

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

PLAINTIFF'S SECOND AMENDED COMPLAINT

Comes now Plaintiff, Penny Benton, by counsel, and for her Second Amended Complaint state as follows:

I. INTRODUCTION

This is an action brought by Plaintiff against Hamilton East Public Library (“Defendant”). Defendant violated Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. Sec. 2000e *et seq.*, when it terminated Plaintiff’s employment. Defendant violated Title VII when it took retaliatory measures against Plaintiff for complaining about the more favorable treatment given to Defendant’s employees who were not African-American. Finally, Defendant violated 42 U.S.C. § 1981 when it terminated Plaintiff’s employment because of race.

II. PARTIES

1. At all times relevant to this litigation, Plaintiffs resided within the geographical boundaries of the Southern District of Indiana.

2. At all times relevant to this litigation, Defendant is an Indiana corporation which maintained offices and conducted business within the geographical boundaries of the Southern District of Indiana.

III. JURISDICTION AND VENUE

3. Jurisdiction is conferred on this Court by 42 U.S.C. Sec. 2000e-5, 28 U.S.C. Sec. 1331, and 28 U.S.C. Sec. 1343.

4. Plaintiff is an “employee” as that term is defined by 42 U.S.C. Sec. 2000e(f).

5. Defendant is an “employer” as that term is defined by 42 U.S.C. Sec. 2000e(b).

6. Plaintiff satisfied her obligation to exhaust her administrative remedies by having timely filed U.S. Equal Employment Opportunity Commission Charge No. 470-2008-01248. Plaintiff received her Dismissal and Notice of Rights and timely files this action.

7. All of the events, transactions, and occurrences pertinent to this lawsuit have occurred within the geographical environs of the Southern District of Indiana, and all parties are located therein. Therefore, venue is proper in this Court pursuant to 28 U.S.C. Sec. 1391.

VI. FACTUAL ALLEGATIONS

8. Plaintiff is an African-American female who was originally hired by Defendant in December of 2006.

9. At all times relevant, Plaintiff met or exceeded Defendant’s legitimate performance expectations.

10. At all times relevant, Plaintiff was the only African-American employee of Defendant.

11. Defendant would subject Plaintiff to different standards for work performance than other similarly-situated employees.

12. Defendant would discipline Plaintiff for alleged conduct which other similarly-situated employees were not disciplined for engaging in the same conduct.

13. In May 2008, Plaintiff brought the unequal treatment to the attention of Defendant's management; however, such unequal treatment continued.

14. On or about August 18, 2008, Plaintiff filed a Charge of Discrimination with the EEOC alleging discrimination based upon race and retaliation.

15. Plaintiff subsequently filed a formal *pro se* lawsuit against Defendant in the United District Court for the Southern District of Indiana, Case Number 1:09-cv-00496-RLY-TAB, which was ultimately settled by the parties on or about December 7, 2009.

16. Defendant's unequal treatment of Plaintiff continued and Defendant ultimately terminated Plaintiff's employment on March 31, 2010.

V. LEGAL CLAIMS

COUNT 1: *Disparate Treatment under Title VII*

17. Plaintiff hereby incorporates the foregoing paragraphs one (1) through sixteen (16) of her Second Amended Complaint and, in addition, alleges and states that Defendant's actions violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000e *et seq.*, as amended.

18. Defendant intentionally discriminated against Plaintiff by treating similarly-situated employees who were not African-American more favorably.

19. Defendant's actions were intentional, malicious, and done with reckless disregard to Plaintiff's federally protected rights to be free from discrimination on the basis of race.

20. Plaintiff has suffered, and will continue to suffer, harm as a result of Defendant's unlawful actions.

COUNT 2: Unlawful Retaliation under Title VII

21. Plaintiff hereby incorporates paragraphs one (1) through twenty-one (21) of their Second Amended Complaint and, in addition, alleges and states that Defendant retaliated against her for complaining about discriminatory treatment, which is also a violation of Title VII.

22. Plaintiff voiced opposition to Defendant's practices and conduct which she reasonably believed to be discriminatory on the basis of race. Plaintiff's complaints of discrimination constitute conduct protected under Title VII.

23. As a result of voicing such opposition, Defendant willfully and intentionally, with malice and/or reckless disregard of Plaintiffs' rights, retaliated against Plaintiff.

24. Plaintiff has suffered, and will continue to suffer, harm as a result of Defendant's unlawful actions.

COUNT 3 – Violation of 42 U.S.C. § 1981

25. Plaintiff hereby incorporates paragraphs one (1) through twenty-four (24) of her Second Amended Complaint as if fully set forth herein.

26. Defendant violated Plaintiff's right to make and enforce contracts under 42 U.S.C. § 1981 by subjecting Plaintiff, because of her race, to different terms and conditions of employment than similarly-situated white employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court find in her favor and order the following relief:

A. Issue a declaratory judgment that Defendant's acts, policies, and procedures violate Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. Sec. 2000e *et seq.*, and 42 U.S.C. § 1981;

B. Permanently enjoin Defendant, its officers, agents, employees, and attorneys acting in concert with them from engaging in any employment policy or practice that violates Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. Sec. 2000e *et seq.*, and 42 U.S.C. § 1981;

C. Award Plaintiff front pay in lieu reinstatement;

D. Award Plaintiff compensatory damages, consequential damages, emotional distress damages, and lost wages and benefits in an amount sufficient to compensate Plaintiff for the damages caused by Defendant's unlawful actions;

E. Award Plaintiff punitive damages;

F. Award Plaintiff her attorneys' fees, litigation expenses, and costs incurred as a result of this action;

G. Award Plaintiff pre- and post-judgment interest on all sums recoverable; and

H. Award any and all other relief as may be just and proper.

Respectfully submitted,

RAMEY & HAILEY

/s/ Joel S. Paul

Joel S. Paul, Atty. #422921
Attorneys for Plaintiff
9333 N. Meridian Street, Suite 105
Indianapolis, IN 46260
Tel: (317) 582-0000
Fax: (317) 582-0080
E-mail: lawjoel@hotmail.com