For Opinion See 2003 WL 25777891

United States District Court, N.D. California.
Noreen HULTEEN, Eleanora Collet, Arma Horton, Elizabeth Snyder, and all others similarly situated, and Communications Workers of America, Afl-Cio, Plaintiffs,
v.
AT&T CORPORATION, AT&T Management Pension Plan, AT&T Pension Plan, and AT&T Employees' Benefit Committee, Defendants.
No. C 01 1122.
March 19, 2001.

Civil Rights, Erisa, Class Action
Jury Demanded

Complaint

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Plaintiffs NOREEN HULTEEN, ELEANORA COLLET, ARMA HORTON, ELIZABETH SNYDER and COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO allege as follows:

PRELIMINARY STATEMENT

This is an action for damages, restitution, and declaratory and injunctive relief to redress the deprivation of rights secured to plaintiffs NOREEN HULTEEN, ELEANORA COLLET, ARMA HORTON, ELIZABETH SNYDER and persons similarly situated, and COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") and the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq. ("ERISA").

JURISDICTION AND VENUE

1. Jurisdiction is founded upon 28 U.S.C. § 1331 [federal question jurisdiction], 28 U.S.C. § 1343(a)(4) [action under Act of Congress providing for the protection of civil rights], 42 U.S.C. § 2000e-5(f)(3) [Title VII], and 29 U.S.C. §§ 1132(a)(1)(B), (2) and (3), (e)(1), and (f) [ERISA].

2. Venue of this action under Title VII lies in the Northern District of California pursuant to 42 U.S.C. § 2000e-5(f)(3) because the alleged unlawful employment practices were and are now being committed within this district. Venue of this action under ERISA lies in the Northern District of California pursuant to 29 U.S.C. § 1132(e)(2) because the

defendant may be found in this district and because the alleged breach of ERISA took place in this district.

THE PARTIES

3. Named plaintiff, Noreen Hulteen ("HULTEEN"), is a female who began employment with Pacific Telephone and Telegraph Company ("PT&T"), a subsidiary operating company of the American Telephone and Telegraph Company ("AT&T") on or about January 5, 1965. HULTEEN was placed on a leave of absence from her work with PT&T due to pregnancy-related disability on or about November 8, 1968 through July 1969. On January 1, 1984, when AT&T was forced to divest its local telephone companies by a federal court, HULTEEN became an employee of AT&T. She terminated her employment with AT&T on or about June 1, 1994. Plaintiff HULTEEN was discriminatorily denied employment benefits due to her status as a female.

4. Named plaintiff, Eleanora Collet ("COLLET"), is a female who began her employment with PT&T on or about August 31, 1965. In 1974 and 1975, COLLET was placed on leaves of absence from her work with PT&T due to a pregnancy-related disability. On or about January 1, 1984, when AT&T was forced to divest its local telephone companies by a federal court, COLLET became an employee of AT&T. She terminated her employment with AT&T on or about December 31, 1999. Plaintiff COLLET was discriminatorily denied employment benefits due to her status as a female.

5. Named plaintiff, Arma Horton ("HORTON") is a female who began her employment with PT&T on or about October 20, 1970. On or about December 22, 1971 until on or about May 8, 1972, HORTON was placed on a leave of absence from her work with PT&T due to a pregnancy-related disability. On January 1, 1983, as a result of the imminent divestiture of AT&T's local telephone companies as a result of a federal court order, HORTON became an employee of AT&T. She terminated her employment with AT&T on or about March 9, 2001. Plaintiff HORTON was discriminatorily denied employment benefits due to her status as a female.

6. Named plaintiff, Elizabeth Snyder ("SNYDER") is a female who began her employment with PT&T on or about May 23, 1966. In 1974, SNYDER was placed on a leave of absence from her work with PT&T due to a pregnancy-related disability. Prior to January 1, 1984, SNYDER became an employee of AT&T. She terminated her employment with AT&T on or about April 28, 2000. Plaintiff SNYDER was discriminatorily denied employment benefits due to her status as a female.

7. Plaintiff Communications Workers of America, AFL-CIO ("CWA"), is and has been at all times relevant herein, the collective bargaining representative for certain non- management employees of AT&T, including non-management members of the class sought to be certified in this action. CWA is an "aggrieved person" as defined by 42 U.S.C. §§ 2000e(a) and (5)(b).

8. Defendant AT&T CORPORATION ("AT&T") is, and at all times relevant herein, was, an employer as defined by 42 U.S.C. § 2000e(b) and 29 U.S.C. § 1002(5); a fiduciary of the employee benefit plans sued herein, pursuant to 29 U.S.C. § 1002(21); a plan sponsor of the employee benefit plans sued herein, pursuant to 29 U.S.C. § 1002(16); and a corporation found and doing business in the Northern District of California.

9. Defendant AT&T MANAGEMENT PENSION PLAN ("MPP") is, and was at all times relevant herein, an employee pension benefit plan for management employees of AT&T pursuant to 29 U.S.C. §1002(2), and a defined benefit plan, pursuant to 29 U.S. C. § 1002(35).

10. Defendant AT&T PENSION PLAN ("PP") is, and was at all times relevant herein, an employee pension benefit plan for non-management employees of AT&T pursuant to 29 U.S.C. § 1002(2), and a defined benefit plan, pursuant to 29 U.S.C. § 1002(35).

11. Defendant AT&T Employees' Benefit Committee ("EBC") has, and had at all times relevant herein, the discretionary authority to resolve claims for benefits and Net Credited Service ("NCS") under the MPP and the PP. The EBC is, and was at all times relevant herein, a fiduciary within the meaning of 29 U.S.C. § 1002(21). The EBC appoints, and appointed at all times relevant herein, the Pension Plan Administrator which has, and had at all times relevant herein, the authority to grant or deny claims for benefits and NCS under the MPP and the PP to the extent such authority is, and has been, delegated by the EBC.

12. At all times relevant herein, defendants, and each of them, were the agents of each of the remaining defendants and were at all times acting within the purpose and scope of said agency, and each defendant has ratified and approved the acts of its agent.

CLASS ACTION ALLEGATIONS

13. This action is maintainable as a class action under Federal Rule of Civil Procedure 23, subsections (a), (b)(2), and (b)(3).

14. Class Definition. The named individual plaintiffs HULTEEN, COLLET, HORTON and SNYDER bring this action on behalf of themselves and the class consisting of all women who are or have been employed by AT&T at any time on or after January 1, 1984 and who, on or before April 29, 1979, were placed on leaves of absence from their work with AT&T and/or an AT&T Bell System subsidiary operating company due to pregnancy and/or pregnancy-related disability and for whom AT&T has continued to calculate a Net Credited Service date omitting all or part of such leaves.

15. **Class Size.** The size of the class is presently unknown. However, plaintiffs HULTEEN, COLLET, HORTON, and SNYDER are informed and believe and on that basis allege that the number of women in the class would be in excess of 15,000.

16. **Common Questions of Law and Fact.** This suit poses questions of law and fact which are common to and affect the rights of all class members. The questions presented include, but are not limited to, AT&T's continuing application of facially discriminatory employment policies and practices and its breach of fiduciary duties to pension plan participants and beneficiaries.

17. Typicality of the Claims of the Representative. The claims of the named plaintiffs HULTEEN, COLLET, HORTON, and SNYDER are typical of the claims of the class as a whole. The named plaintiffs HULTEEN, COLLET, HORTON, and SNYDER are female former employees of an AT&T Bell System subsidiary operating company who were employed by AT&T on and after January 1, 1984, who took at least one pregnancy-related disability leave prior to April 29, 1979, and for whom AT&T has continued to calculate Net Credited Service dates omitting all or part of such leave time. Plaintiffs HULTEEN, COLLET, HORTON, and SNYDER are participants in the MPP or PP.

18. Adequacy of Representation. Named plaintiffs HULTEEN, COLLET, HORTON, and SNYDER have prosecuted the claims made herein in administrative proceedings and taken all other steps to fairly and adequately represent the interests of the class defined above. Named plaintiffs HULTEEN, COLLET, HORTON, and SNYDER have no interests antagonistic to or in conflict with the interests of the class. Plaintiffs' counsel are experienced counsel who have litigated cases involving similar issues.

19. Defendants have engaged in and continue to engage in illegal employment discrimination and have breached their fiduciary duties that affect all members of the class, thereby making appropriate final injunctive and declaratory class-wide relief.

20. Questions of law or fact common to the members of the class predominate over any questions affecting only

individual members. The predominant questions in the litigation are the existence and ongoing consequences of defendants' facially discriminatory employment policies and practices and defendants' ongoing breach of their fiduciary duties to participants and beneficiaries of the MPP and PP.

21. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

22. Members of the class have little interest in individually controlling the prosecution of separate actions.

23. Plaintiffs know of no other pending litigation concerning this controversy which has been commenced by members of the class.

24. In the interests of judicial efficiency any and all claims arising out of this controversy should be consolidated in this class action before this court.

25. No undue difficulties are anticipated to result from the prosecution of this as a class action.

FACTS

Defendants' Benefit, Retirement and Pension System

26. Prior to the court-ordered dismantling of AT&T, which became effective on January 1, 1984, telecommunications and related services were provided by AT&T Bell System subsidiary operating companies owned by AT&T. After January 1, 1984, many employees of those companies became employees of AT&T Corporation and/or its direct and indirect subsidiaries. In calculating Net Credited Service for its current and former employees, AT&T includes the Net Credited Service for employees who previously worked for AT&T and/or any AT&T Bell System subsidiary operating companies. As used herein, the term “current and former AT&T employee” refers to current and former employees of AT&T and/or any former employees of AT&T Bell System subsidiary operating companies who later became employed by AT&T.

27. At all times relevant herein, defendants have used and continue to use a calculation system known as the Net Credited Service (“NCS”) system to measure an employee's length of service or term of employment. As calculated by defendants, Net Credited Service reflects an employee's period of employment, less any amounts of time deducted by defendants for periods of absence, which, under AT&T's policies, are not included in an employee's Net Credited Service. Defendants make deductions for periods of absence by adjusting an employee's Net Credited Service date. Defendants continuously use an employee's Net Credited Service to determine an employee's entitlement to and eligibility for various employment benefits, including the retirement and pension benefits at issue in this litigation.

28. Defendants, at all times relevant herein, have refused and continue to refuse to include in their calculation of Net Credited Service periods of leave taken for maternity or pregnancy-related purposes prior to April 29, 1979 by current and former AT&T female employees. By contrast, at all times relevant herein, defendants have included and continue to include in their calculation of Net Credited Service all periods of disability leave taken for non-maternity and non-pregnancy-related purposes prior to April 29, 1979 by current and former AT&T employees.

29. Plaintiffs are informed and believe, and on that basis allege, that before April 29, 1979, it was the policy and practice of defendant AT&T and its AT&T Bell System subsidiary operating companies to treat pregnancy-related disability less favorably than other temporary disabilities by requiring female employees disabled by pregnancy to take personal leaves of absence rather than leaves covered by their sickness and disability leave policies. As a direct and ongoing result of this policy and practice, female employees lost significant amounts of Net Credited Service. This adverse treatment of maternity and pregnancy-related leaves prior to April 29, 1979 included the following policies and practices:

(a) Female current and former AT&T employees who were placed on personal leaves of absence due to their maternity and/or pregnancy-related disability were not eligible to receive Net Credited Service for the full period of their temporary disability. By contrast, former and current AT&T employees who were temporarily disabled for reasons other than maternity and/or pregnancy-related reasons received NCS for the full period of their disability. Plaintiffs are informed and believe, and on that basis allege, that periods of pregnancy-related temporary disability may extend from six to eight weeks and beyond, but defendants refused to provide any more than a maximum of 30 days of NCS to female employees disabled due to pregnancy during this period. Defendants do not include the full period of pregnancy-related disability leaves taken before April 29, 1979 in their current and ongoing calculations of Net Credited Service for these formerly pregnant female current and former AT&T employees.
(b) Female current and former AT&T employees were forced to begin their maternity and/or pregnancy-related leaves prior to the onset of their actual temporary disability for maternity or pregnancy-related purposes. By contrast, former and current AT&T employees who were temporarily disabled for reasons other than maternity or pregnancy were not forced to begin their leave prior to the onset of their actual temporary disability. Plaintiffs are informed and believe, and on that basis allege, that at various points prior to April 29, 1979, female employees were forced to begin these leaves at their sixth or seventh month of pregnancy, or other periods in advance of the date when they were medically unable to work. Defendants do not include these periods of forced leave taken before April 29, 1979 in their current and ongoing calculations of Net Credited Service for these formerly pregnant female current and former AT&T employees.
(c) Female current and former AT&T employees placed on personal leaves of absence as a result of their pregnancies were ineligible for sickness and disability benefits for periods of temporary disability occurring during their leave even when such temporary disabilities were unrelated to pregnancy. By contrast, former and current AT&T employees who were temporarily disabled for reasons other than maternity or pregnancy were eligible to receive sickness and disability benefits for the period of their disability, and for any other temporary disability occurring during that leave period, and NCS for all those disability periods. Defendants do not include periods of absence due to additional non pregnancy-related temporary disability prior to April 29, 1979 in their current and ongoing calculations of Net Credited Service for these formerly pregnant female current and former AT&T employees.
(d) Female current and former AT&T employees placed on personal leaves of absence as a result of their pregnancies were not automatically guaranteed reinstatement at the end of their period of temporary disability. By contrast, former and current AT&T employees who were temporarily disabled for reasons other than maternity or pregnancy were guaranteed reinstatement to their jobs when their period of disability ended. Plaintiffs are informed and believe, and on that basis allege, that numerous women were unable to return to their jobs at the conclusion of their period of pregnancy-related disability, despite receiving medical approval to return to work, due to this policy and practice. Defendants do not include these periods of absence due to the lack of guaranteed reinstatement prior to April 29, 1979 in their current and ongoing calculations of Net Credited Service for these formerly pregnant female current and former AT&T employees.

30. Defendants' ongoing use of the Net Credited Service calculation system incorporates these facially discriminatory policies and results in continuous and current discrimination against formerly pregnant female current and former AT&T employees. As a result, female current and former AT&T employees receive lesser pension and retirement benefits than similarly situated male employees with comparable length of service or term of employment.

31. On August 12, 1991, the Ninth Circuit Court of Appeals issued an opinion in *Pallas v. Pacific Bell*, 940 F. 2d 1324 (9th Cir. 1991), holding that Pacific Bell's refusal to include in the calculation of Net Credited Service periods of leave taken by female employees for maternity or pregnancy-related purposes prior to April 29, 1979 violated Title VII and ERISA. Plaintiffs are informed and believe, and on that basis allege, that defendants have been aware of this decision since on or about the day it was issued. Nonetheless, defendants have refused and continue to refuse to include in their calculation of Net Credited Service periods of leave taken by current and former female AT&T employees for maternity or pregnancy-related purposes prior to April 29, 1979.

32. On December 16, 1994, the United States District Court for the Southern District of Ohio issued an opinion and entered judgment Jacquelyn Carter v. AT&T, 870 F. Supp. 1438 (S.D. Ohio 1994), holding that AT&T's refusal to

include periods of leave taken by female employees for maternity or pregnancy-related purposes prior to April 29, 1979 violated Title VII, ERISA and the Equal Pay Act. Notwithstanding this decision, defendants have refused and continue to refuse to include in their calculation of Net Credited Service periods of leave taken by current and former female AT&T employees for maternity or pregnancy-related purposes prior to April 29, 1979.

33. The continuing unlawful employment practices complained of in paragraphs 26 through 30 above were and are intentional.

34. The continuing unlawful employment practices complained of in paragraphs 26 through 30 above have been and are being done with malice and/or with reckless indifference to the rights of plaintiffs and the class.

Plaintiff NOREEN HULTEEN

35. Plaintiff HULTEEN began working for PT&T, an AT&T Bell System subsidiary operating company, on or about January 5, 1965.

36. On or about November 11,1968, HULTEEN was placed on leave because was disabled and unable to work due to pregnancy. HULTEEN gave birth on XX/XX/1969.

37. On or about February 24, 1969, while still on her pregnancy leave, HULTEEN was hospitalized and underwent surgery for a medical problem unrelated to her pregnancy disability. She was released by her doctor to return to work on or about July 9, 1969.

38. As a result of her pregnancy-related disability leave, HULTEEN'S Net Credited Service date was changed from January 5, 1965 to August 3, 1965, a loss of approximately seven months of Net Credited Service.

39. On January 1, 1984, HULTEEN became an employee of AT&T. In determining HULTEEN'S Net Credited Service, AT&T included the time she was employed by PT&T, except for the time she spent on pregnancy-related leave, and the unrelated disability occurring while on that leave.

40. HULTEEN has been, at various relevant times, a participant in AT&T's PP and is currently a participant in the MPP.

41. On or about March 31,1994, defendants sent HULTEEN a letter informing her that unless she was placed in another position with AT&T prior to June 1, 1994, she would be involuntarily terminated from her job. HULTEEN was not placed in another position with AT&T. Consequently, HULTEEN was involuntarily terminated from her job on June 1, 1994.

42. As a result of defendants' ongoing refusal to include HULTEEN'S approximately seven months of NCS in calculating her eligibility for and entitlement to benefits under AT&T's MPP, each monthly pension check received by HULTEEN has been lower than it would have been had defendants not engaged in the discriminatory practices alleged in the complaint.

43. On or about June 28, 1994, HULTEEN filed a complaint of discrimination with the California Department of Fair Employment and Housing. This complaint was referred to the United States Equal Employment Opportunity Commission, which processed her complaint.

44. On December 29, 1998, the U.S. Equal Employment Opportunity Commission issued a Letter of Determination finding reasonable cause to believe that AT&T had discriminated against plaintiff HULTEEN “and a class of other

similarly-situated female employees whose adjusted Net Credited Service date has been used to determine eligibility for a service or disability pension, the amount of pension benefits, and eligibility for certain other benefits and programs, including early retirement offerings."

45. Plaintiff HULTEEN has complied with all the administrative prerequisites to filing a lawsuit alleging violations of Title VII.

Plaintiff ELEANORA COLLET

46. Plaintiff COLLET began working for PT&T, an AT&T Bell System subsidiary operating company, on or about August 31,1965.

47. In August or September, 1974, COLLET was placed on leave because she was disabled and unable to work due to pregnancy. She gave birth to her first child on XX/XX/1974. She remained on leave until on or about January 5, 1975.

48. In November or December, 1975, COLLET was placed on leave because she was disabled and unable to work due to pregnancy. She gave birth to her second child on or about XX/XX/1975. She remained on leave until on or about April 1976.

49. As a result of the 1974 and 1975 leaves described above and her 1979-1980 pregnancy-related leave, COLLET'S Net Credited Service date was changed from August 31, 1965 to May 17, 1966, a loss of approximately eight and a half months of Net Credited Service.

50. On January 1, 1984, COLLET became an employee of AT&T. In determining COLLET's Net Credited Service, AT&T included the time she was employed by PT&T, except for the time she spent on pregnancy leave.

51. COLLET was a participant in the MPP.

52. At some time in 1998, defendants notified COLLET that she could retire under the Voluntary Retirement Incentive Plan ("VRIP"). The VRIP offered COLLET the right to retire and receive a lump sum amount in lieu of future pension payments. Defendants calculated the amount of this lump sum offer based, in part, on COLLET's Net Credited Service.

53. As a result of defendants' ongoing refusal to include the time COLLET was out on pregnancy-related disability leave in calculating her eligibility for and entitlement to benefits under the VRIP, COLLET was not eligible to receive a lump sum offer substantially greater than the one she received from defendants.

54. On December 31, 1998, COLLET voluntarily terminated her employment with AT&T.

55. On or about June 1, 1999, COLLET sent the Pension Plan Administrator a letter requesting a recalculation of her Net Credited Service to include the time she had taken off for her pregnancy-related disability leave. She has not received a response to that inquiry.

56. On or about October 18, 1999, COLLET filed a complaint of discrimination with the United States Equal Employment Opportunity Commission.

57. Plaintiff COLLET has complied with all the administrative prerequisites to filing a lawsuit alleging violations of Title VII.

Plaintiff ARMA HORTON

58. Plaintiff HORTON began working for PT&T, an AT&T Bell System subsidiary operating company, on or about October 20, 1970.

59. On or about December 1971 or January 1972, HORTON was placed on leave because she was disabled and unable to work due to pregnancy. She gave birth on or about XX/XX/1972.

60. Plaintiff HORTON was released by her health care provider to return to work prior to the date she actually returned to work. She requested that she be allowed to return to work on the date of her doctor's release. However, HORTON was not permitted to return to work for approximately 3 weeks after the date of her release.

61. As a result of her pregnancy-related disability leave and the delay in her return to work, PT&T changed HORTON'S Net Credited Service date from October 20, 1970 to January 7, 1971, a loss of approximately two and a half months of Net Credited Service.

62. On or about January 1, 1983, HORTON became an employee of AT&T. In determining HORTON'S Net Credited Service, AT&T included the time she was employed by PT&T, except for the time she spent on pregnancy-related disability leave.

63. HORTON was a CWA member and a participant in the PP.

64. At some time in October or November of 2000, HORTON sent the Pension Plan Administrator a letter requesting a recalculation of her Net Credited Service to include the time she was absent due to her pregnancy-related disability leave. On or about January 11, 2001, plaintiff HORTON telephoned and asked if there was a response to her request. She was informed that there was no record of receipt of her letter. On or about January 19, 2001, HORTON resent a letter to the Pension Plan Administrator requesting a recalculation of her Net Credited Service to include the time she was absent due to her pregnancy-related disability leave.

65. On or about March 9, 2001, HORTON voluntarily terminated her employment with AT&T. If defendants had not continued to calculate HORTON'S Net Credited Service in a manner that excluded the approximately two and one-half months of NCS denied as a result of her pregnancy-related disability leave, she would have been eligible for a larger pension calculation.

66. As a result of defendants' ongoing refusal to include the time HORTON was out on pregnancy-related disability leave in calculating her eligibility for and entitlement to employment benefits, including her retirement benefits, HORTON was adversely affected.

67. On or about January 2, 2001, HORTON filed a complaint of discrimination with the United States Equal Employment Opportunity Commission.

68. Plaintiff HORTON has complied with all the administrative prerequisites to filing a lawsuit alleging violations of Title VII.

Plaintiff ELIZABETH SNYDER

69. Plaintiff SNYDER began working for PT&T, an AT&T Bell System subsidiary operating company, on or about May 23, 1966.

70. In July, 1974, SNYDER was placed on leave because she was disabled and unable to work due to pregnancy. She gave birth on or about XX/XX/1974. She remained on leave for approximately three months.

71. As a result of her pregnancy-related disability leave, PT&T changed SNYDER'S Net Credited Service date from May 23 1966 to July 29, 1966, a loss of approximately two months of Net Credited Service.

72. Prior to January 1, 1984, SNYDER became an employee of AT&T. In determining SNYDER'S Net Credited Service, AT&T included the time she was employed by PT&T, except for the time she spent on pregnancy-related disability leave.

73. SNYDER was a CWA member and a participant in the PP.

74. In or about May of 1999, SNYDER sent the Pension Plan Administrator a letter requesting a recalculation of her Net Credited Service to include the time she was absent due to her pregnancy-related disability leave. Defendants informed SNYDER by letter dated July 28, 1999, that her request had been denied. SNYDER appealed this denial to the EBC. By letter dated March 1, 2000 from the EBC, defendants informed SNYDER that her appeal had been denied.

75. On July 1, 1999, defendants sent SNYDER a letter informing her that she was eligible to volunteer for and be granted a voluntary termination offer with a separation payment under the Voluntary Termination Pay Offer ("VTP"), which would be determined, in part, based on Net Credited Service. Defendants informed SNYDER that she must make her retirement election under the VTP on or before July 15, 1999.

76. On April 28, 2000, SNYDER voluntarily terminated her employment with AT&T. If defendants had not continued to calculate SNYDER'S Net Credited Service in a manner that excluded the approximately two months of NCS denied as a result of her pregnancy-related disability leave, she would have been eligible for a larger separation payment and pension calculation.

77. As a result of defendants' ongoing refusal to include the time SNYDER was out on pregnancy-related disability leave in calculating her eligibility for and entitlement to benefits under AT&T's VTP and PP, SNYDER was not eligible to receive a lump sum offer substantially greater than the one she received from defendants.

78. On or about December 17, 1999, SNYDER filed a complaint of discrimination with the United States Equal Employment Opportunity Commission.

79. Plaintiff SNYDER has complied with all the administrative prerequisites to filing a lawsuit alleging violations of Title VII.

Plaintiff CWA

80. CWA has long opposed employment policies and practices that discriminate based on gender or pregnancy. Consistent with its long-standing opposition to such policies and practices, CWA has attempted at various times through collective bargaining and otherwise to convince AT&T to restore Net Credited Service to female employees who took maternity or pregnancy-related disability leaves prior to April 29, 1979. Despite these efforts, AT&T has refused to grant service credit for these leaves.

81. On November 12, 1999, CWA filed a charge of discrimination against the defendants with the Equal Employment Opportunity Commission on behalf of bargaining unit employees. The charge alleged that AT&T's continuing use of the Net Credited Service calculation system, which excludes credit for time spent on maternity or pregnancy-related

disability leave prior to April 29, 1979, violates the Title VII rights of affected bargaining unit employees.

82. CWA is informed and believes, and on that basis alleges, that at all relevant times numerous CWA-represented employees have been denied pension benefits and/or eligibility for early retirement benefits and/or other contractual benefits because of AT&T's continuing and ongoing use of the Net Credited Service calculation system which incorporates the discriminatory policies alleged in paragraph 29 of this complaint, resulting in discrimination against women who took maternity or pregnancy-related disability leaves prior to April 29, 1979. CWA has requested that defendants provide service credit under the PP to all bargaining unit employees who took maternity or pregnancy-related disability leaves prior to April 29, 1979. To date, defendants have denied that request.

83. Defendants' ongoing refusal to calculate pension benefits and/or early retirement benefit eligibility for women who took pregnancy-related disability leaves prior to April 29, 1979 on the same terms as male employees of comparable tenure with AT&T or predecessor Bell System subsidiary operating companies has resulted in continuous and current discrimination against PP participants and beneficiaries represented by CWA. Such discrimination injures members of the bargaining unit represented by CWA and threatens the stability of the labor relations and collective bargaining relationship between CWA and AT&T.

84. Defendants' ongoing refusal to calculate Net Credited Service dates in a non-discriminatory manner for women who took maternity or pregnancy-related disability leaves prior to April 29, 1979 also affects other employment benefits, including NCS-based contractual VTP which defendants continue to offer to selected employees in various regions around the country to induce them to retire. Women who took maternity or pregnancy-related disability leaves prior to April 29, 1979, even if eligible for a service pension, would receive greater VTP payments and greater pension benefits if they were credited for the time spent on those leaves. Defendants' continuing offers of VTP retirements have resulted in ongoing grievances and disputes over employee entitlement to these benefits. Defendants' VTP retirement offers have created additional instability in the labor relations and collective bargaining relationship between CWA and AT&T due to these discriminatory practices and policies.

85. CWA's claim falls within the zone of interests protected by ERISA and is not precluded by the statute.

86. CWA has complied with all the administrative prerequisites to filing a lawsuit alleging violations of Title VII.

FIRST CLAIM FOR RELIEF

(Title VII of the Civil Rights Act of 1964)

87. Plaintiffs incorporate and re-allege by reference the foregoing paragraphs 1 through 86, inclusive, as if they were fully set forth herein.

88. Defendants have discriminated and continue to discriminate against members of plaintiff CWA and plaintiffs HULTEEN, COLLET, HORTON, and SNYDER and the class they represent, based on sex and pregnancy, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., by adopting and continuing to implement an employment benefit, retirement, and pension policy and practice which:
(a) perpetuates afacially discriminatory system which originated prior to the passage of the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), by continuing to deny Net Credited Service for leaves taken by current and former female employees prior to April 29, 1979 for maternity and pregnancy-related disabilities, while granting NCS to all employees who took leaves prior to April 29, 1979 due to other temporary disabilities.
(b) perpetuates a facially discriminatory system which originated prior to the passage of the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), which forced current and former female employees to take leave prior to the onset of their actual maternity and pregnancy-related disability while employees with other temporary disabilities were not forced to take leaves prior to the onset of their temporary disabilities, by continuing to deny female employees Net Credited

Service for these periods of forced leave prior to April 29, 1979, while granting NCS to all employees who took leave prior to April 29,1979 for all other temporary disabilities;
(c) perpetuates a facially discriminatory system which originated prior to the passage of the Pregnancy Discrimination Act, 42 U.S.C. §2000e(k), which denied coverage of additional temporary disabilities occurring during pregnancy-related leave under the sickness and accident benefit plans of AT&T and/or an AT&T Bell System subsidiary operating company while covering all other additional temporary disabilities occurring during leaves for all other temporary disabilities, by continuing to deny female employees Net Credited Service for these periods of additional temporary disability prior to April 29, 1979, while granting NCS to all employees who took leave prior to April 29, 1979 for all other temporary disabilities.
(d) perpetuates a facially discriminatory system which originated prior to the passage of the Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k), which denied automatic reinstatement to female employees on pregnancy-related disability leave while guaranteeing reinstatement to employees disabled for any other reason, by continuing to deny female employees Net Credited Service for additional time spent on leave due to the lack of guaranteed reinstatement prior to April 29, 1979, while granting NCS to all employees who took leave prior to April 29, 1979 for all other temporary disabilities.

89. The above-mentioned policies and practices constitute ongoing facially discriminatory systems, which treat former and present female employees of AT&T differently and less favorably than former and current male employees of AT&T.

90. The policies and practices described above were intentionally designed to discriminate against pregnant women.

91. The policies and practices described above were and are implemented and administered by defendants, and each of them, with malice or with reckless indifference to the rights of CWA, the named individual plaintiffs, and the members of the class they represent.

92. Defendants will continue to engage in the discriminatory employment policies and practices described above unless they are enjoined from doing so. CWA, the named plaintiffs and the members of the class they represent are and will continue to be aggrieved and irreparably injured thereby and have no adequate remedy at law.

93. As a proximate result of the discriminatory policies and practices alleged herein, the named plaintiffs and members of the class they represent have incurred and will in the future continue to incur economic losses, including current and ongoing loss of valuable retirement and pension benefits, in an amount to be proven at time of trial.

SECOND CLAIM FOR RELIEF

(Employee Retirement Income Security Act)

94. Plaintiffs incorporate and reallege by reference the foregoing paragraphs 1 through 86, inclusive, as if they were fully set forth herein.

95. The facially discriminatory policies and practices as alleged in paragraphs 26 through 30 above constitute ongoing, current, and continuing discrimination against pension plan participants and beneficiaries based on gender and pregnancy.

96. By engaging in the acts alleged in the Complaint, defendants AT&T and EBC, and each of them, have breached their fiduciary duties to the participants and beneficiaries of the PP and MPP by failing to act solely in the interests of the participants and beneficiaries of those plans with respect to those plans as required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

97. By engaging in the acts alleged in the Complaint, defendants AT&T and EBC, and each of them, as fiduciaries to the participants and beneficiaries of the PP and MPP, have interpreted and applied the terms of the PP and MPP in an arbitrary and/or discriminatory manner and/or in a manner contrary to law, and/or have otherwise wrongfully denied benefits and Net Credited Service under the PP and MPP and other employment benefits based on NCS to current and former female AT&T employees on a continuous, ongoing, and current basis.

98. Plaintiffs have exhausted administrative remedies to the extent required by ERISA.

JURY DEMAND

Plaintiffs CWA, and HULTEEN, COLLET, HORTON, and SNYDER demand a trial by jury in this action.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs CWA, and HULTEEN, COLLET, HORTON, and SNYDER on behalf of themselves and all members of the class, pray that the court enter judgment against defendants as follows:

1. Declaring defendants' discriminatory employment practices and policies complained of herein to be unlawful.

2. Permanently enjoining defendants and their officials, agents, employees and all persons acting in concert or participation with them from engaging in such discriminatory employment practices.

3. Directing defendants and their officials, agents, employees and all persons acting in concert or participation with them to recalculate the Net Credited Service dates of current and former female employees to include time spent prior to April 29, 1979 on maternity or pregnancy-related disability leaves, including forced leaves resulting from the application of defendants' discriminatory policies.

4. Directing defendants and their officials, agents, employees and all persons acting in concert or participation with them to recalculate the Net Credited Service dates of current and former female employees to include absences prior to April 29, 1979 due to any non-pregnancy- related disability which arose while the employee was absent on maternity or pregnancy-related disability leave but was not covered by the sickness and accident benefit policy of AT&T and/or an AT&T Bell System subsidiary operating company.

5. Directing defendants and their officials, agents, employees and all persons acting in concert or participation with them to recalculate the Net Credited Service dates of current and former female employees to include absences prior to April 29, 1979 due to the failure to guarantee reinstatement to female employees placed on maternity or pregnancy-related disability leave.

6. Directing that defendants recalculate the eligibility of current or former AT&T employees for retirement and/or pension benefits to which they would have been entitled or for which they would have been eligible had their Net Credited Service date been calculated under the provisions of paragraphs 3 to 5 above.

7. Directing defendants to compensate plaintiffs HULTEEN, COLLET, HORTON, and SNYDER and the class they represent for lost benefits, by appropriate back pay and otherwise, such amounts to include compound interest and an upward adjustment to compensate for the loss of real purchasing power due to inflation between the dates of loss and of award.

8. Directing defendants to pay plaintiffs HULTEEN, COLLET, HORTON, and SNYDER and the members of the class they represent punitive damages in an amount to be established at trial.

9. Enjoining defendants from retaliating against members of plaintiff CWA and plaintiffs HULTEEN, COLLET, HORTON, and SNYDER and the class they represent on the basis of their filing or prosecution of employment discrimination charges with the Equal Employment Opportunity Commission or any state or local anti-discrimination agency, or the filing of this action. /

10. Awarding plaintiffs costs, including reasonable attorney's fees and court costs, as provided by law.

11. Awarding plaintiffs CWA and HULTEEN, COLLET, HORTON, and SNYDER and the class they represent such other and further relief as the court deems just and proper.

Dated: March 19 , 2001

Noreen HULTEEN, Eleanora Collet, Arma Horton, Elizabeth Snyder, and all others similarly situated, and Communications Workers of America, Afl-Cio, Plaintiffs, v. AT&T CORPORATION, AT&T Management Pension Plan, AT&T Pension Plan, and AT&T Employees' Benefit Committee, Defendants.
2001 WL 36168843 (N.D.Cal.) (Trial Pleading)

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