lynette A. Barnes, Acting Regional Attorney, Equal Employment Opportunity Commission, 129 West Trade Street, Suite 400, Charlotte, N.C. 28202, a copy of each check and proof of delivery.

9. Policy. Within sixty (60) days of the entry of the Final Order, Defendant will implement, disseminate, and publish a written policy prohibiting harassment and discrimination (“Harassment Policy”). The Harassment Policy shall prohibit all forms of racial graffiti on Defendant’s property. The Harassment Policy shall also include a description of racial harassment, and provide a procedure under which individuals may make complaints about violations of the Harassment Policy, including racist graffiti, to their Supervisor, Defendant’s Human Resources Manager, or other persons identified in the Harassment Policy. The Harassment Policy will also provide, in part, that Defendant will thoroughly investigate all complaints or incidences of discrimination, retaliation, and harassment. It will specify that such investigations will, at a minimum, include interviewing all relevant witnesses who may have knowledge about the alleged discrimination, retaliation, or harassment, and it shall require that Defendant document facts learned during the investigation from each person interviewed. Defendant further agrees that all documentation related to any investigation will be collected and maintained in accordance with 42 U.S.C. § 2000e-8(c) and 29 CFR § 1602.14.

10. Training. During the term of this Consent Decree, Defendant shall provide an annual training program to all of its employees regarding the Harassment Policy. At least fifteen (15) days prior to the training program, Defendant shall provide the Commission with an agenda for the training program, which shall stress during each program the responsibility of any Supervisor or Manager who receives a complaint or observes racist graffiti to report the complaint or observation immediately to Defendant's Human Resources Manager. The training program shall include training on the Harassment Policy described in paragraph 9 above. The training shall also include an explanation of the requirements of the federal equal employment opportunity laws, including the Title VII of the Civil Rights Act of 1964, including information about its prohibition against race discrimination in the workplace, and particularly racial harassment. This training shall be completed within ninety (90) days after the entry of the Final Order by the Court. Each subsequent training program shall be completed on or before ninety (90) days after the anniversary of the date the Final Order is entered. Within thirty (30) days after completion of the training, Defendant shall certify to the Commission the specific training which was undertaken and shall provide the Commission with a roster of all employees in attendance. Additionally, during the term of this Consent Decree, Defendant shall provide a copy of the Harassment Policy to each person it hires.

11. Notice Posting. During the term of this Consent Decree, Defendant shall conspicuously post the attached Employee Notice (Exhibit A), hereby made a part of this Consent Decree, in a place where it is visible to employees at its Mt. Holly, South Carolina, facility. If the Notice becomes defaced or unreadable, Defendant shall replace it by posting another copy of the Notice.

12. Reporting Concerning Race Discrimination or Harassment. Defendant

agrees to provide the Commission with semi-annual reports during the term of this Consent Decree regarding complaints of race discrimination or racial harassment. The first report is due no later than one hundred twenty (120) days after the date the Final Order is entered. Defendant will provide reports every one hundred eighty (180) days thereafter during the term of this Consent Decree. The reports shall include the following information about complaints: (1) the identities of all individuals who have complained of or reported race discrimination or racial harassment at Defendant's Mt. Holly, S.C., facility, including by way of identification each person's name, home address, home telephone number, and race, (b) a brief statement regarding the nature of the individual's complaint; and (c) a brief description of what action Defendant took in response to the individual's complaint. If no complaints were received during the reporting period, Defendant shall report this fact to the EEOC.

13. Reporting Concerning Racial Graffiti. Defendant agrees to provide the Commission with semi-annual reports during the term of this Decree regarding racial graffiti. The first report is due no later than one hundred twenty (120) days after the date the Final Order is entered. Defendant will provide reports every one hundred eighty (180) days thereafter during the term of this Consent Decree. The reports shall include the following information about racial graffiti discovered on Defendant's property: (a) the dates of any reports of racial graffiti; (b) the identity of the employee who reported and/or discovered the racial graffiti; (c) the location, date and time the employee discovered the graffiti; (d) a photograph of the racial graffiti; (e) the identity of all individuals interviewed by Defendant in its investigation of the discovery or report of racial graffiti; (f) all actions taken by Defendant to make the display of racial graffiti on Defendant's premises stop, including, as appropriate, meetings with management, departments and employees at Defendant's facility; and (g) discipline taken against responsible employees,

and/or the managers, supervisors and employees responsible for the area, department, or place where the racial graffiti was found. If no racial graffiti is discovered during the reporting period, Defendant shall report this fact to the EEOC.

14. Compliance Review. Defendant agrees that the Commission may review compliance with this Consent Decree. As part of such review, the Commission may inspect the premises, interview employees and examine and copy documents. Any inspection for the purpose of satisfying the review component of this provision shall occur after Defendant has been provided at least forty-eight (48) hours' notice by telephone or mail, to Defendant's designated contact person or his/her successor. For the purposes of this section, Defendant's designated contact person is Isaiah Brown, Director of Human Resources, J.W. Aluminum Company, 435 Old Mt. Holly Road, Mt. Holly, South Carolina 29445 (Phone No. 843-572-1100). Defendant may designate a new contact person by notifying the Commission in writing. Defendant shall maintain at all times, on file with the Commission, an "active" contact person for the purposes of this section. A contact person is active if he or she is: (a) a current owner, manager or employee of Defendant; and (2) can be reached by the Commission by telephone or mail at the address and telephone number set forth in this paragraph or at an address and telephone number provided by Defendant in writing. If at any time, Defendant fails to maintain an active contact person on file with the Commission, the Commission's obligation to provide notice prior to an inspection is void and the Commission may proceed with its inspection without further notice to Defendant.

15. Enforcement of Consent Decree. If anytime during the term of this Consent Decree the Commission believes Defendant is in violation of this Consent Decree, the Commission shall give written notice of the alleged violation to Defendant's designated contact person, or his successor after receipt of the notice. Defendant shall have twenty (20) days in which to investigate and respond to the allegations. Thereafter, the parties shall have a period of thirty (30) days, or such additional period as may be agreed upon by them, in which to engage in negotiation and conciliation regarding such allegations, before the Commission pursues any remedy provided by law. The Commission agrees that it will not bring legal action against Defendant based on the charge filed by Charging Party, Reginald Kelly, Charge No. 14C-2000-01207 for the duration of this Consent Decree, except as authorized in this paragraph to enforce the terms of this Consent Decree.

16. Term. The term of this Consent Decree shall be for three (3) years from the date of entry of the "Final Order Approving Consent Decree" by the Court.

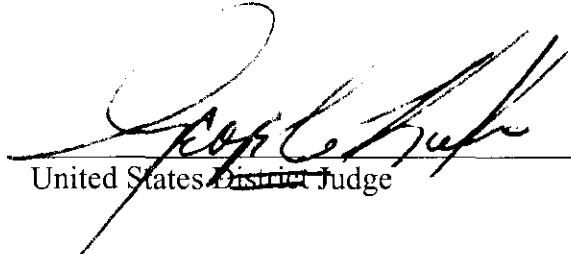
17. General Release by Charging Party. This Consent Decree and the obligations of the parties set forth herein are expressly conditioned upon the execution of a general release by Charging Party Reginald Kelly, executed on July 12, 2004. Said general release has been provided to, and accepted by Defendant.

18. Attorneys' fees and costs. Each party shall bear its own attorneys' fees and costs, except that Defendant agreed to pay, and has paid, a reasonable attorney's fee in the amount of three hundred fifty (\$350.00) dollars to Charging Party Reginald Kelly, for Mr. Kelly to retain private counsel for the purpose of reviewing Defendant's general release.

19. Retention of Jurisdiction. This Court shall retain jurisdiction of this case for purpose of resolving controversies arising under this Consent Decree and for entry of any orders as may be necessary or appropriate.

20. Dismissal of Lawsuit. Within thirty (30) days of the entry of the Final Order, the parties shall file a joint motion to dismiss the above-captioned lawsuit with prejudice subject to the Court retaining jurisdiction of this case for the purpose of resolving controversies arising under this Consent Decree and for any orders as may be necessary or appropriate to enforce the terms of the Decree.

Dated: Oct 12, 2001


United States District Judge

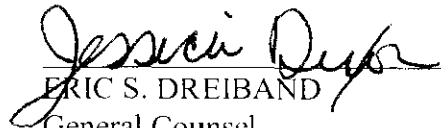
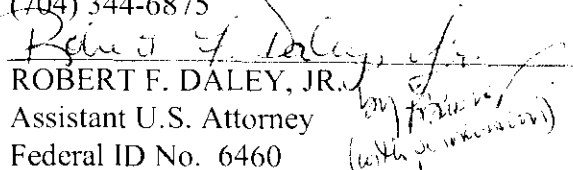
Pursuant to Local Civil Rule 83.1.08, this order is being sent to local counsel only.

(Counsel signatures appear the following page)

AGREED AND ENTRY REQUESTED

For Plaintiff, Equal Employment Opportunity Commission:

This 7th day of October, 2004.


ERIC S. DREIBAND
General Counsel
JAMES L. LEE
Deputy General Counsel
GWENDOLYN YOUNG REAMS
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(803) 929-3054
(with permission)

For Defendant, J.W. Aluminum Company:

This 26th day of September, 2004.


JIM O. STUCKEY, II, ESQ.
Nelson Mullins Riley & Scarborough, LLP
Federal ID No. 6272
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 255-9524

NOTICE TO EMPLOYEES

1. This Notice is posted pursuant to a voluntarily-entered consent decree between J. W. Aluminum Company ("JWA") and the United States Equal Employment Opportunity Commission arising from a case alleging race discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq. ("Title VII"), Equal Employment Opportunity Commission v. J.W. Aluminum Company, civil action number: 2:03-2448-12BG.
2. Federal law requires that there be no discrimination against or harassment of any employee or applicant for employment because of the employee's race, color, religion, sex, national origin, age (40 or older) or disability.
3. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, et seq., is a federal law which prohibits race discrimination or harassment of any employee in all aspects of employment including, but not limited to, hiring, promotion, discharge, pay, job training and fringe benefits.
4. JWA hereby reaffirms its commitment to compliance with such federal law in all respects. JWA will not take any actions against employees because they have exercised their rights, reported an alleged violation under the law or have given testimony, assistance or participation in any investigation, proceeding or hearing conducted by the U.S. Equal Employment Opportunity Commission.
5. It is JWA's policy to maintain a working environment free from race discrimination and race harassment. JWA has adopted a policy regarding race discrimination and race harassment, and the policy sets forth a complaint procedure for individuals who believe they have been a victim of or witnessed race discrimination or race harassment. An employee of JWA who believes he or she has been a victim of or witnessed race discrimination or race harassment is encouraged to use the complaint procedure set forth in JWA's policy.

An employee has the right, and is encouraged to exercise that right, to report allegations of employment discrimination or harassment in the workplace. An employee may contact the U. S. Equal Employment Opportunity Commission at the following address and telephone number for the purpose of filing a charge of employment discrimination or harassment.

Equal Employment Opportunity Commission
Greenville Local Office
301 N. Main Street, Landmark Building, Suite 1402
Greenville, SC 29601
Tel: (864) 241-4400