

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JERRY D. JONES,)
2920 Sweet Briar Drive)
Independence, MO 64057)

Plaintiff,)

vs.)

Case No. 05-0500-CV-W-ODS

D.S.T. OUTPUT, LLC)
333 W. 11th Street, 5th Floor)
Kansas City, MO 64105)

Registered Agent:)

Theresa C. Hursh)

D.S.T. Systems, Inc.,)

333 W. 11th Street)

Kansas City, MO 64105)

Defendant.)

COMPLAINT

COMES NOW the Plaintiff, Jerry D. Jones, by and through his attorney of record, Brian J. Klopfenstein, and for his complaint against defendant states and alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction of the subject matter is proper pursuant to Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991, 42 U.S.C. Section 2000e et seq., and the Civil Rights Act, 42 U.S.C. Section 1981 regarding race discrimination and in retaliation for protected activity. Additionally, Plaintiff was subjected to a hostile work environment while working at D.S.T.

2. The cause of action arose in Kansas City, Jackson County, Missouri and the venue is proper in the United States District Court for the Western District of Missouri pursuant to 28 U.S.C. Section 1331.

PARTIES

3. Plaintiff Jones is an African American male over the age of 40 who is a citizen and resident of Independence, Jackson County, Missouri and the United States of America.

4. Defendant D.S.T. Output LLC is a corporation that provides a wide variety of services to members of the general public and other businesses. The services offered include security protection and also copying documents and publishing them to a disc available for use in a friendlier user environment. Defendant operates a business in Kansas City, Jackson County, Missouri where the Plaintiff was employed. Defendant is a Delaware Corporation in good standing in the State of Missouri. Defendant can be served process by serving the Registered Agent listed above.

5. Plaintiff became employed at Defendant in July 2001 after applying for work on June 20, 2001. Plaintiff initially operated a machine and worked under the supervision of Jay Peola. While working under Peola, Plaintiff was treated different from the other males in the department.

6. While working under supervisor Peola, Plaintiff constantly heard racially insulting remarks. Peola would refer to African American males as either “boy” or “coons.” In Peola’s department, there were 11 Samoans, 3 African American individuals and 2 Caucasian females.

7. Plaintiff offered a ride to work for his boss. When Peola accepted the ride, he began eating Plaintiff's food. Additionally, Peola then began a campaign to teach the Bible to Plaintiff and to convert Plaintiff to the faith that Peola knew. Peola's persistent demand that Plaintiff study the Bible then became a demand that Plaintiff convert to the Mormon Faith because Peola was Mormon. In fact, Plaintiff was baptized into the Mormon faith out of a fear that were he to not be baptized a Mormon, he would lose his job.

8. On or about May 23, 2003, Plaintiff was terminated on the charge of being a no call no show. Although Plaintiff denied he was a "no call no show" because his supervisor gave him a vacation day, his supervisor elected to terminate Plaintiff on that date.

9. After being terminated, Plaintiff was returned to work when the Defendant realized that Plaintiff's supervisor had no authority to summarily terminate him. Plaintiff spoke with the HR director, Gary Funkhauser who eventually rescinded his discipline regarding a co-worker. When he returned to work, Plaintiff's rate of pay was lower than prior to his departure. Additionally, Plaintiff lost his supervisory job title and never recovered the amount. Funkhauser told Plaintiff that he would stay on the Decision Making Leave (DML) list for 3 years. While on that list, Plaintiff is unable to bid other jobs and also is unable to enjoy many of the raises that are routinely offered employees.

10. After returning to work, Plaintiff was subjected to a variety of racially derogatory comments that he reported to DST Output's Human Resources Department. Those comments included referring to Plaintiff as the "token Nigger;" "Black people walk like they have a pole stuck up their butts;" "God made white people and they came

out too white; He made black people and they came out burnt; he made Samoans people and they came out perfect just like apple pie.”

11. Plaintiff even reported others who made racist comments including Saili Peola (Jay’s father) and others. The investigation conducted by Defendant’s Human Resources Dept., however, did not reveal any evidence of wrong doing.

12. Among other acts of harassment that Plaintiff identified were the leaving of notes on his car. Those notes included such things as “I know what you did last night” and “How could you do this to my Mom.” While the HR department identified that Jay Peola was the author of such notes, his explanation that Plaintiff was having an extramarital affair with another DST employee resulted only in counseling for Peola. Plaintiff denied having any such affair.

13. Plaintiff even reported that the manager Jay Peola was hiring an inordinate number of Samoan employees and providing them with benefits that he was denied. Defendant DST’s HR department simply denied the allegations. Plaintiff alleges that he was wrongly charged with committing different acts against members of the Samoan work force including an incident in November 2002 when he was wrongly accused of making sexually inappropriate comments to Lisa Taliulu.

14. Plaintiff, in February 2003 was charged with committing inappropriate behavior while in the workplace. Plaintiff was, at the time, a lead machine operator. While the action was later rescinded, Plaintiff still had his job title taken away and his rate of pay was reduced.

15. On April 5, 2003, Plaintiff was accused of having an affair with a Caucasian employee. Plaintiff was accused of engaging in inappropriate sexual conduct

with the female employee. While the company found the female employee did not engage in any such affair, Plaintiff was disciplined. When he was returned to work, Plaintiff lost his duty as supervisor and also lost his rate of pay.

16. Plaintiff continued to experience race discrimination from his supervisor, Jay Peola, on a daily basis. Peola would make racial comments on a daily basis about Black people. Despite reporting the conduct to management, no action was taken. As a result of reporting the incident and having no action taken, Jay Peola told Plaintiff that “he was going to lose his job, then my brand new car, and end up living on the street.”

17. While Plaintiff continued to work at DST, his job reviews were reduced and he constantly was in trouble having reported the conduct of his supervisor. He was subjected to greater and stricter punishment with regard to discipline issues and absenteeism than other Mormon and Samoan employees.

18. As a result of this conduct, Plaintiff suffered both economic loss and psychological harm. Plaintiff found it difficult to go to work, and difficult to interact with his supervisor. Plaintiff was hassled and targeted on a daily basis. Plaintiff lost his natural sleep and rest. Plaintiff suffered emotional harm and further a loss of enjoyment of work and his time away from work. Plaintiff was forced to continue working because he could not find other employment and he needed his job.

COUNT I-UNLAWFUL RACE DISCRIMINATION

19. Plaintiff incorporates paragraphs 1 through 18 as if fully contained in Count I.

20. Plaintiff was wrongly discriminated against in his employment because of his race. He was constantly subjected to harassment, humiliation and criticism from his

supervisor because of his race, in violation of Title VII of the Civil Rights Act of 1964, as amended. Further, Plaintiff suffered adverse actions on his employment during the process.

21. The unlawful employment practices alleged herein were knowingly and intentionally committed against Plaintiff. Defendant's management staff accepted, and adopted the conduct of Plaintiff's manager, Jay Peola with no discernable consequences to Peola.

22. The unlawful employment practices alleged herein were willful and malicious and in reckless disregard of Plaintiff's civil rights causing Plaintiff to suffer severe damage as a result of the actions.

WHEREFORE, Plaintiff prays the following:

A. Compensatory damages, both pecuniary and non-pecuniary damages in an amount proven at trial;

B. That the Court enjoin the Defendant from continued unlawful employment practices and any further retaliatory actions;

C. That the Court order the defendant to pay Plaintiff's reasonable attorney fees and costs;

D. That the Court grant Plaintiff a jury trial on all triable matters;

E. That the Court grant such further relief as the Court may deem just and proper;

F. Punitive damages in an amount sufficient to deter further wrongful conduct and to punish the wrongdoing of the Defendant.

COUNT II-DISCRIMINATION BASED UPON RELIGION

23. Plaintiff incorporates paragraphs 1 through 22 as if fully contained in Count II.

24. Plaintiff was wrongly discriminated against in his employment because of his religion. He was constantly subjected to harassment, humiliation and criticism from his supervisor because of his religion, in violation of Title VII of the Civil Rights Act of 1964, as amended. Further, Plaintiff suffered adverse actions on his employment during the process.

25. During the employment, Plaintiff was forced and co-erced to join the Mormon faith by his supervisor. Additionally, Plaintiff noticed that he was treated more harshly because he was not a “true” Mormon, by his supervisor.

26. The unlawful employment practices alleged herein were knowingly and intentionally committed against Plaintiff. Defendant’s management staff accepted, and adopted the conduct of Plaintiff’s manager, Jay Peola with no discernable consequences to Peola.

27. The unlawful employment practices alleged herein were willful and malicious and in reckless disregard of Plaintiff’s civil rights causing Plaintiff to suffer severe damage as a result of the actions.

WHEREFORE, Plaintiff prays the following:

A. Compensatory damages, both pecuniary and non-pecuniary damages in an amount proven at trial;

B. That the Court enjoin the Defendant from continued unlawful employment practices and any further retaliatory actions;

C. That the Court order the defendant to pay Plaintiff's reasonable attorney fees and costs;

D. That the Court grant Plaintiff a jury trial on all triable matters;

E. That the Court grant such further relief as the Court may deem just and proper;

F. Punitive damages in an amount sufficient to deter further wrongful conduct and to punish the wrongdoing of the Defendant.

COUNT III-DISCRIMINATION BASED UPON TERMINATION

28. Plaintiff incorporates paragraphs 1 through 27 as if fully contained in Count III.

29. Plaintiff was wrongly discriminated against in his employment because he reported the unlawful conduct to the HR department and others. He was constantly subjected to harassment, humiliation and criticism from his supervisor because of his race, in violation of Title VII of the Civil Rights Act of 1964, as amended. Further, Plaintiff suffered adverse actions on his employment during the process.

30. The unlawful employment practices alleged herein were knowingly and intentionally committed against Plaintiff. Defendant's management staff accepted, and adopted the conduct Plaintiff's manager, Jay Peola with no discernable consequence to Peola. When he vigorously fought the charge of committing sexual harassment against a Caucasian employee, he was treated differently for defending himself. After the event was proven to not have occurred, he still was subjected to comments in retaliation.

31. The unlawful employment practices alleged herein were willful and malicious and in reckless disregard of Plaintiff's civil rights causing Plaintiff to suffer severe damage as a result of the actions.

WHEREFORE, Plaintiff prays the following:

A. Compensatory damages, both pecuniary and non-pecuniary damages in an amount proven at trial;

B. That the Court enjoin the Defendant from continued unlawful employment practices and any further retaliatory actions;

C. That the Court order the defendant to pay Plaintiff's reasonable attorney fees and costs;

D. That the Court grant Plaintiff a jury trial on all triable matters;

E. That the Court grant such further relief as the Court may deem just and proper;

F. Punitive damages in an amount sufficient to deter further wrongful conduct and to punish the wrongdoing of the Defendant.

**COUNT IV-DISCRIMINATION BASED UPON HOSTILE WORK
ENVIRONMENT**

32. Plaintiff incorporates paragraphs 1 through 31 as if fully contained in Count IV.

33. Plaintiff was wrongly discriminated against in his employment because of his race, religion, and in retaliation of reporting acts of discrimination. He was constantly subjected to harassment, humiliation and criticism from his supervisor and others in the department, including different members of the Samoan community on Plaintiff's shift, in violation of Title VII of the Civil Rights Act of 1964, as amended. Further, Plaintiff suffered adverse actions on his employment during the process.

34. The unlawful employment practices alleged herein were knowingly and intentionally committed against Plaintiff. Defendant's management staff accepted, and adopted the conduct of Plaintiff's manager, Jay Peola with no discernable consequence to Peola.

35. The unlawful employment practices alleged herein were willful and malicious and in reckless disregard of Plaintiff's civil rights causing Plaintiff to suffer severe damage as a result of the actions.

WHEREFORE, Plaintiff prays the following:

- A. Compensatory damages, both pecuniary and non-pecuniary damages in an amount proven at trial;
- B. That the Court enjoin the Defendant from continued unlawful employment practices and any further retaliatory actions;
- C. That the Court order the defendant to pay Plaintiff's reasonable attorney fees and costs;
- D. That the Court grant Plaintiff's jury trial on all triable matters;
- E. That the Court grant such further relief as the Court may deem just and proper;
- F. Punitive damages in an amount sufficient to deter further wrongful conduct and to punish the wrongdoing of the Defendant.

Respectfully Submitted,

BRIAN J. KLOPFENSTEIN 333722
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Post Office Box 897
Kearney, MO 64060-0897
(816) 628-2800
(816) 628-2802 (FAX)
ATTORNEY FOR PLAINTIFF

State of Missouri)
) ss
County of Jackson)

I, Jerry D. Jones, have read the foregoing Petition for Damages and do hereby state that the contents are true, accurate, and correct to the best of my knowledge, information and belief.

JERRY D. JONES

Subscribed and sworn to before me, the undersigned Notary Public, ____ day of May 2005.

Notary Public

My Commission Expires: