

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FILED
U.S. DISTRICT COURT
2012 JAN -9 PM 3: 32
S.D. OF N.Y.W.P.

-----X
TOM GATES,

Plaintiff,

-against-

FEDEX OFFICE AND PRINT
SERVICES, INC.,

Defendant.
-----X

COMPLAINT

12 Civ. _____

12 CV 0167

Plaintiff Tom Gates (“Plaintiff” or “Gates”) by his attorneys, Yankwitz & McGuire, LLP, for his complaint against FedEx Office and Print Services, Inc. (“FedEx”), in this action, alleges as follows:

I.

INTRODUCTION

1. Plaintiff commences this action for declaratory, injunctive and equitable relief as well as monetary damages, to redress FedEx’s unlawful employment practices committed against Plaintiff, including FedEx’s harassment and unlawful termination of Plaintiff on account of his service as a grand juror, in violation of 28 U.S.C. § 1875.

2. Plaintiff, a 48-year old African-American male with a Masters in Organization Leadership, had worked for FedEx for more than twenty years. Plaintiff served as a manager for approximately ten years, most recently as a manager at the FedEx Office store at 100 Wall Street, New York, New York.

3. Notwithstanding his years of service and favorable reviews, Plaintiff was unlawfully terminated by FedEx on April 5, 2011, for alleged failures occurring while he was serving as a grand juror from March 3, 2011 to April 6, 2011.

II.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as this action involves federal questions regarding Plaintiff's rights under 28 U.S.C. § 1875.

5. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

III.

THE PARTIES

6. Plaintiff Tom Gates is a 48-year old African American male who resides in White Plains, New York.

7. Upon information and belief, defendant FedEx Office and Print Services, Inc., is a corporation organized and existing pursuant to the laws of the State of Texas, with its principal place of business at 13155 Noel Road, Suite 1600, Dallas, Texas, 75240.

IV.

THE FACTS

8. Gates began working for FedEx on November 26, 1990. Plaintiff served as a manager for approximately ten years, most recently as a manager at the FedEx Office store at 100 Wall Street, New York, New York.

9. On February 28, 2011, Gates was selected for service on the Federal Grand Jury for the Southern District of New York.

10. When Gates told his supervisor, District Manager Tafsir Mbodje (“Mbodje”), that he had been selected and was required to serve on a federal grand jury from March 3 through April 6, 2011, Tafsir told him to “lie” to the Court and falsely state that he was a racist so that he would “get out of” jury duty.

11. When Gates responded that he would not commit perjury, Mbodje declared that he was still responsible for getting everything done, and that he could not delegate his work to an assistant manager. Gates told Mbodje that he would not be able to work certain days due to the fact that he was required to serve as a Grand Juror, and Mbodje responded that he would have to “figure it out.”

12. Mbodje also told Gates that the 100 Wall Street store was going to be audited soon so he had to “get out of” jury duty.

13. Gates served a grand juror from March 3, 2011 to April 6, 2011. Throughout his service, Gates did his best to attend to his job duties at FedEx while, at the same time, doing his civic duty by serving on the grand jury. Knowing that his facility was understaffed and that his Assistant Manager had only been working there since mid-January, Gates went to work at FedEx at the end of the day, after his service to the grand jury was completed for that day.

14. Despite the fact that Mbodje knew Gates was serving as a grand juror, on March 16, 2011, Gates was directed to meet with Mbodje the next day, March 17. At that time, he was given a “Final Warning” for “Control Self Monitoring” (“CSM”). When Gates explained that he had been on jury duty, Mbodje stated that Gates must “own [his] audit” and could not delegate it to his Assistant Manager.

15. In the Final Warning, Mbodje identified Gates' deficiencies as the failure to "continuously engage, communicate and inspire," failure to "demonstrate drive for results," and failure to "utilize sound judgment and decision making."

16. Even though Mbodje knew Gates would be on jury duty through April 6, 2011, the Final Warning directed Gates to attend a CSM training on March 23, to submit an action plan by March 25 at 5:00 p.m., and to submit his CSM submission for the month of March on March 29.

17. The counseling notice further provided that Gates would be evaluated on "03/31/2010 (sic)." Gates protested the March 17 Final Warning for being inaccurate, disregarding achievements made in generating revenue, and for being inconsistent with the company's discipline progression policy guidelines in that he had not had any positive discipline in nearly two years.

18. On April 6, 2011, Mbodje told Gates that he had to report to work, notwithstanding the fact that it was Gates' last day of jury service. At that time, Gates was placed on administrative leave, and subsequently terminated on April 18, 2011. The reasons cited in his Termination Statement were all based on a visit to the 100 Wall Street facility during March 2011, while Gates was serving on the grand jury.

AS AND FOR A FIRST CAUSE OF ACTION
(Harassment and Unlawful Termination in Violation of 28 U.S.C. § 1875)

19. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 16 with the same force and effect as if set forth herein.

20. FedEx has harassed and unlawfully terminated Plaintiff's employment by reason of his service on the grand jury in violation of 28 U.S.C. § 1875.

21. As a direct and proximate result of FedEx's unlawful conduct, Plaintiff has suffered, and continues to suffer, monetary and/or economic damages including, but not limited to, loss of past and future income, compensation and benefits for which he is entitled to an award of monetary damages and other relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court enter judgment in his favor and against Defendant, containing the following relief:

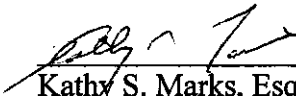
- a. A declaratory judgment that the actions, conduct and practices of Defendant complained of herein violate the laws of the United States;
- b. An injunction and order permanently restraining Defendant from engaging in such unlawful conduct;
- c. An order directing Defendant to reinstate Plaintiff's employment and place him in the position he would have occupied but for Defendant's unlawful conduct, as well as to take such affirmative action as is necessary to ensure that the effect of this unlawful conduct is eliminated and does not continue to affect his professional personal life;
- d. An award of damages in an amount to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all monetary and/or economic damages, including, but not limited to, the loss of past and future income, wages, bonuses, compensation, seniority and other benefits of employment;
- e. A civil penalty of \$5,000 for each violation;
- f. An award of attorney's fees and expenses pursuant to 28 U.S.C. § 1875(d)(2)
- g. The costs of this action; and
- h. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: White Plains, New York
January 2, 2012

YANKWITT & McGUIRE, LLP

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