

Hon. Robert J. Bryan

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVE AXTELL,

Plaintiff,

v.

JAMES J. WILLIAMS BULK SERVICE
TRANSPORT, INC., TRANS-SYSTEM, INC.,
and SYSTEM TWT TRANSPORTATION,
INC.,

Defendants.

C11-5499-RJB

CONSENT DECREE

(Please Note on Motion Calendar for:
October 27, 2011)

Plaintiff, Dave Axtell ("Mr. Axtell"), commenced the above-captioned action in this Court, with a complaint alleging that Defendants James J. Williams Bulk Service Transport, Inc. ("JJW"), Trans-System, Inc. ("TSI"), and System TWT Transportation LLC ("STT") (collectively "Defendants") violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by: (1) failing and refusing to reemploy Mr. Axtell in the position in which he would have been employed if his continuous employment had not been interrupted by his military service; (2) failing and refusing to reemploy Mr. Axtell in a timely manner; and (3) discharging Mr. Axtell within one year of his reemployment without cause. Mr. Axtell sought liquidated damages for these allegedly willful violations of USERRA. *See* Dkt. No. 1.

1 Defendants deny that they violated any provision of USERRA or any other law with
2 respect to Mr. Axtell's employment or termination thereof.

3 Nevertheless, Mr. Axtell and Defendants, desiring that this action be settled by an
4 appropriate Consent Decree, and without the burden and risks of protracted litigation, agree to
5 the jurisdiction of this Court over the parties, over the subject matter of this action, and for
6 purposes of the present Proposed Consent Decree and the incorporated General Release of
7 Claims (together, the "Decree"). Mr. Axtell and Defendants also hereby waive, for purposes of
8 the present Decree only, hearings and findings of fact and conclusions of law on all issues, and
9 further agree to the entry of this Decree as a final and binding agreement between them with
10 regard to the issues raised in the Complaint filed by Mr. Axtell in this case. *See* Dkt. No. 1.

11 This Decree, being entered into with the consent of Mr. Axtell and Defendants, shall in no
12 way constitute an adjudication or finding on the merits of the case, nor be construed as an
13 admission by Defendants or a finding of wrongdoing or violation of any applicable federal law
14 or regulation.

15 In resolution of this action, the parties hereby STIPULATE, AGREE, and
16 RESPECTFULLY JOINTLY REQUEST that the Court expressly APPROVE and ENTER the
17 Consent Decree, as follows:

18 **I. PARTIES**

- 19 1. The parties to this Decree are Mr. Axtell and Defendants.
20 2. This Decree will be binding and enforceable against Defendants (including
21 successors in interest) for the acts and omissions of Defendants' employees committed within
22 the scope of employment and upon Mr. Axtell (including his heirs, successors, and assigns).

23 **II. THE SCOPE OF THE DECREE**

- 24 3. This Decree and the incorporated General Release of Claims resolve all legal and
25 equitable claims actually or potentially arising out of Mr. Axtell's employment with and
26 termination from Defendants as of the date of the signing of this Decree. In consideration for
27 Mr. Axtell's execution of the General Release of Claims, appended and incorporated by
28 reference to this Decree as Attachment A, and for Mr. Axtell's agreement to be bound to the

1 other provisions of the Decree set forth below, Defendants agree to provide the relief and be
2 bound by the provisions of the Decree set forth below.

3 **III. NON-RETALIATION**

4 4. Defendants shall not take any action against any person, including but not limited
5 to Mr. Axtell, which constitutes retaliation or interference with the exercise of such person's
6 rights under USERRA, or because such person gave testimony or assistance or participated in
7 any manner in any investigation or proceeding in connection with this case.

8 **IV. INDIVIDUAL RELIEF**

9 5. In full settlement of the claims raised in this case and in consideration for his
10 execution of the Release of Claims, Defendants shall pay to Plaintiff SIXTY THOUSAND
11 DOLLARS (\$60,000.00), payable in two equal installments (of \$30,000) as follows:

12 (a) the first installment, no later than ten (10) business days after approval and
13 entry by the Court of this Decree; and

14 (b) the second installment, during the first week of January 2012 (not earlier than
15 January 1, 2011 and no later than January 6, 2012).

16 (c) Defendants will make appropriate employer-based income tax withholdings
17 and other statutory deductions. Defendants shall pay the employer portion of any social security
18 tax on the back pay portion of the amount separately and shall not deduct its portion of such tax
19 from the amount paid to Mr. Axtell. Mr. Axtell shall be responsible for paying any income
20 taxes he may owe on amounts paid to him by Defendants.

21 (d) Defendants shall pay the required amounts by mailing to Mr. Axtell the checks
22 sent by overnight mail delivery service requiring a signature upon receipt, addressed as follows:

23 Dave Axtell
24 c/o J. Michael Diaz
25 United States Attorney's Office
26 700 Stewart Street, Suite 5200
27 Seattle, WA 98105

28 (e) Defendants shall timely issue to Mr. Axtell the appropriate Internal Revenue
Service tax forms reflecting the amounts paid to Mr. Axtell and the amounts withheld by
Defendants, including issuing to Mr. Axtell a W-2 wage and tax statement.

1 6. Mr. Axtell shall refer all potential future employers/references to Defendants' Vice
2 President of Personnel. Upon inquiry about Mr. Axtell's employment with or leaving of
3 Defendants, Defendants' Vice President of Personnel shall state only Mr. Axtell's dates of
4 employment, positions (salaried employee with additional duties and hourly driver), and
5 compensation history. Defendant's Vice President of Personnel shall make no other statements
6 about Mr. Axtell to a prospective employer unless required by law, other than to state that
7 "company policy allows them only to verify the information that is listed above." Further,
8 Defendants will segregate (in a separate file located in the General Counsel's office entitled
9 "Axtell Litigation File") the customer complaint and termination records from his personnel file.
10 Finally, Defendants will not disclose Mr. Axtell's personnel file without his express consent,
11 unless required by law.

12 **V. TRAINING/RETRAINING REQUIREMENTS**

13 7. No later than ninety (90) calendar days after entry of this Decree, Defendants shall
14 require the following individuals to undergo USERRA training:

- 15 a. Terry Martin (General Counsel)
16 b. Jeff Benesch (Vice President of Personnel)
17 c. Francis McGhee (JJW General Manager)
18 d. Jerrod Stockton (JJW Safety and Compliance Manager)
19 e. All Human Resources staff members

20 (collectively, the "Trainees.>").

21 8. The training will consist of requiring the Trainees to view as a group a United
22 States Office of Personnel Management USERRA training video located at the following URL:
23 <http://www.opm.gov/mediacenter/videos/OPM-Media-Center/USERRA-Training-Webcast.aspx>.

24 9. The Trainees will observe this training video collectively in the same room, on the
25 same date, and at the same time. Terry Martin, General Counsel for Defendants, will introduce
26 the video and state as follows: "The following training video relates to employer and employee
27 rights and obligations under the Uniformed Services Employment and Reemployment Rights
28 Act, or USERRA. USERRA generally protects members of the uniformed, military services

1 who also work outside of the military. The company takes its obligations under USERRA
2 seriously, and it is important that you give your full attention to this presentation. If you have
3 any questions about this material, please speak with me.”

4 10. All Trainees will sign a form acknowledging their attendance at the training for the
5 full length of the video.

6 11. To reinforce the training described above, Defendants agree to post information
7 about USERRA in its workplace. Specifically, within thirty (30) calendar days after the date of
8 this Agreement, Defendants will display the “USERRA Rights Notice” Poster issued by the
9 United States Department of Labor (appended as Attachment B to this Decree) in all places
10 where other non-discrimination notices are posted, including but not limited to breakrooms and
11 other common areas.

12 **VI. MISCELLANEOUS**

13 12. The undersigned representatives of Defendants certify that they are fully
14 authorized to enter into the terms and conditions of this Decree and to execute and legally bind
15 Defendants.

16 13. This Decree will be binding and enforceable against Defendants (including
17 successors in interest) for the acts and omissions of Defendants’ employees committed within
18 the scope of employment and upon Mr. Axtell (including his heirs, successors, and assigns).

19 14. This Decree may be signed in counterparts, and its validity shall not be challenged
20 on that basis. All such counterparts, together, shall be deemed to be one document and a
21 photocopy of this Decree and any signature page thereto is as valid as the original. This Decree
22 constitutes the entire agreement and commitments of the parties. Any modifications to this
23 Decree must be mutually agreed upon and memorialized in a writing by all parties.

24 15. Each party shall bear their own costs and expenses of litigation, including
25 attorneys’ fees.

26 **VII. RETENTION OF JURISDICTION, DISPUTE RESOLUTION AND 27 COMPLIANCE**

28 16. This Court retains jurisdiction over this matter for the purpose of entering
appropriate orders enforcing this Decree.

1 17. The effective date of this Decree shall be the date upon which it is entered by the
2 Court.

3 18. The parties shall engage in good faith efforts to resolve any dispute concerning
4 compliance with this Decree. In the event of a dispute, the parties shall give notice to each other
5 fourteen (14) days before seeking resolution of the dispute by the Court, and may conduct
6 expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining
7 compliance with the terms of the Decree.

8 19. The terms of this Decree shall expire without further action from the Court one
9 year from the date of entry of the judgment dismissing this lawsuit. The Parties agree, however,
10 that the terms of the Release of Claims and Defendants' obligations under Paragraphs 6 and 11,
11 do not expire, but rather shall survive the expiration of the other terms of the Decree.

12 20. Either party may move the Court to extend the expiration date of the Decree for
13 good cause shown.

14
15 Dated this 27th day of October, 2011.

16 By:

17 JACKSON LEWIS LLP

18 s / _____

19 Michael A. Griffin
20 Jackson Lewis LLP
21 One Union Square
22 600 University Street, Suite 2900
23 Seattle, W A 98101

24 Attorneys for Defendants
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By:

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ORDER APPROVING CONSENT DECREE

The Court, having considered the foregoing stipulated agreement of the parties, including the General Release incorporated into the Decree, hereby orders that the Consent Decree is approved as the final decree of this Court in full settlement of this action. This lawsuit is hereby dismissed with prejudice and without costs or attorneys' fees. The Court retains jurisdiction over this matter for purpose of enforcing the Consent Decree approved herein.

APPROVED and ENTERED BY THIS COURT this 31st of October, 2011



Robert J. Bryan
United States District Judge