

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

ANGELINE JEAN-BAPTISTE,
on her own behalf and others similarly situated,

Plaintiffs,

v.

BURGER KING CORPORATION, a Florida Corporation

Defendant

/

COMPLAINT

Plaintiff, ANGELINE JEAN-BAPTISTE, on her own behalf and on behalf of others similarly situated (“Plaintiff” or “Jean-Baptiste”), hereby sues the Defendant, Burger King Corporation (“Burger King” or “BKC” or “Defendant”), and as grounds therefore states as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action on behalf of herself and other employees and former employees of Burger King similarly situated to her to recover unpaid straight time and overtime compensation and other relief under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 USC §§ 201-219 (hereafter “FLSA”). Plaintiff also brings an action under the anti-retaliation provisions of the FLSA and whistleblower and unpaid wages claims under Florida state law.

2. Jurisdiction of this action is conferred upon this Court by 29 U.S.C. § 216(b), and by 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction

over the Plaintiff's claims arising under state law.

3. Venue of this action is established in this Court by 29 U.S.C. § 216(b) and by 28 USC § 1391(b).

PARTIES

4. Jean-Baptiste is a resident of the State of Florida and was an employee of BKC until approximately July 8, 2011.

5. Pursuant to 29 U.S.C. §§ 216(b) and 256, Jean-Baptiste has executed and hereby files with the Court her consent in writing to become a party plaintiff in this action, appended hereto.

6. BKC is a corporation incorporated under the laws of Florida, with its principal place of business at 5505 Blue Lagoon Drive, Miami, Florida 33126. BKC does business within the Southern District of Florida. BKC operates fast food hamburger restaurants, principally under the Burger King brand. "The Restaurant" means Store #10688 in Boynton Beach, Florida, which is operated by BKC and where Plaintiff was employed. BKC is an enterprise engaged in an industry affecting commerce and is an employer within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(r), 29 U.S.C. § 203(s), and 29 U.S.C. §203(d).

7. Upon information and belief, at all relevant times, Burger King had gross annual revenues in excess of \$500,000.00.

8. Jean-Baptiste was an employee of BKC as defined by 29 U.S.C. § 203(c).

9. The additional persons who may become plaintiffs in this action are or were employees of Burger King who worked in excess of forty (40) hours during one or more workweeks but who did not receive time and a half of their regular rate of pay for

each such overtime hour worked; or who did not receive wages for all hours worked in one or more workweeks.

GENERAL ALLEGATIONS

10. Jean-Baptiste was employed at BKC from March 2011 until July 2011.

11. During this time period, Jean-Baptiste was employed as a non-exempt “Team Member” performing numerous tasks for Burger King, including cashier functions. Burger King policy (as set forth in the BKC Employee Handbook for non-exempt restaurant employees) provides that working as a Team Member, Plaintiff was required to clock in and clock out. Such policy and the FLSA expressly prohibit “performing any work while not clocked in.”

12. As a Team Member, Jean-Baptiste was required to work, and did work straight time without being compensated at her regular rate, and in certain workweeks was required to work over 40 hours without additional premium compensation as well.

13. During this time period, Plaintiff was scheduled to work approximately 40 hours per week. However, the common practice was to require Plaintiff to clock-out at the end of her shift and to continue working to avoid any implications to the payroll.

14. On these occasions, Jean-Baptiste was told by management to clock out (or was physically clocked out by a member of management at the end of her shift) and was required to continue working. This practice included the assistant manager asking Plaintiff for her employee number so that the assistant manager could clock Plaintiff out while she was still working. During this unpaid time, management’s practice was to require Jean-Baptiste to remain on premises and perform additional tasks such as cleaning, mopping, fixing the milk shake machine, and dropping money in the safe. This

working time was off the clock without proper compensation. This unlawful practice was done by each assistant manager that supervised Plaintiff, including Rachel Milford and Edna Verdy.

15. From in or about March to June 2011, Jean-Baptiste, and others similarly situated, were not permitted by supervisors to take a break or have a meal. Burger King policy provides for “time outs for breaks and meals.”

16. Jean-Baptiste objected to and refused to participate in the policy and practice of BKC, which was in violation of the FLSA. Such objections and refusals by Jean-Baptiste included informing her managers that it was illegal to require work off the clock, that she (Jean-Baptiste) would not “work for free,” and objecting to the illegal pay practices. In response to Jean-Baptiste’s objections, Plaintiff was sent home early by her supervisor, and on other occasions she was told that if she (Plaintiff) couldn’t do the job, she should find another one. Plaintiff was also ridiculed by co-workers for refusing to follow the illegal practices.

17. In addition to notifying her manager of her objections to the illegal pay practices, Jean-Baptiste contacted Human Resources by calling BKC’s “We’re Listening” phone line (as set forth in the BKC handbook). Plaintiff reported that her managers were violating the wage and hour laws, as well as the policies in the BKC handbook, and indicated her refusal to participate in this activity. Plaintiff also reported that her managers were engaging in illegal conduct, to wit: frequently requiring black patrons of the Burger King drive through to back up prior to receiving food service, but not requiring white patrons to do so, and indicated her objection to and refusal to participate in this activity as well. Plaintiff received a report number for the call, and upon

information and belief, the call was reduced to a written report, but the call was not followed up.

18. Defendant through both the General Manager and Human Resources representative acknowledged the improper pay practices. However, the improper payment practices continued. BKC's actions were to admit FLSA violations, but not explain what monies were actually owed to Plaintiffs. Indeed, when Plaintiff requested a record of her hours, she was told no.

19. As a result of Jean-Baptiste's complaints to management and her report to Human Resources, Plaintiff suffered reprisals from her supervisors, which culminated in the constructive termination of her employment effective July 8, 2011.

COUNT I-VIOLATION OF FLSA BY BURGER KING

20. Jean-Baptiste adopts and realleges paragraphs 1 through 19 above as if fully set forth herein.

21. Under 29 U.S.C. §207, employees covered by the FLSA are entitled to compensation for all hours worked, and overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek, except as otherwise provided in such section.

22. Jean-Baptiste and others similarly situated, suffered and were permitted to work and did work in excess of 40 hours per workweek for Burger King without receiving compensation for such excess hours at a rate of one and one-half times the regular rate at which Jean-Baptiste and others similarly situated were employed. In addition, Jean-Baptiste and others similarly situated, suffered and were permitted to work straight time without being compensated at their regular rate.

23. The failure of Defendant to compensate Jean-Baptiste at one and one-half times the regular rate for such excess hours is a violation of the FLSA. The failure to compensate Jean-Baptiste at her given rate of pay for all hours worked is a violation of the FLSA. The violations by Defendant of the provisions of the FLSA were willful.

24. Defendant, therefore, is liable to Jean-Baptiste, and others similarly situated, in the amount of their unpaid hours and overtime compensation and an additional equal amount as liquidated damages, and for reasonable attorneys' fees, together with the costs and disbursements of this action.

25. Defendant is under a duty imposed by 29 U.S.C. § 211(c) and the applicable regulations of the United States Department of Labor to maintain and preserve payroll and other employment records with respect to Jean-Baptiste from which the precise amount of Defendant's liability can be ascertained.

26. Upon information and belief, at all times relevant within the period three years prior to the filing of this Complaint, Defendant was aware of the provisions of the FLSA, as amended, 29 U.S.C. §201 *et seq.*, requiring payment of overtime compensation at the rate of time and one-half the regular rate to hourly employees working hours over 40 in a workweek. Therefore, Jean-Baptiste, and others similarly situated, are entitled to the unpaid overtime compensation and liquidated damages owed for the three-year period immediately preceding the commencement of the action.

WHEREFORE, Jean-Baptiste and those similarly situated to them request the Court to grant the following relief:

- (a) judgment declaring that Burger King violated Jean-Baptiste's statutory rights (and those of other similarly situated current and/or former employees) and entitlement to be paid overtime as required by federal and state law;
- (b) an order for a complete and accurate accounting of all the compensation to which Jean-Baptiste and other similarly situated current and/or former employees are entitled to under the Fair Labor Standards Act;
- (c) judgment against Burger King awarding Jean-Baptiste, and other similarly situated current and/or former employees, monetary damages in the form of unpaid straight time compensation and unpaid overtime compensation and an additional amount as liquidated damages equal to the unpaid wages and overtime compensation pursuant to 29 U.S.C. §216(b), and post-judgment interest;
- (d) reasonable attorneys' fees;
- (e) the costs and disbursements of this action; and
- (f) such other relief as this Court deems just and proper.

COUNT II-FLSA RETALIATION BY BURGER KING

27. Jean-Baptiste adopts and realleges paragraphs 1 through 19 above as if fully set forth herein.

28. 29 U.S.C. §215(a)(3) prohibits an employer from discharging or in any other manner discriminating against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under the FLSA or has testified or is about to testify in any such proceeding.

29. Burger King retaliated against Jean-Baptiste for engaging in activity protected by the FLSA by taking unwarranted actions against her and terminating her employment.

30. As a result, Jean-Baptiste has suffered lost wages and emotional distress.

WHEREFORE, Jean-Baptiste requests the Court to grant the following relief:

- (a) judgment declaring that Burger King violated Jean-Baptiste's statutory rights and entitlement to back pay and front pay as required by federal and state law;
- (b) judgment against Burger King awarding Jean-Baptiste monetary damages in the form of lost wages and an additional amount as liquidated damages pursuant to 29 U.S.C. §216(b), and post-judgment interest;
- (c) compensatory damages;
- (d) reasonable attorneys' fees; and
- (e) the costs and disbursements of this action; and
- (f) such other relief as this Court deems just and proper.

COUNT III-VIOLATION OF FLORIDA STATUTE §448.101 et seq., by BURGER KING (WHISTLEBLOWER RETALIATION)

31. Jean-Baptiste readopts and realleges paragraphs 1 through 19 above as if fully set forth herein.

32. At all times pertinent, Jean-Baptiste was an employee as defined by §448.101(2), Fla. Stat., and BKC was an employer as defined by §448.101(3), Fla. Stat.

33. During her employment, Jean-Baptiste engaged in protected activity within the meaning of §448.102, Fla. Stat., including her objection to and refusal to

participate in the illegal pay policies and practices of BKC; and her complaints to both BKC management and Human Resources.

34. As a result of Jean-Baptiste's protected activity, Burger King took retaliatory personnel actions against Jean-Baptiste in the terms and conditions of her employment, including ultimately constructively terminating her employment.

WHEREFORE Jean-Baptiste seeks compensation for lost wages, benefits, and other remuneration, compensatory damages, reinstatement, and injunctive relief as provided in §448.103(2), Fla. Stat., and reasonable attorneys' fees, costs and expenses pursuant to §448.104, Fla. Stat., and such other relief as this Court deems just and proper.

COUNT IV-FLORIDA UNPAID WAGES VIOLATIONS BY BURGER KING

35. Jean-Baptiste readopts and realleges paragraphs 1 through 19 above as if fully set forth herein.

36. Jean-Baptiste has fully earned her wages and is entitled to payment.

37. BKC has failed to pay Jean-Baptiste the wages she fully earned and are now owed.

WHEREFORE Jean-Baptiste respectfully prays for judgment in the amount of her unpaid wages plus interest and reasonable attorneys' fees and costs pursuant to §448.08, Fla. Stat., and such other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury as to all issues so triable as a matter of right.

DATED: September 9, 2011

Respectfully submitted,

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By: /s/ Alan D. Danz
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NOTICE OF CONSENT TO SUE

I hereby consent to be a party Plaintiff in a lawsuit under the Fair Labor Standards Act. I hereby authorize my attorneys to represent me before any court or agency on these claims.

Angeline Jean-Baptiste

NAME

Angeline Jean-Baptiste

SIGNATURE

08/10/2011

DATE