

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

CHARLES BROWN, JEFFERY BURKS,)
ANTONIO COLON, JAMES DEMOSS,)
JAMESON DIXON, CLARK FAULKNER,)
KENNETH GEORGE, LEONARD GREGORY,)
MARSHUN HILL, CEDRIC MUSE,)
LARoy WASHINGTON, DARRELL WILLIAMS,)
CHARLES WOODS, MICHAEL WOODS,)
on behalf of themselves and similarly)
situated African-American employees,)

Plaintiffs,

v.

YELLOW TRANSPORTATION, INC.

Defendant.

Case No.

FILED: OCTOBER 15, 2008
08CV5908
JUDGE GOTTSCHALL
MAGISTRATE JUDGE NOLAN

TC

COMPLAINT

NATURE OF THE ACTION

This is an action under 42 U.S.C. § 1981 to correct unlawful discrimination on the basis of race and to provide appropriate relief to Charles Brown, Jeffery Burks, Antonio Colon, James DeMoss, Jameson Dixon, Clark Faulkner, Kenneth George, Leonard Gregory, Marshun Hill, Cedric Muse, Laroy Washington, Darrell Williams, Charles Woods, Michael Woods, and similarly situated African-American former and current employees of Yellow Transportation, Inc. (hereinafter "Plaintiffs"). Plaintiffs allege that Yellow Transportation, Inc. (hereinafter "Defendant") has created a racially hostile work environment by: (1) failing to respond to Plaintiffs' repeated complaints about nooses hung in the workplace, failing to investigate, and failing to take disciplinary action against those individuals who hung the nooses; (2) failing to

respond to Plaintiffs' repeated complaints about racially hostile graffiti written on bathroom walls, failing to investigate, and failing to take disciplinary action against those individuals who wrote the graffiti, and (3) failing to respond to Plaintiffs' repeated complaints that coworkers used racial slurs, wore racially hostile clothing, and exposed racially hostile tattoos, failing to investigate, and failing to take disciplinary action against those individuals who used racial slurs, wore racially hostile clothing, and exposed racially hostile tattoos. Plaintiffs also allege that Defendant has subjected them to disparate treatment on account of their race by: (1) subjecting Plaintiffs to more stringent disciplinary action than similarly situated Caucasian employees, and (2) promoting Caucasian workers who had worked for less time than Plaintiffs instead of and/or before promoting Plaintiffs. Finally, Plaintiffs allege that Defendant retaliated against Plaintiffs for complaining about the hostile work environment and racially disparate treatment.

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. This action is authorized and instituted pursuant to 42 U.S.C. § 1981.

2. Venue is proper in the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 1391, because the unlawful conduct alleged herein was committed and continues to occur within the boundaries of the Northern District of Illinois.

PARTIES

3. Plaintiff Charles Brown is an adult African-American male and resident of Cook County, Illinois.

4. Plaintiff Jeffery Burks is an adult African-American male and resident of Cook County, Illinois.

5. Plaintiff Antonio Colon is an adult African-American male and resident of Cook County, Illinois.

6. Plaintiff James DeMoss is an adult African-American male and resident of Cook County, Illinois.

7. Plaintiff Jameson Dixon is an adult African-American male and resident of Cook County, Illinois.

8. Plaintiff Clark Faulkner is an adult African-American male and resident of Cook County, Illinois.

9. Plaintiff Kenneth George is an adult African-American male and resident of Cook County, Illinois.

10. Plaintiff Leonard Gregory is an adult African-American male and resident of Cook County, Illinois.

11. Plaintiff Marshun Hill is an adult African-American male and resident of Cook County, Illinois.

12. Plaintiff Cedric Muse is an adult African-American male and resident of Cook County, Illinois.

13. Plaintiff Laroy Washington is an adult African-American male and resident of Cook County, Illinois.

14. Plaintiff Darrell Williams is an adult African-American male and resident of Cook County, Illinois.

15. Plaintiff Charles Woods is an adult African-American male and resident of Cook County, Illinois.

16. Plaintiff Michael Woods is an adult African-American male and resident of Cook County, Illinois.

17. Defendant is incorporated in Indiana and employs approximately 22,000 people worldwide.

18. Defendant had revenue of \$3,460,500,000 and operating profit of \$208,500,000 during fiscal year 2006. According to Defendant's website, Yellow Transportation is a "thriving, multibillion dollar corporation."

19. Defendant operates 590 terminals across the United States and ten terminals within the state of Illinois.

20. At all times relevant to this action, Defendant was doing business in Illinois and operating the location at which the alleged discrimination took place.

21. The allegations in this Complaint took place at Defendant's facility located at 10301 S. Harlem Ave., Chicago Ridge, Illinois (hereinafter "the workplace").

CLASS ALLEGATIONS

DEFINITION OF THE CLASS

22. The representative Plaintiffs sue on behalf of themselves and on behalf of all similarly situated African-American employees and former employees employed by Defendant between October 15, 2004 and the present. The Hostile Work Environment Class consists of all current and former African-American employees employed by Yellow Transportation at their facility located at 10301 S. Harlem Ave., Chicago Ridge, Illinois, between October 15, 2004, and the present.

HOSTILE WORK ENVIRONMENT/RACIAL HARASSMENT

23. Defendant subjected Plaintiffs to a racially hostile work environment by tolerating the repeated hanging of nooses in conspicuous places in the workplace, including on work equipment, in order to intimidate African-American workers.

24. Defendant subjected Plaintiffs to a racially hostile work environment by tolerating the persistent appearance of written racial slurs in the workplace, including, but not limited to, “I hate niggers,” “all niggers must die,” “fuck all niggers,” “rotten nigger,” “burn nigger burn,” “fag,” “white power,” and swastikas.

25. Defendant subjected Plaintiffs to a racially hostile work environment by tolerating Caucasian employees’ frequent use of racial slurs, including, but not limited to, “nigger” and “mudcat,” as well as spoken statements including, but not limited to, “I hate black people,” “I hate niggers,” and, in reference to hurricane Katrina, “they should have put a cage around New Orleans and put a banana in the cage and let all the niggers drown.”

26. Defendant subjected Plaintiffs to a racially hostile work environment by tolerating the display of racially hostile symbols, including, but not limited to, the Confederate flag and the letters “KKK” on Caucasian employees’ apparel and visible tattoos.

27. Defendant subjected Plaintiffs to a racially hostile work environment by tolerating racially hostile comments made over the radio in the workplace.

28. Defendant subjected Plaintiffs to a racially hostile work environment by allowing Caucasian supervisors to aggressively scrutinize Plaintiffs’ job performances while not subjecting similarly situated Caucasian employees to similar treatment.

29. Defendant failed to adequately address or respond to Plaintiffs' complaints of racial harassment and the hostile work environment made to company officials, including, but not limited to, direct supervisors, management, and the Human Resources department.

30. Defendant subjected Plaintiffs to disparate treatment due to their race by failing to document Plaintiffs' repeated complaints of race discrimination.

DISPARATE TREATMENT DUE TO RACE

31. Defendant subjected Plaintiffs to disparate treatment due to their race by allowing supervisors to assign more strenuous work to Plaintiffs than to similarly situated Caucasian employees.

32. Defendant subjected Plaintiffs to disparate treatment due to their race by promoting similarly situated Caucasian employees, as well as Caucasian employees who had worked for Defendant for a shorter time, instead of and/or before promoting Plaintiffs.

33. Defendant subjected Plaintiffs to disparate treatment due to their race by denying Plaintiffs opportunities that would eventually allow them to be promoted while giving such opportunities to similarly situated Caucasian employees.

34. Defendant subjected Plaintiffs to disparate treatment due to their race by forcing injured Plaintiffs to take shorter sick leaves than similarly situated Caucasian employees.

35. Defendant subjected Plaintiffs to disparate treatment due to their race by disciplining them for infractions for which similarly situated Caucasian employees were not disciplined, including, but not limited to, returning late to work after breaks, talking to each other, and going to the bathroom without asking permission.

36. Defendant subjected Plaintiffs to disparate treatment due to their race by disciplining them without proper investigation, which was different than their treatment of similarly situated Caucasian employees.

37. Defendant subjected Plaintiffs to disparate treatment due to their race by allowing similarly situated Caucasian employees to take more time off than Plaintiffs.

38. Defendant subjected Plaintiffs to disparate treatment due to their race by giving them less desirable work shifts than similarly situated Caucasian employees, and by denying them the opportunity, afforded to similarly situated Caucasian employees, to choose with which colleagues they worked.

39. Defendant subjected Plaintiffs to disparate treatment due to their race by giving Plaintiffs fewer opportunities to work overtime shifts than similarly situated Caucasian employees.

40. Defendant subjected Plaintiffs to disparate treatment due to their race by assigning them less desirable tasks than similarly situated Caucasian employees, including, but not limited to, requiring them to get in and out of their trucks in inclement weather.

41. Defendant subjected Plaintiffs to disparate treatment due to their race by allowing similarly situated Caucasian employees to participate in a gift-certificate program through which they received thousands of dollars in gift certificates while denying Plaintiffs the same opportunity.

42. Defendant subjected Plaintiffs to disparate treatment due to their race by not giving them the same opportunities as similarly situated Caucasian employees to become drivers and spotters.

RETALIATION DUE TO RACE

43. Defendant retaliated against Plaintiffs for complaining about the discriminatory treatment as described in paragraphs 23-42 by, among other things, firing Plaintiffs, disciplining Plaintiffs for ordinarily unenforced rules, cutting off Plaintiffs' medical benefits, and intimidating Plaintiffs while they were working.

CLASS REQUIREMENTS MET

44. The individuals in the Class are so numerous that joinder of all members is impracticable. Plaintiffs estimate that there are approximately 160 members of the Class.

45. There are questions of law and fact common to the Class that predominate over questions affecting only individuals. Among these common questions are:

- a. Whether Defendant created a racially hostile work environment or failed to remedy and prevent a racially hostile work environment;
- b. Whether there was a disparity between when full time employment is awarded to Plaintiffs and when it was awarded to similarly situated Caucasian employees;
- c. Whether there was a disparity between the extent and gravity of discipline imposed upon Plaintiffs and the extent and gravity of discipline imposed upon similarly situated Caucasian employees;
- d. Whether Defendant failed to address Plaintiffs' complaints about racial harassment and discrimination; and
- e. Whether Defendant failed to give Plaintiffs benefits such as overtime work, desirable work shifts and inclusion in the gift-certificate program yet granted these benefits to similarly situated Caucasian employees.

46. The claims of the representative parties are typical of the claims of the class.

INDIVIDUAL NAMED PLAINTIFF'S CLAIMS

Charles Brown's Individual Complaints

47. Plaintiff Brown was hired by Defendant on July 5, 1991, as a temporary worker. Plaintiff became a full time worker for Defendant on September 17, 1991. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

48. During Plaintiff Brown's employment with Defendant, Defendant subjected Plaintiff Brown to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Brown less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Brown for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

49. Plaintiff Brown has been and continues to be subject to harassment and discrimination based on race. Examples of this harassment and discrimination include:

- a. A picture of a man hanging from a noose hung on Plaintiff's forklift in June 2005;
- b. Multiple nooses hung in the workplace between May 2005 until May 2008;
- c. Supervisors taking no or minimal action to cover up or erase graffiti of racial slurs and racially hostile phrases in Plaintiff Brown's workplace;
- d. Supervisors ignoring and failing to take investigatory or disciplinary action based on Plaintiff Brown's complaints about the nooses, the racial slurs, and the racially hostile phrases;

- e. Defendant promoting similarly situated Caucasian workers who had worked at Defendant's company for a shorter time than Plaintiff Brown to full-time status before Plaintiff Brown;
- f. Defendant punishing Plaintiff Brown for infractions for which similarly situated Caucasian employees were not disciplined, including going to the bathroom without asking permission;
- g. Defendant demanding that Plaintiff Brown return to work after a break or while talking to a coworker while not demanding that similarly situated Caucasian employees do the same; and
- h. Plaintiff Brown's supervisor, Bob Zabonski, disciplining Plaintiff Brown for reading a newspaper in the bathroom without investigating whether Plaintiff was actually reading a newspaper in the bathroom.

50. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment during their employment with Defendant due to their race.

51. In April 2007, Defendant retaliated against Plaintiff Brown by denying Plaintiff Brown benefits under the Family and Medical Leave Act (FMLA) when Plaintiff Brown complained about the appearance of nooses in his workplace.

52. During Plaintiff Brown's employment, Defendant was aware of Plaintiff Brown's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Jeffery Burks's Individual Claims

53. Plaintiff Burks started working as a temporary employee for Defendant in October 1995. He was hired as a full-time dock man on February 13, 1996. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

54. During Plaintiff Burks's employment with Defendant, Defendant subjected Plaintiff Burks to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Burks less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Burks for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

55. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant due to their race.

56. During Plaintiff Burks's employment, Defendant was aware of Plaintiff Burks's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Antonio Colon's Individual Claims

57. Plaintiff Colon started working as a temporary employee for Defendant in 2000. He became a full-time employee approximately one year later, in 2001. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

58. During Plaintiff Colon's employment with Defendant, Defendant subjected Plaintiff Colon to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Colon less favorably than similarly situated Caucasian

employees, and by retaliating against Plaintiff Colon for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

59. During his employment with Defendant, Plaintiff Colon was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being subjected to disparate treatment in the enforcement of work rules and policies, such as the rule against standing around talking after breaks are over, the requirement that workers alert a supervisor when they intend to leave to use the bathroom, and the attendance policy;
- b. Being assigned less desirable shifts and tasks than similarly situated Caucasian employees;
- c. Having to wait a longer time than similarly qualified Caucasian workers to acquire the status of full-time employee; and
- d. Being called a “mutt” by a coworker in reference to his being half Puerto Rican and half African-American.

60. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

61. During Plaintiff Colon’s employment, Defendant was aware of Plaintiff Colon’s complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

James DeMoss’s Individual Claims

62. Plaintiff DeMoss was hired by Defendant in September 1991 as a temporary worker. He became a full time worker approximately one year later, in September 1992.

Plaintiff currently works for Defendant as a dock man/spotter; the same position as when he started as a full time employee.

63. During Plaintiff DeMoss's employment with Defendant, Defendant subjected Plaintiff DeMoss to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff DeMoss less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff DeMoss for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

64. During his employment with Defendant, Plaintiff DeMoss was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being denied promotion to full-time status until one day after a similarly situated Caucasian worker was promoted, which resulted in the Caucasian worker receiving seniority status, better work schedules, overtime, and days off;
- b. Being denied promotion by supervisors who subjected Plaintiff DeMoss to more stringent testing requirements than similarly situated Caucasian employees when he applied to be a driver;
- c. Receiving less desirable work schedules and more labor-intensive loads than similarly situated Caucasian dock workers; and
- d. Defendant not responding to Plaintiff DeMoss's complaints about racial slurs being used in the workplace, including, but not limited to, a Caucasian employee making racial comments over the radio system.

65. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

66. During Plaintiff DeMoss's employment, Defendant was aware of Plaintiff DeMoss's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Jameson Dixon's Individual Claims

67. Plaintiff Dixon began working for Defendant in April 1999 as a temporary worker and became a full time worker in August 1999. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

68. During Plaintiff Dixon's employment with Defendant, Defendant subjected Plaintiff Dixon to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Dixon less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Dixon for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

69. During his employment with Defendant, Plaintiff Dixon was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being ordered back to work after a break when similarly situated Caucasian employees were not ordered back to work; and
- b. Having his complaints about racially charged graffiti and comments ignored by company supervisors.

70. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant.

71. During Plaintiff Dixon's employment with Defendant, he was retaliated against for complaining about the racially hostile work environment when a supervisor denied him

permission to work with certain coworkers for the stated reason that Plaintiff Dixon had filed a complaint with the Equal Employment Opportunity Commission (EEOC).

72. During Plaintiff Dixon's employment, Defendant was aware of Plaintiff Dixon's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Clark Faulkner's Individual Claims

73. Plaintiff Faulkner began working for Defendant in June 1997 as a temporary worker and became a full time worker in December 1997. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

74. During Plaintiff Faulkner's employment with Defendant, Defendant subjected Plaintiff Faulkner to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Faulkner less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Faulkner for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

75. During his employment with Defendant, Plaintiff Faulkner was and continues to be subject to discrimination due to his race. Examples of this discrimination include:

- a. Being denied promotion to full-time status until shortly after a similarly situated Caucasian worker was promoted, which resulted in the Caucasian worker receiving seniority status, better work schedules, overtime, and days off;
- b. Demeaning treatment including, but not limited to, being ordered to pick up a piece of wood by a Caucasian coworker while the coworker stood over the wood;

c. Being denied promotion by being subjected to more stringent requirements than similarly situated Caucasian workers when Plaintiff applied to be a driver; and

d. Being subjected to more stringent disciplinary action than similarly situated Caucasian employees, and having company rules applied to him in an arbitrary way.

76. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

77. During his employment with Defendant, Plaintiff Faulkner was written up for complaining about the hostile work environment.

78. During Plaintiff's employment, Defendant was aware of Plaintiff's complaints as stated above, but failed to take sufficient corrective action or prevent further discrimination. Specific examples of Defendant's failure to respond to Plaintiff's complaints include but are not limited to:

a. In June 2008, "KKK" was written on the wall of the work bathroom.

Although Plaintiff complained to multiple supervisors, the writing was left on the wall for at least one month.

b. In July 2008, Plaintiff asked a coworker to wear a shirt of a tattoo of a confederate flag he had on his arm. When the coworker ignored the request, Plaintiff complained to a supervisor who also ignored the request. The coworker continues to wear clothes that reveal the tattoo in violation of work rules but is not disciplined for this action.

c. After complaining about confederate flags being worn in the workplace, coworkers began to tamper with Plaintiff's locker. Although Plaintiff complained about the tampering to supervisors, no investigation was performed or disciplinary action taken.

79. During Plaintiff Faulkner's employment, Defendant was aware of Plaintiff Faulkner's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Kenneth George's Individual Claims

80. Plaintiff George began working for Defendant in June 2000 as a temporary worker and became a full time worker in June 2008. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

81. During Plaintiff George's employment with Defendant, Defendant subjected Plaintiff George to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff George less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff George for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

82. During his employment with Defendant, Plaintiff George was and continues to be subject to discrimination due to his race. Examples of this discrimination include:

- a. Being promoted to full time status after similarly situated Caucasian employees, thus giving seniority status to Caucasian employees;
- b. Being subjected to more stringent disciplinary action than similarly situated Caucasian employees, and having company rules applied to him in an arbitrary way;

- c. Demeaning treatment by coworkers such as graffiti written on the wall using Plaintiff George's name along with racial slurs;
- d. Being denied access to workers compensation funds when Plaintiff George was injured at work while similarly situated Caucasian employees were not denied access;
- e. Being denied the opportunity to work "light duty" after being injured on the job, while similarly situated Caucasian employees were not subject to such treatment.

83. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant.

84. During Plaintiff George's employment, Defendant was aware of Plaintiff George's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Leonard Gregory's Individual Claims

85. Plaintiff Gregory was hired as a supervisor for Defendant on December 6, 1994. He was promoted to the position of Systems Operations Manager in 1997 and to the position of General Operations Manager in February 2004. Plaintiff stepped down from his position as General Operations Manager to the position of supervisor in March 2007 because he feared he would be discharged.

86. During Plaintiff Gregory's employment with Defendant, Defendant subjected Plaintiff Gregory to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Gregory less favorably than similarly situated Caucasian

employees, and by retaliating against Plaintiff Gregory for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

87. During his employment with Defendant, Plaintiff was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Insubordination by Caucasian employees that Plaintiff supervised;
- b. A false accusation by a Caucasian employee that led to Plaintiff's arrest;
- c. Plaintiff's tires being slashed immediately after a Caucasian employee threatened him;
- d. Racially charged phrases spoken in the workplace and written on workroom walls such as "Leonard is a nigger lover," "I think I'm going to take Ron Johnson to meet some of my friends at the next KKK rally, burn nigger burn, don't forget Leonard," "the white race would be perfect without the black race," and "[being Black is] worse if you're a Jehovah's Witness;" and
- e. Being constructively demoted from the position of General Operations Manager to the position of supervisor by repeated threats of termination after Plaintiff Gregory took steps as a supervisor to address complaints about the hostile work environment.

88. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

89. During Plaintiff Gregory's employment, Defendant was aware of Plaintiff Gregory's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Marshun Hill's Individual Claims

90. Plaintiff Hill started working as a temporary employee for Defendant in June 1991 and was hired as a full-time employee three months later. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

91. During Plaintiff Hill's employment with Defendant, Defendant subjected Plaintiff Hill to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Hill less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Hill for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

92. During his employment with Defendant, Plaintiff was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being denied promotion to full-time status until shortly after a similarly situated Caucasian worker was promoted, which resulted in the Caucasian worker receiving seniority status, better work schedules, overtime, and days off;
- b. Being subjected to disparate treatment with regards to the rule against standing around talking after breaks are over; and
- c. Being subjected to disparate treatment by being punished for minor offenses while Caucasians were not punished for comparatively greater offenses.

93. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

94. During Plaintiff Hill's employment, Defendant was aware of Plaintiff Hill's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Cedric Muse's Individual Claims

95. Plaintiff Muse started working for defendant in September 1990 as a temporary worker and became a full time employee in January 1991.

96. Plaintiff was a union steward from 1996 until 1999. During this time, Plaintiff was told by Defendant Supervisor Tom Hartman that he was subjected to different rules as a Union Steward because he was black. Plaintiff was the only African-American Union Steward at that time.

97. During Plaintiff Muse's employment with Defendant, Defendant subjected Plaintiff Muse to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Muse less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Muse for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

98. Since Plaintiff began working for Defendant he has been subject to discrimination due to his race. Examples of this discrimination include but are not limited to:

- a. Being assigned heavier loads than Caucasian workers.
- b. Being assigned to physical labor while Caucasian workers were assigned to driving trucks. Plaintiff was certified to drive trucks at this time.
- c. Observing writing on the bathroom wall that targeted him while he was a union steward such as "Muse represents the niggers."

99. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

100. Plaintiff Muse complained about the hostile work environment to supervisors whose reaction was to tell Plaintiff Muse that they would get back to him about it. Defendant's supervisors would not report to Plaintiff Muse that they had taken any action to remedy the hostile environment.

101. During Plaintiff Muse's employment, Defendant was aware of Plaintiff Muse's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Laroy Washington's Individual Claims

102. Plaintiff Washington began working for Defendant in October or November 1996 and was hired as a full-time dockworker in May 1997. Plaintiff currently works for Defendant as a dock man; the same position as when he started as a full time employee.

103. During Plaintiff Washington's employment with Defendant, Defendant subjected Plaintiff Washington to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Washington less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Washington for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

104. During his employment with Defendant, Plaintiff Washington was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being denied promotion to full-time status until shortly after a similarly situated Caucasian worker was promoted, which resulted in the Caucasian worker receiving seniority status, better work schedules, overtime, and days off; and
- b. Being subjected to disparate treatment with regards to the rule against standing around talking after breaks are over.

105. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

106. During Plaintiff Washington's employment, Defendant was aware of Plaintiff Washington's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Darryl Williams's Individual Claims

107. Plaintiff Williams started working as a temporary employee for Defendant in August 2001. He became a full-time dock man on June 25, 2002.

108. During Plaintiff Williams's employment with Defendant, Defendant subjected Plaintiff Williams to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Williams less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Williams for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

109. During his employment with Defendant, Plaintiff was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being subjected to disparate treatment in the enforcement of work rules and policies when a supervisor walked past four Caucasian men violating the rule

against talking in order to reprimand Plaintiff Williams for violating the rule against using a cell phone; and

b. Being subjected to disparate treatment on account of his race with regard to work assignments and difficulty of work.

110. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

111. Plaintiff was retaliated against for complaining about discrimination by getting more difficult assignments or by getting no work at all.

112. During Plaintiff Williams's employment, Defendant was aware of Plaintiff Williams's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Charles Woods's Individual Claims

113. Plaintiff Woods started working as a temporary employee for Defendant in July 2002 and became a full time employee in August 2003. Plaintiff Woods currently works for Defendant as a dock man; the same position as when he started as a full time employee.

114. During Plaintiff Woods's employment with Defendant, Defendant subjected Plaintiff Woods to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Woods less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Woods for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

115. During his employment with Defendant, Plaintiff has been subject to discrimination on account of his race. Examples of this discrimination include:

- a. Being subject to more stringent requirements than similarly situated Caucasian employees to gain full time status;
- b. Being given a more difficult driving test than similarly situated Caucasian employees when he applied to be a driver for Defendant;
- c. Overhearing his supervisor tell his coworkers that he did not like African-Americans and Mexicans; and
- d. Being disciplined for actions for which similarly situated Caucasian employees were not disciplined, including taking breaks at prohibited times.

116. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant.

117. During Plaintiff Woods's employment, Defendant was aware of Plaintiff Woods's complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

Michael Woods's Individual Claims

118. Plaintiff Woods started working as a temporary employee for Defendant in mid-2001. He became a full-time employee on June 25, 2002. Plaintiff Woods currently works for Defendant as a dock man; the same position as when he started as a full time employee.

119. During Plaintiff Woods's employment with Defendant, Defendant subjected Plaintiff Woods to discrimination due to his race by creating and tolerating a racially hostile work environment, by treating Plaintiff Woods less favorably than similarly situated Caucasian employees, and by retaliating against Plaintiff Woods for complaining about racial discrimination as alleged with regards to the entire class in paragraphs 23 – 43.

120. During his employment with Defendant, Plaintiff Woods was subjected to discrimination due to his race. Examples of this discrimination include:

- a. Being subjected to disparate treatment in the enforcement of work rules and policies, such as the rule against standing around talking after breaks are over and the requirement that workers alert a supervisor when they intend to leave to use the bathroom;
- b. Being denied promotion to full-time status until shortly after a similarly situated Caucasian worker was promoted, which resulted in the Caucasian worker receiving seniority status, better work schedules, overtime, and days off; and
- c. Being subjected to a hostile work environment by being specifically named in statements appearing on bathroom walls, such as, "Mike is a rotten nigger," and "Mike isn't black."

121. Plaintiff Woods was retaliated against for complaining about discrimination. Examples of this retaliation include but are not limited to:

- a. Having axle grease poured on the seat of his forklift after he complained about the hostile work environment;
- b. Being punished for actions that did not violate any rule;
- c. Being punished for violating a rule that was rarely or never enforced;
- d. Receiving unusually harsh punishments for violations that typically warranted minimal reprimand;
- e. Being temporarily terminated for reasons his supervisors refused to state; and

f. Plaintiff Woods is now labeled as a “trouble-maker” by Defendant’s supervisors for complaining about race discrimination. Plaintiff Woods is watched and disciplined more strictly than he was before complaining.

122. Similarly situated Caucasian employees were not subjected to such discrimination and received more favorable treatment in the terms and conditions of their employment with Defendant, due to their race.

123. During Plaintiff Woods’s employment, Defendant was aware of Plaintiff Woods’s complaints as enumerated above, but failed to take corrective action or prevent further discrimination.

COUNT I: VIOLATIONS OF 42 U.S.C. § 1981

124. Plaintiffs repeat and re-allege each allegation above as if set forth herein in full.

125. Defendant has subjected its African-American employees to different terms and conditions of employment than similarly situated Caucasian employees and has intentionally discriminated against Plaintiffs and the Class in violation of 42 U.S.C. § 1981 by: (1) allowing a racially hostile work environment to exist by not taking sufficient actions to stop nooses from being hung in the workplace, racial slurs and racially hostile statements from being written and spoken, racially hostile symbols from being displayed and racial employees from wearing racially charged clothing and tattoos, racial slurs being written on workplace walls, and nooses being hung in the workplace to intimidate African-American employees; (2) applying promotion practices which give seniority to Caucasian workers that have worked for the Defendant for either less or equal time than similarly situated African-American employees; (3) applying disciplinary actions in a discriminatory fashion against African-Americans; (4) refusing to respond to or not taking sufficient actions about complaints from African-American employees

about the hostile work environment; (5) retaliating against African-American employees for complaining about the racially hostile work environment.

PRAYER FOR RELIEF

126. WHEREFORE, Plaintiffs and the Class respectfully request that this Court grant the following relief:

- a. Certification of a Class consisting of all African-American employees employed at Defendant's facility from October 15, 2004, to present;
- b. Enter judgment that Defendant's acts and practices as set forth herein are in violation of the laws of the United States;
- c. Enter preliminary and permanent relief enjoining the discriminatory conduct and requiring Defendant to take steps to end its discriminatory practices and prevent current and future harm to Plaintiffs and the Class, including, but not limited to:
 - i. Revised procedures which would require that Defendant's managers use fair and objective criteria when promoting employees;
 - ii. Revised procedures which would require that Defendant's disciplinary procedures to be applied in a non-discriminatory fashion;
 - iii. Implementation of a meaningful system of oversight to ensure that Defendant managers are using objective criteria to assign overtime, shift schedules, job assignments, and benefits such as hiring and promotions; and
 - iv. Implementation of meaningful procedures to ensure racial harassment in the workplace is eliminated.

- d. Award Plaintiffs and the Class lost wages, including back pay for failure to promote, and any lost benefits that would otherwise have been available to the Plaintiffs and Class without the discrimination;
- e. Award Plaintiffs and the Class compensatory and punitive damages;
- f. Award reinstatement to class members who resigned due to race discrimination;
- g. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees and costs; and
- h. Grant Plaintiffs and the Class such other and further relief as this Court finds necessary and proper.

JURY DEMAND

127. Plaintiffs demand a trial by jury on all issues of facts and damages in this action.

Respectfully Submitted,

By: s/ Randall D. Schmidt
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Dated: October 15, 2008