

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S. DISTRICT COURT

JAN 29 2010

JAMES N. WILSON, Clerk
By: *[Signature]*
Deputy Clerk

Michael Hill,)
)
 Plaintiff,)
)
 vs.)
)
 Performance Food Group Company,)
 LLC, Chuck Slappy, and Cary Ward,)
)
 Defendants.)

-RLV

CIVIL ACTION FILE NO.

1:10-CV-0268

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Michael Hill (hereinafter sometimes "Plaintiff"), and files this lawsuit against Defendants, and shows the following:

Jurisdiction and Venue

1.

Plaintiff is a citizen and resident of the State of Georgia and resides in this judicial district.

2.

Defendant Performance Food Group Company, LLC (hereinafter sometimes "PFG") is a Delaware corporation with its principal place of

business in Richmond, Virginia. At all relevant times, said Defendant has done business within the judicial district of the Court. Process may be served upon said Defendant at National Registered Agents, Inc., 3675 Crestwood Parkway, Suite 350, Duluth, GA 30096.

3.

Defendants Chuck Slappy and Cary Ward, are managers for PFG at its location at 7895 Third Flag Parkway, Austell, GA, 30168, and are residents of this judicial district.

4.

PFG has, at various times, transacted business under the names of predecessor companies "Roma," "Vistar," and/or "Vistar/Roma" at the 7895 Third Flag Parkway location

5.

The unlawful practices described herein occurred at 7895 Third Flag Parkway. Defendants are subject to the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1331, 1332, and/ or 1367. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

Facts

6.

Plaintiff is an African-American male. Defendant PFG employed Plaintiff as a driver at 7895 Third Flag Parkway from August 2003 to January 31, 2009. During the period January 31, 2008 to January 31, 2009, Plaintiff was placed off-duty.

7.

Throughout his tenure of active employment Plaintiff worked for Cary Ward, a White male, who was Plaintiff's second level supervisor.

8.

Throughout Plaintiff's tenure of active employment, Cary Ward on a daily basis addressed Plaintiff and other African-American employees under Ward's supervision as "boy" and "you people."

Ward began every sentence directed toward Plaintiff with "boy" and never used Plaintiff's name. In contrast, Ward addressed White employees by their first names.

9.

Plaintiff and other African-American employees found said language

and racial slurs offensive and racially derogatory. This created a hostile work environment for Mr. Hill at PFG.

10.

Furthermore, Ward grabbed, wrestled, and kicked in the rear at least one African-American employee on at least two occasions. As Ward kicked the employee in the rear he called the employee "boy." Ward ignored said employee's protests to stop this conduct. Plaintiff and other African-American employees found said language, racial slurs, and conduct offensive and racially derogatory.

11.

Vacant positions were not posted so that African-American employees could apply. This had the effect of discriminating against African-American employees such as Plaintiff. When Mr. Hill observed that a trainer position would be open (due to an employee leaving) he asked Ward about being considered for the position. Ward said "You people are not running anything!"

Chuck Slappy (another White male) said in front of Ward to Mr. Hill, "We do not need you people here running nothing. You do not qualify and

the position is not open.” Slappy also said “we do not have any black supervisor here. You guys always end up getting hurt and don’t stay on the truck long enough to be trusted with any other positions.” Plaintiff found said statements and slurs offensive and racially derogatory.

12.

In fact the trainer position did become open on two occasions and unqualified whites were placed into the position. They were unqualified because of driving infractions and suspension of their commercial driver’s licenses.

13.

At all relevant times, the entire management staff at 7895 Third Flag Pkwy, Austell, GA 30253 consisted of White personnel.

14.

In January 2008, an employee named Tommy Skelton (a White male) said that African-American "boys" would make suitable targets for rifle practice. Slappy voiced agreement with Skelton. Skelton and Slappy made said statements in the presence of Mr. Hill and other African-American employees.

15.

Plaintiff and other African-American employees found said language offensive and racially derogatory.

16.

In 2007, Mr. Hill was injured on the job and thereafter became unable to continue his regular duties as a driver. Plaintiff requested reassignment to a light-duty position. This occurred for a short period of time, but then was stopped.

17.

Management, however, had provided light duty or alternative assignments to White drivers who had need of such, including one who, in 2007, lost his commercial driver's license due to traffic infractions. Such light duty assignments lasted for extended periods of time for White employees.

18.

At the time of his request, Mr. Hill was physically capable of performing one or more of the light duty or alternative assignments of the types given to White drivers on other occasions. At the time of his request,

light duty or alternative assignments of the types given to White drivers on other occasions were available for Plaintiff.

19.

As the result of management's denying light duty to Mr. Hill, he was placed out of work on January 31, 2008. This greatly decreased Plaintiff's income.

20.

On January 31, 2009, management terminated Plaintiff's employment.

21.

On June 3, 2008, Mr. Hill timely filed a charge (class) of Title VII discrimination against PFG (formerly Vistar/Roma) with the Equal Employment Opportunity Commission (hereinafter "EEOC"). The charge is currently being investigated by the EEOC. Plaintiff's charge alleges that he was subjected to a racially hostile work environment and denied promotions and light duty work because of his race.

Upon receiving a right to sue letter from the EEOC, Mr. Hill intends to amend his complaint to include Title VII causes of action. This will include, but not be limited to, claims for a failure to promote, hostile work

environment, and possible class action.

Count I: Hostile Work Environment

22.

Plaintiff re-alleges and incorporates herein all preceding paragraphs of this Complaint.

23.

The said actions of one or more of said Defendants, through their employees, created a racially-hostile work environment, forcing Plaintiff to endure severe and pervasive racial harassment as a term or condition of his employment throughout his tenure of active employment. Defendants have violated 42 U.S.C. § 1981.

24.

As a direct and proximate result of Defendants' violation of 42 U.S.C. § 1981, Plaintiff has been damaged and is entitled to the relief set forth in his Prayer for Relief.

Count II: Disparate Treatment

25.

Plaintiff re-alleges and incorporates herein all preceding paragraphs of

this Complaint.

26.

The said actions of Defendants, through their employees, forced Plaintiff, by reason of racial discrimination, to take leave at a fraction of his regular pay. White counterparts were given extended light duty positions that maintained their regular pay. Defendants also denied Plaintiff promotions because of his race while unqualified whites were promoted. Defendants have violated 42 U.S.C. § 1981.

27.

As a direct and proximate result of Defendants' violation of 42 U.S.C. § 1981, Plaintiff has been damaged and is entitled to the relief set forth in his Prayer for Relief.

Count III: Retaliation

28.

Plaintiff re-alleges and incorporates herein all preceding paragraphs of this Complaint.

29.

When Plaintiff, in April 2007, questioned the selections of the

unqualified Whites as being discriminatory with Ward, Ward retaliated against Mr. Hill by charging him with fabricated driving infractions and threatening him with termination. In fact Plaintiff was an outstanding driver who had just received an award for an unblemished safety record in March 2007. Defendants have violated 42 U.S.C. § 1981.

30.

As a direct and proximate result of Defendants' violation of 42 U.S.C. § 1981, Plaintiff has been damaged and is entitled to the relief set forth in his Prayer for Relief.

Count IV: Termination of Employment

31.

Plaintiff re-alleges and incorporates herein all preceding paragraphs of this Complaint.

32.

The Defendants, through their employees, resulted in the racially discriminatory termination of Plaintiff's employment. Defendants have violated 42 U.S.C. § 1981.

33.

As a direct and proximate result of Defendants' violation of 42 U.S.C. § 1981, Plaintiff has been damaged and is entitled to the relief set forth in his Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

- a. That Plaintiff receive a trial by jury.
- b. That Plaintiff recover from Defendants back pay, benefits, and interest due and payable.
- c. That Plaintiff recover from Defendants front pay and benefits, or, in lieu of recovering front pay and benefits, that Plaintiff be reinstated to an appropriate position.
- d. That Plaintiff recover from Defendants an amount of damages to compensate him for the emotional pain and suffering he has endured as a result of Defendants' discriminatory, retaliatory, and tortious acts.
- e. That Plaintiff recover from Defendants punitive damages under 42 U.S.C. § 1981(a)(1) in an amount sufficient to punish Defendants for their actions and to deter them from discriminating against their employees

in the future.

f. That Plaintiff be granted declaratory relief.

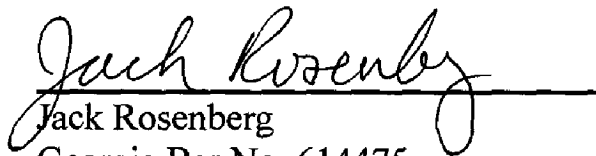
g. That Plaintiff be granted injunctive relief to prevent Defendants from engaging in such discriminatory conduct in the future.

h. That Plaintiff recover from Defendants his costs incurred in bringing this action; including his attorney's fees and expenses of litigation.

i. That Plaintiff be awarded prejudgment interest.

j. That Plaintiff have such other and further relief as this Court deems just and proper.

Respectfully submitted this 29th day of January, 2010.



Jack Rosenberg
Georgia Bar No. 614475
Suite W405
1117 Perimeter Center West
Atlanta, GA 30338
Telephone: (678) 736-5746
Facsimile: (678) 736-5199
jackrosenberg2@gmail.com